IMPEACHMENT INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH
RICHARD M. NIXON
PRESIDENT OF THE UNITED STATES OF AMERICA

Book I

JANUARY 31–MAY 15, 1974

U.S. GOVERNMENT PRINTING OFFICE
41-018 WASHINGTON : 1975

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, JR., New Jersey, *Chairman*

HAROLD D. DONOHUE, Massachusetts
JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
WILLIAM L. HUNGATE, Missouri
JOHN CONYERS, JR., Michigan
JOSHUA EILBERG, Pennsylvania
JEROME R. WALDIE, California
WALTER FLOWERS, Alabama
JAMES R. MANN, South Carolina
PAUL S. SARBANES, Maryland
JOHN F. SEIBERLING, Ohio
GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
CHARLES B. RANGEL, New York
BARBARA JORDAN, Texas
RAY THORNTON, Arkansas
ELIZABETH HOLTZMAN, New York
WAYNE OWENS, Utah
EDWARD MEZVINSKY, Iowa

EDWARD HUTCHINSON, Michigan
ROBERT McCLORY, Illinois
HENRY P. SMITH III, New York
CHARLES W. SANDMAN, JR., New Jersey
TOM RAILSBACK, Illinois
CHARLES E. WIGGINS, California
DAVID W. DENNIS, Indiana
HAMILTON FISH, JR., New York
WILEY MAYNE, Iowa
LAWRENCE J. HOGAN, Maryland
M. CALDWELL BUTLER, Virginia
WILLIAM S. COHEN, Maine
TRENT LOTT, Mississippi
HAROLD V. FROEHLICH, Wisconsin
CARLOS J. MOORHEAD, California
JOSEPH J. MARAZITI, New Jersey
DELBERT L. LATTA, Ohio

JEROME M. ZEIFMAN, *General Counsel*
GARNER J. CLINE, *Associate General Counsel*
ALAN A. PARKER, *Counsel*
DANIEL L. COHEN, *Counsel*
WILLIAM P. DIXON, *Counsel*
ARDEN B. SCHELL, *Assistant Counsel*
FRANKLIN G. POLK, *Associate Counsel*
THOMAS E. MOONEY, *Associate Counsel*
MICHAEL W. BLOMMER, *Associate Counsel*

IMPEACHMENT INQUIRY STAFF

JOHN DOAR, *Special Counsel*
ALBERT E. JENNER, JR., *Special Counsel to the Minority*
JOSEPH A. WOODS, JR., *Senior Associate Special Counsel*
RICHARD CATES, *Senior Associate Special Counsel*
BERNARD W. NUSSBAUM, *Senior Associate Special Counsel*
ROBERT D. SACK, *Senior Associate Special Counsel*
ROBERT A. SHELTON, *Associate Special Counsel*
SAMUEL GARRISON III, *Deputy Minority Counsel*

FRED H. ALTSHULER, *Counsel*
THOMAS BELL, *Counsel*
W. PAUL BISHOP, *Counsel*
ROBERT L. BROWN, *Counsel*
MICHAEL M. CONWAY, *Counsel*
RUFUS CORMIER, *Special Assistant*
E. LEE DALE, *Counsel*
JOHN B. DAVIDSON, *Counsel*
EVAN A. DAVIS, *Counsel*
CONSTANTINE J. GEKAS, *Counsel*
RICHARD H. GILL, *Counsel*
DAGMAR HAMILTON, *Counsel*
DAVID HANES, *Special Assistant*
JOHN E. KENNAHAN, *Counsel*
TERRY R. KIRKPATRICK, *Counsel*
JOHN R. LABOVITZ, *Counsel*
LAWRENCE LUCCHINO, *Counsel*
R. L. SMITH McKEITHEN, *Counsel*
ALAN MARER, *Counsel*

ROBERT P. MURPHY, *Counsel*
JAMES B. F. OLIPHANT, *Counsel*
RICHARD H. PORTER, *Counsel*
GEORGE RAYBORN, *Counsel*
JAMES REUM, *Counsel*
HILLARY D. RODHAM, *Counsel*
STEPHEN A. SHARP, *Counsel*
EILEEN SILVERSTEIN, *Counsel*
JARED STAMELL, *Counsel*
ROSCOE B. STAREK III, *Counsel*
GARY W. SUTTON, *Counsel*
EDWARD S. SZUKELEWICZ, *Counsel*
ROBERT J. TRAINOR, *Counsel*
J. STEPHEN WALKER, *Counsel*
BEN A. WALLIS, JR., *Counsel*
WILLIAM WELD, *Counsel*
WILLIAM A. WHITE, *Counsel*
JOHN S. WHITMAN, *Counsel*

CONTENTS

HEARING DAYS

IMPEACHMENT INQUIRY

Investigatory Powers of Committee on the Judiciary With Respect to Its Impeachment Inquiry

THURSDAY, JANUARY 31, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woodds, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

I recognize the gentleman from Massachusetts, Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, I offer the following resolution and recommend that it be reported favorably to the full House.

The CHAIRMAN. The counsel will read the resolution.

[Mr. Doar read the resolution as follows:]

93d Congress, 2d Session, Resolution providing appropriate power to the Committee on the Judiciary to conduct an investigation of whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States and for other purposes.

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information as it deems necessary to such investigation.

Sec. 2. (b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

Sec. 3. For the purpose of making such investigation, the committee, and any subcommittee thereof, are authorized to sit and act, without regard to clause 31 of rule XI of the Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

Sec. 4. Any fund made available to the Committee on the Judiciary under House Resolution 702 of the Ninety-third Congress, adopted November 15, 1973, or made available for the purpose thereafter, may be expended for the purpose of carrying out the investigation authorized and directed by this resolution.

Mr. Wiggins. Mr. Chairman, a parliamentary inquiry.

The Chairman. The gentleman will state it.

Mr. Wiggins. The resolution now having been read, is it the intention of the Chair to entertain amendments to the resolution at any point?

The Chairman. The Chair intends that the matter be discussed and then we will recognize Members for purpose of offering amendments. I recognize the gentleman from Massachusetts.

Mr. Donohue. Mr. Chairman, very briefly, I think that this is an appropriate resolution which will make it clear the tools that will be available to the committee in the critical investigatory phases of this constitutional process.

It is a resolution that has been carefully prepared and studied by counsel, both Mr. Doar and Mr. Jenner, and their staffs believe it will enable the committee to proceed professionally with the exercise of its responsibility.

For my part, I am pleased that we have an instrument which will allow a genuine bipartisan exercise of these authorities. Subpenas are to be authorized jointly by the chairman and by the ranking member, or by either, acting alone with the unqualified right of either to refer the matter to the full committee in case of a nonagreement.

It is only in this spirit of consultation and cooperation that we can continue to pursue these grave matters on behalf of the House and the American people. I would hope that this resolution will be favorably reported by the committee this morning.

The Chairman. The gentleman from Illinois, Mr. McClory.

Mr. McClory. Thank you, Mr. Chairman. Mr. Chairman, in gen-

eral debate, I want to express my general support of this proposed resolution. I think it is important, for one thing, that we have our authority confirmed by the House of Representatives with respect to the impeachment inquiry, and I certainly want to commend counsel for having presented what I regard as a substantially bipartisan approach to the entire subject of the subpena power of this committee.

I also want to support the broad range aspect of this subpena authority, because I think that our action here is of an autonomous or plenary nature. And as I envision the exercise of this authority, it will be reposed essentially in the Congress, without any impediment insofar as the judiciary or the executive branches are concerned.

I will, as I have indicated to you, Mr. Chairman, as the Members are aware, because I have had the amendment distributed for the benefit of the other Members, I will offer an amendment that our committee report its conclusions, its findings and conclusions on or before April 30, 1974. I think it is important that we do have a set date for conclusion of the work of this committee.

Now, Mr. Chairman, you have indicated your intention to conclude this work and to report to the House of Representatives either articles of impeachment or such other recommendations as we might have, and I think that it is important not only that we have your assurance in that respect and the expectation of this committee, that we do conclude our work then, but that we embody that intent in the resolution itself. And without setting forth the many reasons in support of that amendment at this time, I expect that you will recognize me at the time that we get to the amendatory stage of the discussion here and to present my amendment at that time.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair will certainly recognize the gentleman at the appropriate time.

The Chair would like to state that this resolution has been thought out deliberately with a great deal of concern for the nature of the work that this committee has undertaken. The drafting, which was done by the staff, under the direction of Mr. Doar and Mr. Jenner, was the work actually of the committee staff as a whole. I think that what we have attempted to put forth here is a resolution providing subpena authority worthy of the nature of the inquiry that we are to conduct as a result of a constitutional mandate which this committee has, which was assigned to it by the House of Representatives through the various resolutions that were assigned.

For the purposes of merely explaining briefly, the resolution authorizes and directs the Committee on the Judiciary, acting as a whole or by subcommittee established or designated for this purpose, to investigate fully and completely whether sufficient grounds exist for the House to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America.

It directs the committee to report to the House any resolutions, articles of impeachment or other recommendations it may deem proper.

I think it important to point out that the committee's power stems from the power provided to the House in article I, section 2, clause 3 of the Constitution, stating that the sole power of impeachment

rests in the House of Representatives. The power of the House in an impeachment investigation stemming from that grant therefore, in my judgment, does not depend upon any statutory provisions or require judicial enforcement. The sole power of impeachment carries with it the power to conduct a full and complete investigation of whether sufficient grounds exist or do not exist, and by this resolution these investigative powers are conferred to their full extent upon the Committee on the Judiciary. It is intended that the committee and its subcommittees be empowered in every way to exercise the full original and unqualified investigative power conferred upon the House by the Constitution.

The committees investigative authority is intended to be fully coextensive with the power of the House in an impeachment investigation with respect to the persons who may be required to respond, the methods by which response may be required, and the types of information and materials required to be furnished and produced. It includes the right to the extent the committee deems necessary for purposes of its investigation, to obtain full and complete access to any persons, information or things in the custody or under the control of any agency, officer, or employee of the Government of the United States, including the President of the United States.

It is the intention of the committee that its investigation will be conducted in all respects on a fair and impartial and bipartisan basis, and that is why in the spirit of bipartisanship the Chair saw fit to state unequivocally that when the drafting was to commence that the power to issue the subpena or exercising the right to issue the subpena would reside in the chairman and the ranking minority member jointly, together with other provisions in the event there should be disagreement, recognizing fully, as the Chair does, that the power which resides first and foremost and basically in the House of Representatives, because it has this constitutional power, that it vests this authority through this resolution in this committee.

I hope that in this spirit, while amendments may be offered, we have to be aware of the fact that this committee has up until this point of time proceeded deliberately, conscientiously, fairly and responsively in the hope that when we finally have assessed all the facts, and that when all the legal research has been completed, and that only then are we going to be able to as a committee make a responsible judgment and decision to report to the House of Representatives.

Are there any members wishing to——

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to say that I certainly support the effort of this committee to have a fully empowered subpena right assigned to it and approved by the Congress of the United States, House of Representatives, as I am sure they will.

I would say that I appreciate the effort of the staff and Mr. Doar and others involved in making some adjustments in this draftwise and languagewise, which I think has improved it from, say, old Greek to old English. It is still a little convoluted, and I am really a strong advocate of simple requests for power and I do not feel that we should be spending our time in this kind of resolution basically trying to lecture Leon Jaworski or threaten the President—I think

we just should say that we had full subpena authority and, by God, let's exercise it. It is my feeling that power generally in this world, and particularly in Congress, is best defined by its exercise. I say that the fewer words we have, probably the better we would be off in this subpena resolution, but I would support the authority and certainly will support a resolution to endorse a subpena, to pass one, and I hope that we will then be expeditious in using that subpena instead of going into every court in the country trying to get information.

Thank you, Mr. Chairman.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. For purposes of discussion?

Mr. WIGGINS. Yes.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman. My purpose in taking the time is only to alert my colleague that at the appropriate time I will offer two amendments to the pending resolution. In doing so, I do not wish to be understood as opposing the granting of subpena powers to this committee. It is absolutely essential in connection with its investigation, and I support that fully.

However, in the exercise of this power, it is important for the committee and for the Congress and for the country to believe that that power is granted adequately but fairly. In that respect, it is my view that the pending resolution is deficient in two respects, and I shall not amplify further at this time because I will explain more fully the nature of my amendments when recognized for the purpose of making them. But at this time I wish the members only to know that I have filed two amendments with the desk and when recognized will make those amendments.

The CHAIRMAN. Does any other member wish to be recognized for purposes of discussion?

Mr. Butler?

Mr. BUTLER. I would like to ask a question of counsel, if it is appropriate.

The CHAIRMAN. It is appropriate.

Mr. Counsel, Mr. Butler is going to address a question.

Mr. BUTLER. I have some questions about the draftsmanship of the document which is before us at the moment. My purpose is not to nitpick but to enlighten me a little bit as to how you have proceeded.

Mr. Doar, addressing ourselves first to the reason for the preamble, if we want to call it, or section 1 of this resolution; since we have a section 2, I presume the first part we call section 1. This, as I view it, is a considerable enlargement of what I understood was the basis for your investigation to date. Am I correct in my recollection, that you have told us informally or formally on several occasions that you felt limited in your investigation to the charges that have been contained in the resolutions which were before this committee? Am I fair in that recollection?

Mr. DOAR. In the preliminary inquiry, Congressman, we were investigating the charges that were in the resolutions before the committee, yes, that is right.

Mr. BUTLER. And so the effect of this is to enlarge if we pass this resolution, is to enlarge the investigative power which you think that you have had up to the present, is that a fair statement?

Mr. DOAR. Well, I think that within the resolutions that were before the committee, there was authority to conduct a full and complete investigation into the question of whether or not there was sufficient grounds for this committee to recommend or not to recommend articles of impeachment to the House. I don't think that this resolution expands the power or the authority that this committee already has. I think what it does is confirms it and formalizes it, and this is the way in the past the House of Representatives has authorized and directed the Judiciary Committee to conduct such an investigation.

Mr. BUTLER. Then further, for my enlightenment, you really do not consider that section 1 is essential to the subpena authority but it is for your purposes of clarifying and removing any doubt?

Mr. DOAR. I think it is essential in the sense that I think it is important that this committee, in order to conduct a fair, full and expeditious investigation, fair to the President, fair to the Presidency and fair to the House of Representatives, that it have this authority explicitly stated by the House of Representatives.

Mr. BUTLER. All right.

Mr. WIGGINS. Will the gentleman yield for a question along this——

Mr. BUTLER. Yes, sir.

Mr. WIGGINS. Counsel, on page 1 of the draft resolution, section 1, the final few words are "or other recommendations as it," meaning the committee, "deems proper." In drafting those words, did you envision that the committee might make recommendations quite apart from whether the President ought to be impeached or not?

Mr. DOAR. Well, we drafted those in a way where the committee had broad leeway as to what it might recommend, based upon the facts as they were developed in the course of the inquiry.

Mr. WIGGINS. But the essential recommendation, would it not, counsel—and you correct me, please, if I misunderstand—the essential recommendation here is whether the President of the United States should be impeached or not.

Mr. DOAR. That is correct.

Mr. WIGGINS. And if the committee makes one or the other of those recommendations, you would not anticipate that it would go beyond that, would you, by reason of the language suggested in your draft resolution?

Mr. DOAR. I cannot say what recommendations the committee might make, because I think that would depend upon how the inquiry developed and what facts and circumstances were brought forward and considered by the committee in the course of the inquiry.

Mr. WIGGINS. Well, I think I understand your answer.

The CHAIRMAN. Mr. Butler?

Mr. BUTLER. Turning again to the language of the resolution, and I am concerned about the second line, refers to the Committee on the Judiciary, acting as a whole or by any subcommittee thereof, is it your—is this usual language, to authorize any subcommittee to proceed, does this mean that any subcommittee of this Judiciary Committee can proceed without further authorization to inquire, follow a line of inquiry? Why is that language in there?

Mr. DOAR. Well, it means that—it gives to the Judiciary Committee the power and the authority to proceed by subcommittee if it so

chooses, but it does not mean that a subcommittee acting alone, without authority, specific authority from the committee could go forward.

Mr. BUTLER. Well, would a subcommittee not have that authority without this language inserted here if the committee chose to designate it?

Mr. DOAR. Well, the people in the legislative counsel's office indicated that there was a possible question of whether or not a subcommittee—the committee could authorize a subcommittee could go forward if it chose without this language, and just to be sure that this was covered if the committee chose to proceed in any way by subcommittee, that it would be clear that it had that authority.

Mr. MCCLORY. Could the gentleman yield? If the gentleman would yield——

Mr. BUTLER. I have concluded on that point, but I have other questions.

Mr. MCCLORY. I would just like to point out that an earlier draft used the words "established for this purpose," which was much clearer than the substituting the word "thereof" in place of the words "established for this purpose." So in trying to effect brevity, I think they have—there has been some uncertainty that has been injected.

The CHAIRMAN. If the gentleman will yield, I would like to state that, in accordance with the rules of the House, if this committee were to authorize a subcommittee which would be in accordance with the proceedings of the House, there would be no question. I think that this is merely an attempt at least to assure that if we did decide as a committee, and the Chair could not act alone because there is no committee for that purpose, then this would be perfectly appropriate. And I think that this is an attempt merely to avoid any possibility should there be a subcommittee that might have been appointed for that purpose.

Mr. BUTLER. Thank you, Mr. Chairman. Understand, my consideration is prompted by the fact that we have kind of got an abortive subcommittee operating now that I don't know exactly what its status is and I wanted to be clear in my own mind, and it is not clear yet but we are making progress, and I appreciate it.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. Butler still has the floor.

Mr. BUTLER. If I may, continuing my question of counsel with reference to the words "and directed," is it appropriate in a resolution of this nature to include a direction? I have looked at the rules with reference to those, the various committees of the House, and I do not find that they are done ever to have anything other than an authorization. And is this direction in here for any particular reason, or is this something you gave some thought to and, if you did, I would appreciate the benefit of it.

Mr. DOAR. In the past, with respect to resolutions by the House, this authorized and directed language is used, and we think that it would be appropriate for it to be included here, it should be included here.

Mr. BUTLER. That means, sir, then, that the work of this committee under this resolution will not be concluded until we have made a recommendation and a report to the House of some form, is that correct?

Mr. Doar. Well, the——

Mr. Butler. Is that the intention of the draftsmen?

Mr. Doar. Yes.

Mr. Butler. Thank you, sir. Another question, if I may—excuse me.

Mr. Railsback. Mr. Chairman, I join with my colleagues in general support of your resolution requesting subpena power. As I understand it—I would like to address also a question to Mr. Doar—as I understand it, the powers of authorization at issuance being given to our chairman and to the ranking minority member are very, very similar to what was done with the chairman and vice chairman of the Senate Watergate committee, is that correct?

Mr. Doar. Well, I think that there are some slight differences with respect to that, in that—but the intention here was to give to the chairman and the ranking minority member the authority to authorize the issuance of subpenas if they would agree.

Mr. Railsback. Well, as I understand from reading the Senate Watergate committee's rules, either the chairman or the vice chairman was in a position to issue subpenas on his own but if there was a disagreement then there could be an appeal to the full committee to possibly override the issuance of a subpena. Is that correct?

Mr. Doar. That is correct.

Mr. Railsback. Do you know whether there were instances over there where that actually happened, where either the chairman—I think it would be helpful to us to see exactly what powers we are delegating to our chairman and ranking minority member and, based upon the experience over there, whether there were occasions when the full committee decided to not permit an issuance of the subpena.

Mr. Doar. Yes; I believe that—and I am not completely familiar with that, Congressman, but I believe there were cases where the full committee did not approve a subpena. And I know that there were many cases where the matter was brought to the full committee for consideration.

Mr. Dennis. Would the gentleman yield?

Mr. Railsback. I would be glad to yield.

Mr. Dennis. It was my impression that the draft of this resolution is the same as the Watergate draft. The Watergate draft says, if I remember it correctly, that the authority can be exercised by the chairman, by the vice chairman or by both, or by a majority of the committee if either or both requests. Now, that is not what we do here, because here we go to the committee only if the other two disagree. It is a very distinct difference, in my opinion, and I think that the amendment to be offered by my friend from California will address itself generally to this area for which reason I don't intend to go into the matter further at this point. But I do think his amendment is a very important one and it is one which I very vigorously personally support, and I would discuss it at that time if recognized.

The Chairman. Thank you. Mr. Waldie?

Mr. Waldie. Mr. Doar, can we be assured that the powers under this document, if voted, will enable the committee, if they so desire, to compel the attendance of the President to testify in person before the committee?

Mr. Doar. The powers are that broad, yes.

Mr. WALDIE. And in the event the chairman and the ranking minority member are not desirous of such a subpena for just purposes of my own information, the committee then has the power by a majority vote to compel the appearance of the President under oath before the committee?

Mr. DOAR. Yes; it does. Subsection (2) provides for that.

Mr. WALDIE. And in your view there is no assertion of any super power that the President might assert would weaken the Presidency, that would enable him to not respond to the subpena?

Mr. DOAR. Well, my view is that the committee has the power to issue the subpena to the President, and it is my view that the power of the House in an impeachment inquiry comes from the Constitution and it provides for the broadest kind of a constitutional inquiry.

Mr. WALDIE. And does that therefore mean in your view the President would not be able to assert a defense that would prevent the subpena requiring his appearance?

Mr. DOAR. My view is that the President would not be able to assert that kind of a defense.

Mr. WALDIE. May I ask minority counsel if he concurs in that opinion?

Mr. JENNER. Mr. Congressman, yes; I share fully that opinion.

Mr. WALDIE. Thank you.

The CHAIRMAN. If there are no further—Mr. Butler, I understand you have a couple more questions, and then we will recognize members for purposes of offering amendments.

Mr. BUTLER. I am interested in section 2 and specifically, Mr. Doar, if you would discuss with us the precedents that there may be for depositions and interrogatories by a committee of the House. Is this practiced often? Are there other rules which have authorized it? And how has it proceeded in the past?

Mr. DOAR. There are no precedents for the taking of depositions by counsel for the committee. However, the taking of such depositions are not prohibited by the rules of the House. And it seemed to Mr. Jenner and myself that in the interest of conducting an expeditious investigation in preparation for hearings, if the committee were to decide that hearings should be held, that the use of depositions and interrogatories would greatly facilitate the preparation of the matters that were relevant to the committee's inquiry.

Mr. JENNER. Congressman Butler, this also comes a good deal from my experience as senior counsel of the Warren Commission, in conducting that wide-ranging investigation for a period of a year. There are certain times when in order to facilitate your investigation that, instead of having the committee assemble, something of that character, to take a deposition of a relatively minor factual witness and that sort of thing, and also that you exercise your power to use interrogatories so that you might avoid the necessity of the formality of even holding or taking a deposition.

What sub (2) is designated to do is to facilitate the ability of the House Judiciary Committee to assemble the facts.

Mr. BUTLER. Please understand, I am totally sympathetic with what you are trying to do, but my question is this: Is there precedent for subpena authority of a House committee to compel a witness to appear

at the taking of a deposition at which the committee nor had no member thereof is present?

Mr. DOAR. I don't believe there is precedent for that, but it is not prohibited by the rules.

Mr. BUTLER. Yes, sir, I understand. Now, one more question. Of course, you are familiar with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Mr. DOAR. Right.

Mr. BUTLER. Well, I'm not, so I am glad to know that. But I would understand, from my recollection, that they spell out in great detail the rules where you proceed for the taking of depositions, the timetable, the warnings of the circumstances of how you proceed, how you call the witness to court to account for his failure to answer. Is it your intention to spell out the rules for the taking of these depositions in any detail by this committee, or are you going to rely on this general authority and just play it by ear?

Mr. DOAR. Well, it would be our intention, I believe, Mr. Jenner's and mine, to establish procedures for the taking of depositions that would insure fairness to the witnesses. And if there was a situation that was at all troublesome or at all questionable, it would be our intention to bring that matter to the committee so that the committee could decide how to deal with that particular witness.

Mr. BUTLER. One more question. Is it your intention to adopt—excuse me.

Mr. JENNER. Could I supplement also. six——

Mr. BUTLER. Yes, sir. I would appreciate it.

Mr. JENNER. It is Mr. Doar's and my view also—I should say that I am very familiar with the civil and criminal rules. I was a member of the Supreme Court Advisory Committee that drafted the Federal Civil Rules of Procedure. A major objective here was not to circumscribe the powers of the House Judiciary Committee; second, not to put in this resolution various limitations as to time when depositions are to be taken and other things, to which you have referred, sir, to involve us then in motions, objections and bringing the committee before the courts. We were very desirous here that the House Committee on the Judiciary and the House of Representatives here is exercising its constitutional power and it will exercise responsibility and within the due process clause of the Constitution.

Mr. BUTLER. One more question along this line. Having adopted these rules of—having concluded among yourselves as to the appropriate rules by which you would proceed on depositions and interrogatories, is it then your intention to come back to the committee for the endorsement of these rules and our formal adoption of them or not?

Mr. DOAR. Yes; it would be our intention that the committee be fully advised in advance as to our recommendations so that the committee would have the opportunity to make the final judgment on those rules.

Mr. BUTLER. Is not your feeling that it is necessary for the committee to approve them before you proceed to take depositions or not?

Mr. DOAR. No; I believe that it would be important for the committee to approve them so that there would be no question and that if there was any—no question about the fact that the counsel and the staff were proceeding in accordance with the direction of the committee.

Mr. BUTLER. One more question along this line.

The CHAIRMAN. Mr. Butler, I hope that one more question doesn't lead to three more questions. There are other members who would like to also direct questions.

Mr. BUTLER. Yes, Mr. Chairman, I appreciate that.

The CHAIRMAN. OK.

Mr. BUTLER. I hope they will indulge me in the same way I indulged them for 10 days on Gerald Ford.

The CHAIRMAN. You go right ahead.

Mr. BUTLER. Just 2 more minutes.

Is it your feeling that the preservation of the secrecy or the confidentiality of depositions is a matter which will be within your discretion when you take these depositions, or must we, by our rules of this committee, adopt appropriate provisions as to whether the public will be admitted to the taking of these depositions or not?

Mr. DOAR. I would say that unquestionably it would be up to the committee to determine that, not for counsel to determine that.

Mr. BUTLER. Mr. Chairman, I yield to the gentleman from Maine, if I may.

The CHAIRMAN. I'm sorry, the gentleman has lost the floor. I recognize Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, I just have two technical questions for Mr. Doar.

First, I refer your attention to section 2, paragraph (2), where you say "by interrogatory, the furnishing of such information," does this document limit the committee to obtaining information only by means of interrogatories?

Mr. DOAR. No; it does not.

Ms. HOLTZMAN. OK. I just wanted to be satisfied——

Mr. DOAR. You can obtain information through the subpena by compelling the attendance and testimony of a witness by compelling the witness to produce books, records, and other things; and, finally, with respect to interrogatories, there is a formal method, a means provided, an additional means of expeditiously gathering the information.

Ms. HOLTZMAN. And with respect to paragraph (1) of section 2, is the taking of depositions to be limited to counsel or does the language of this resolution permit the committee or subcommittee of this committee to take depositions.

Mr. DOAR. Well, the language of the resolution provided that depositions would be taken by counsel. That does not mean, I don't believe, that a member of the committee couldn't be present if he or she wished at the deposition and ask questions. However, in my judgment, I would recommend to the committee that this not be the practice that the committee would follow. The purpose of the depositions is to collect preliminary information for the purpose of preparing the mass of material that we have to collect and collate and assemble for intelligent presentation to the committee. If there was a witness that had testimony that we believed or the committee believed it wanted to hear itself, it would be my recommendation that that witness testify before the committee and not to offer that testimony through a deposition.

It was only—the deposition would only have validity in this case when and if the committee received it. If the committee wished not to receive it and to ask that witness to be present at a hearing for further

questions by members of the committee, of course, it would have the authority, the right to do that.

Ms. HOLTZMAN. Thank you.

Mr. HUNGATE. Would the gentlewoman yield for one question?

Ms. HOLTZMAN. I would be happy to yield.

Mr. HUNGATE. I would like to ask Mr. Jenner: Do you think that the rule would be broad enough to cover requests for admissions as that practice is used under the Federal Rules of Civil Procedure?

Mr. JENNER. Mr. Hungate, I think not as drafted. We did consider that but, as you know many of you ladies and gentlemen are practicing lawyers know, that is one of the more difficult discovery devices from a practical standpoint, we have discovered, we lawyers, under the Federal rules. We wanted to avoid that as another thing that might enable defense counsel or a witness to bring the House Judiciary Committee to the courts.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Doar, I would like to have you clarify, if you would, a statement made to Mr. Butler with reference to your recommendation for general guidelines on the depositions, interrogatories. I assume you are not going to deal with definite time periods like the Federal Rules of Procedure, civil or criminal, such as 30 days or even 20 days. I think that would bog us down into other interminable delays. And am I correct that you would simply be making broad general recommendations within the bounds and purview of due process or fairness?

Mr. DOAR. Yes, that is correct.

Mr. COHEN. And, finally, you are aware that there is one, just one scholar, that I am aware of, that has suggested that there is a right of judicial review, and this sort of pertains to the standards that you will recommend. In other words, if we were to be criticized for exercising arbitrary abuse of power, what is your view and Mr. Jenner, your opinion with respect to Professor Burger's argument that the courts have a right of judicial review? I would like your professional judgment on that.

Mr. DOAR. Well, my professional judgment is that in an impeachment inquiry that there is very little power of judicial review. Now, with respect to a question about a witness and fairness with respect to how the committee were to treat a witness who was compelled to testify at some time in the proceeding, that witness would of course have a right to have any action taken by the committee against him be reviewed.

Mr. COHEN. I am not sure of your original statement. You mean that there are very few situations in which there is a right of review. I am not sure I understand that. Do you feel that a court has the right to review the proceedings of this body on the subject of impeachment?

Mr. DOAR. Well, if a witness were to refuse to comply with a subpena or to produce documents, and this committee were then to take action against that person, it may be that thereafter the witness would have a right of review.

Mr. COHEN. Would that apply also with respect to Mr. Waldie's question of you, if the President of the United States were subpenaed to appear before this committee and failed to do so, would there be a right of review on that question?

Mr. Doar. I think the question would be how the House of Representatives chose to treat that refusal. If the question came up in a question of whether or not the House was taking that into account in considering whether or not articles of impeachment might issue, I don't think there would be judicial review. If, on the other hand, there was a question of taking some action following contempt by the House, I think there would be judicial review.

Mr. Cohen. Mr. Jenner, could I have your opinion?

Mr. Jenner. I share Mr. Doar's views. I would like to say that the committee also has had advice of Mr. Hutchinson and other minority members, that the House of Representatives in making this investigation is exercising a very high political function under the Constitution that is supreme. There are areas, as indicated by Mr. Doar, to which the power of the House is circumscribed only to the extent fixed by amendments of the Constitution of the United States guaranteeing civil rights to individuals against whom, say, an interrogatory is issued, a deposition taken, or subpena issued. There are an infinite number of ways in which the matter might get to a court for the review or consideration of a particular procedural point. But I take it in part your question went to the general issue of whether the action of the House of Representatives in this area may be subject to judicial rule in the major sense. It is my judgment, and I share with Mr. Doar, that the House of Representatives is not subject to judicial review in that sense.

Mr. Cohen. My concern was, suppose that you gave 5 days, you subpenaed a number of documents or tapes or other things—and I am not sure what that word "things" means, even though you spell it out—I assume it includes sinister forces as well—but assuming that you have a 5-day period, for example, whether that would be subject to review by the court as being arbitrary, unreasonable, that is what I was concerned with.

Mr. Jenner. I would say "Yes," if a witness in that connection asserted that 5 days was a violation of due process as guaranteed by the amendments of the Constitution, the court could exercise a judgment as to whether that was so. I would expect the court to be very liberal as far as this committee is concerned.

Mr. Cohen. That is all I have, Mr. Chairman.

The Chairman. Thank you.

Mr. Eilberg. Mr. Chairman?

The Chairman. Mr. Eilberg.

Mr. Eilberg. I would like to ask Mr. Doar—in the course of discussing some of the problems that will follow the adoption of this resolution, either in its original form or as amended—whether he anticipates any particular date when we may be in a position to make a report to the full House. Assuming that he cannot do so, would you outline some of the reasons? Some of them have been alluded to in the questions so far, but I think it would be helpful for the committee to know your personal view as to where we are and how much time it may take.

Mr. Doar. Well, as the members of the committee know, I have been asked that question before by some members of the committee. And it is my professional judgment that I could not responsibly say to this

committee that this inquiry could be completed on any particular date in the future within, say, a several month period. I pledge to the committee that the staff that we have organized, Mr. Jenner and myself will work as diligently and expeditiously as possible. I also pledge to the committee that by the first of March that we will be able to report to the committee as to the status of the investigation and to give to the committee some idea of just what remains to be done and how much time we think that would take to do it. But it is not possible for me now, having been here only for just slightly over a month and having assembled a staff, for me to give you a professional judgment of that time, because I have just not assembled the material and organized the direction of the investigation nor made any judgment with respect to how much is left to be done at this point.

The second thing I think I should say is that the speed with which we are going to be able to conduct the investigation will, of course, depend in this case, as in every case, with the amount of cooperation that we get with respect to getting the facts before us. All the counsel is interested in and the committee is to get the whole truth and to get to the bottom of all of the allegations that we think need to be pursued to decide—to enable the committee to decide whether or not it should recommend further proceedings in the House of Representatives.

Now, if we are able to get the documents that we think are material to that investigation in an expeditious way, that will, of course, mean that we can complete this sooner. We do have a lot to do and we are getting busy doing it, and we are beginning now to begin to identify the other materials that we would like to examine in the course of this inquiry.

The CHAIRMAN. Mr. Jenner, may I ask you whether or not you share the view of Mr. Doar that at this time the March 1 date is a reasonable date on which you might give this committee a status report as to then how far we have gone and how much more it is going to take?

Mr. JENNER. Yes, I do share that, Mr. Chairman, and I think that by that time, having in mind my previous experiences in conducting major investigations of this character both in my State and for the Government of the United States, that by that time Mr. Doar and I and, I may assure you, a splendid professional staff that is almost now completely assembled, will be able to give you all the parameters and what we see down the road as problems, what point we have reached at the moment, to give you an ability to exercise your sound judgment as you always do as to where we are going and how soon we can complete this.

The CHAIRMAN. Mr. Jenner, if I were to ask you now to give me an assessment which you intend to give on March 1, could you give it to me now?

Mr. JENNER. I could not, sir.

The CHAIRMAN. I recognize Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. I have an amendment and I would ask that someone on the staff read the amendment.

The CHAIRMAN. Counsel will read the amendment.

[Mr. Doar read the amendment as follows:]

Amendment:

On page 1, in lieu of the present second sentence of the first section insert the following:

The committee shall submit its final report to the House of Representatives on or before April 30, 1974, and such report shall set forth the committee's conclusions with respect to the investigation authorized and directed by this resolution, together with such resolutions, articles of impeachment or other recommendations as it deems proper.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I offer this amendment as a modest disagreement with the draft resolution as presented to the committee. I think there is no element involved in this impeachment inquiry which is more significant or which weighs more on the minds of members of this committee or the House or the American people than the question as to when we are going to get this impeachment inquiry over with. And it seems to me that going to the floor of the House with an open ended resolution, with open ended authority with respect to subpena power, with no indication as to the date in the body of the resolution with respect to when we are going to present our recommendations and conclusions, is going to just pose a serious obstacle to getting favorable action from the House on this subject.

I realize that in almost every investigative measure which is referred to committees, there is a time when the committee is supposed to report the results of its investigation. Now I realize that with respect to the subject of impeachment and the resolutions that I have learned about with respect to the impeachment resolutions and inquiries, there is only one that has come to my attention, but it is in the case of Andrew Johnson where an impeachment resolution was presented on the floor of the House and with respect to which a provision was made that the committee should report at the first week of the next session with respect to its testimony and other matters concerned in the impeachment case.

In the case of the Watergate Committee, the Senate Watergate Committee, to which so much reference is made and also which is very closely related to this inquiry, they have established a deadline of February 28. Now, this is an inquiry. This is a preliminary matter. This is not a trial. This is to determine whether or not there is basis for articles of impeachment or not.

And it seems to me that there is no reason why we can't establish a date. I think it would encourage us to come forward with the results of our work by that time. I think there is no criticism perhaps which is stronger or more uppermost in the minds of the American people and sometimes in our own minds than the slow-moving operations of the Congress of the United States and its committees. And to let this kind of criticism continue, when we have an opportunity to express a cutoff date, to express an expeditious time for concluding our work would seem to me to be entirely wrong.

Now, I realize, Mr. Chairman, that you have indicated that April 30 is the target date for the presentation to the House of Representatives of our recommendations. Now, really, all I am suggesting is that since that is your intent, since that is, I believe, the intent of the

members of the committee, let's embody it in our resolution and then present it in that form to the House of Representatives.

So I do urge favorable action by all the members on this subject. It will certainly overcome criticism of foot dragging or any partisanship, whether it is on the Republican or the Democratic side which might be leveled, because of a failure to include a cutoff date.

Mr. COHEN. Would the gentleman yield?

Mr. SEIBERLING. Would the gentleman yield?

Mr. MCCLORY. I yield first to the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding.

Would it be your position that if, assuming there were a termination date or expiration date of April 30, it developed that certain impediments did occur, the investigation would be—would this committee have your support for extending that April 30 deadline if this would happen?

Mr. MCCLORY. Exactly. That is a familiar practice, and I see no reason why that couldn't be easily handled by a simple motion on the House floor.

Mr. COHEN. And you would join in that support for extension if that were the case?

Mr. MCCLORY. I certainly would, if we had not responsibly and completely concluded our investigation.

Mr. COHEN. Thank you.

Mr. SEIBERLING. Would the gentleman yield?

Mr. MCCLORY. Yes, I yield to the gentleman from Ohio.

Mr. SEIBERLING. Does the gentleman know any way that the House can put a similar deadline on the President for complying to any requests for information or testimony in this matter?

Mr. MCCLORY. Well, I frankly myself support the committee securing every bit of information that we may require. And I don't think that the fact that we put a cutoff date is going to encourage or discourage. I know the President himself indicated in his state of the Union message that he wanted this to be the whole subject of Watergate, including the work of our committee, to be disposed of expeditiously, and I think that that is the most popular statement perhaps he made because I think that is uppermost in the minds of the American people, to get this subject resolved one way or the other.

Mr. SEIBERLING. Well, he certainly did, but he also indicated some qualifications to his statement that he would cooperate with this committee, and we have no control over his actions except as far as timing is concerned, and I don't see how this committee can put itself in a straitjacket.

Mr. MCCLORY. Let me just say this: I share Mr. Hutchinson's view in that I think there are no impediments, no limitations on our securing of evidence, such as have been experienced by the Senate Watergate Committee.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I just want to say that I think this is an infrigement on the reputation of our committee and the chairman. Our chairman has stated very clearly that he hopes to conclude this in April. I hope we can conclude it in April. I would be happy if we could do it tomorrow. I don't think the Republicans are interested in delaying

this on this committee. I don't think the Democrats are. I think it is quite obvious that everybody wants to get this done as soon as possible. But to fix a date, to set a date is erroneous and unrealistic, and I would say that this is not a pregnancy. This is just the rabbit test. [Laughter]

And I believe that candidly to try and fix an arbitrary date for the delivery is at this point an irresponsible and unrealistic position.

The CHAIRMAN. I would like to respond to the gentleman who offered the amendment, and I am sure that the gentleman, having assured us that he wants to do a thorough and responsible job, is aware of the fact that, while the public is impatient, while we are impatient, I think that what is basic to this total inquiry and this whole process is responsibility and fairness. And I believe that we owe it to the American public to assure them that, notwithstanding the fact that we may be assailed one way or another by those who say that you have got to get it done today or tomorrow, that what is more important is that we do it right, and that there is no other way to do this than to do it right. And when Mr. Doar and Mr. Jenner both say to us that they are unable to assess what the status will be or how much more we will do or need to do until March 1, I don't see how, in all sincerity and all honesty and all fairness and all good conscience, we can make a judgment at this time as to when we can conclude this investigation on our part.

I may say further that I think all of the committee members know that I have stated all along and very categorically that I want this investigation or this inquiry done fairly and responsibly. I am stating now that I believe that it would be absolutely unwise and absolutely irresponsible and a failure on our part to discharge what I consider to be probably the most serious responsibility imposed on the Congress of the United States, the consideration of an impeachment inquiry which is a responsibility given to us under the Constitution. We didn't seek it. It came to us because of many facts that have occurred and allegations that have been made, and I think that we had better remember that we owe that responsibility at this time to do a competent, fair, and honest job without trying to set dates because you are saying that people have said they are impatient. I know they are impatient. But they are impatient for us to do what is right, and this is what I intend to do when I oppose the amendment strenuously.

Mr. MCCLORY. Would you yield to me just for a few comments? I would just like to say that we are setting a date. The staff is setting a date for the historical and legal report to this committee, of February 20. They are setting a date with regard to an interim report. Now, there are going to be 2 months between that time and the time that is set forth in the amendment that I have offered, and it would seem to me that since this is an inquiry, this is a preliminary hearing, this is an investigation to determine whether or not there should be a trial.

And let me say further that we set dates with regard to budget messages, with respect to adjournments with respect to all kinds of things, and we have to do that because if it weren't for the compulsion of a cutoff date, why, we couldn't end our work. And to go to the House with this open ended, with no date whatever, it would seem to me to be extremely risky and cause a lot of opposition that we should not generate. The House wants to know when we are going to finish

our work and report to them, and we should set forth a specific date, and I have adopted the date you indicated, Mr. Chairman, when we can do that.

The CHAIRMAN. I would like to qualify that, Mr. McClory, and state that at all times, whenever I express any opinion as to a date, I stated emphatically that I wasn't going to be locked in by that, however, that most important and basic to this inquiry is responsibility, thoroughness, and fairness.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, it seems to me that as we embark on this, we have really got some obstacles that could be placed in front of us. One, we are going to have to try to—in my opinion, if we are to expedite, we are going to have to try to get Leon Jaworski's work product, the benefit of his work product and get a report from him, what he has.

The other thing is the White House can either be cooperative or it can be uncooperative. The other thing is, there can be questions about whether we are proceeding fairly or not. I am inclined to think that we will proceed in a very fair and nonpartisan manner.

Let me just say that I think the American people want us to get this thing over with. I agree with what you said about the fact that they want us to do a good job and they want us to be fair. I think that you would find, if we do adopt an April 30 deadline, that there would be members on this side, and I would be one of them, that if there are any obstacles that we believe really impede our investigation and the thoroughness of that investigation, I, for one, would certainly be willing to support an extension, and I think there are other members as well.

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Chairman, I support the amendment presented here this afternoon. If you recall, on October 23, the impeachment resolutions were referred to this committee for consideration. Now, by April 30, that will be a total of 6 months. And from now until April 30, we have 3 additional months.

As has been said here just a few moments ago, the people of this Nation want a decision. Yes, they are impatient, Mr. Chairman. They want a decision. They want action. They want a determination one way or the other. And certainly, when you consider that you have a period of 3 additional months, you have a staff of 35 capable lawyers, it seems to me that working with this staff and, if necessary, continuing in session this committee for 4 or 5 days a week, we can get the job done.

The CHAIRMAN. I would merely like to respond to Mr. Maraziti, because he mentioned the date of October 23. I would like to remind the gentleman, because I am sure that all of use are aware of it, and I am sure that our memories are not that short: On October 23, we not only were assigned these impeachment resolutions but we had also under consideration the question of trying to fill the vacancy in the office of the Vice President and that we were engaged with that matter for a period of time until December 6. And from December 6 until a later date, we then began to set up preliminary staffs. So I think that

the gentleman has to be aware of the fact that this committee has worked and worked expeditiously and intends to do so, and I believe that that should reply to the gentleman.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman? Mr. Chairman, reference has been made to time and to the Andrew Johnson impeachment. That was referred to the Judiciary Committee of the House on January 7, 1867, and the recommendation came back on November 25 of that year, a period of some 11 months or more. I simply cite that to show that these things do take some time, they have in the past, and I would hope that this one would not be that long. But if we are going to look at history, that is what it is. And the final action in the Johnson matter took some 18 months.

Mr. MCCLORY. Would the gentleman yield just for a comment on that?

Mr. HUNGATE. I would be glad to yield.

Mr. MCCLORY. It was part way through the proceeding, because it was dragging out, that on July 17, 1867, on the motion of Mr. John Cabode, of Pennsylvania, who got up, on a motion of high privilege, on the floor of the House and asked that another matter be included in the impeachment proceedings and then said that the committee should report the evidence to the House in the first week of the next session, together with the testimony already taken in the impeachment case. So, you see, the House got impatient after a while and fixed a set date.

Mr. HUNGATE. I certainly——

Mr. MCCLORY. It seems to me they will be impatient here if we don't have—if we have an open-ended resolution.

Mr. HUNGATE. I agree with the gentleman that, after 6 months, they became impatient, and after 11 months the House took action, it was then defeated at that time. It was brought back in the next Congress, in 1868, at that time they referred it to the Reconstruction Committee. It was introduced on the 21st, referred on the 21st of February, it was voted on the 22d of February, and the House voted on impeachment on the 24th of February. Now, I call that speed. [Laughter.]

I call that too much speed, and I think——

The CHAIRMAN. Would the gentleman yield?

Mr. HUNGATE. Yes, sir.

The CHAIRMAN. Would the gentleman yield? I would like to also point out that it was on December 21, after serious screening of many, many who were under consideration for the position of Special Counsel, that we appointed Special Counsel, the House went into recess until January 22, and I think that that says something.

I recognize Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I believe that the adoption of this amendment would be absolutely unwise. I say that, being one of the members of this committee, I know there are several, who have gone completely on record as supporting an expeditious hearing, an expeditious consideration of this matter, and I have confirmed that to my constituents and I have said it pub-

liely, that we ought to complete our work as soon as possible. If it is before April 30, that would be even better. But to put ourselves in a straitjacket at this time, with what counsel has reported this morning, would be a terrible mistake, in my judgment, Mr. Chairman, and so I am firmly opposed to the amendment of the gentleman from Illinois.

Mr. FISH. Mr. Chairman?

Mr. DANIELSON. Mr. Chairman, I move the previous question.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. What purpose, Mr. Fish?

Mr. FISH. I would like to speak in support of Mr. McClory's amendment, Mr. Chairman. I find Mr. McClory's arguments very persuasive, and I would just like to add two things that seem to me to be important here. One is that, surely, we have an enormous responsibility. It is responsibility to go into this whole matter with such great care, realizing that we are establishing precedence and that the standards that we arrive at are not to apply just to the incumbent President but will be standards that all future Presidents will be measured against, and this obviously takes time, and I have such great confidence in our staff that I know that this will be done properly and judiciously.

However, we also have enormous opportunity at a time of very low ebb and public respect of this Government. We have an opportunity in this committee, I think, to make an important contribution toward turning this around and showing that we can follow the processes of government, we can follow the dictates of the Constitution, we can act responsibly and come to a decision, and that is what the American people are looking for us to do. Thank you.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Mr. Chairman, I support Mr. McClory's amendment. I believe it will, if passed, be a very healthy reminder to us and to the committee staff that we do have an obligation to proceed in this matter with all reasonable speed. I am satisfied from the polls and from having talked with many hundreds of my own constituents on this, that the American people do want us to proceed with more dispatch than we have heretofore done. These resolutions were assigned to us, after all, on October 25, and this is the very first time in my recollection that the full committee has been called together to act on this very important subject. I think the American people expect more of us than that. I feel that the date of April 30 is well within the chairman's repeated predictions as to when our work can be completed. I recognize that there has been some qualifications attached to some of those predictions. But it seems to be a reasonable limit and one which would have a salutary encouraging effect on expedition.

Mr. DANIELSON. Mr. Chairman, I move the previous question on the amendment.

The CHAIRMAN. I am going to recognize Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman.

I intend to support the amendment. I am persuaded by the arguments that we need to set some kind of a deadline, and I am not persuaded by some of the arguments made by the chairman, with all due respect to him.

The chairman points out that we had the Ford matter before us,

which we did. I don't see in any way how the committee members' deliberations and hearings on the Ford matter had any effect in delaying the work of the staff. The chairman says that we took a month's recess. Presumably, the staff was working very hard during that recess toward the whole impeachment inquiry.

The fact that this is the very first meeting that this committee has ever had on impeachment indicates that it has not been the committee itself which has been in any way delaying matters, and I don't mean in a disparaging way. The ball is in the hands of the staff. We are just sitting here waiting for the staff to report. The staff says it cannot get us a brief on what is an impeachable offense until February 20. They can't give us a factual report until March 1. The chairman's feeling is that there isn't anything we can do until that time.

So I don't think it really is fair to say that the reason we have spent 3 months already without any tangible results to show for us is because of the Ford matter and the recess. Presumably, the work has been going on even during those two matters. So I intend to support the amendment.

The CHAIRMAN. I recognize Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I move the previous question on the amendment.

The CHAIRMAN. The previous question is moved on the amendment. All those in favor of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I request a rollcall vote on my amendment.

The CHAIRMAN. The clerk will call the roll. All those voting in favor of the amendment, please say aye; those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

The CHAIRMAN. By proxy, no.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
Mr. DANIELSON. No.
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. No.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The clerk will report the——

The CLERK. Fourteen voted aye, in favor of the resolution; 23 voted no.

The CHAIRMAN. The amendment is not agreed to.

Mr. Wiggins?

Mr. WIGGINS. Thank you, Mr. Chairman. I would ask the counsel to read my amendment to the resolution. Apparently copies have not been distributed.

The CHAIRMAN. Has the clerk distributed copies of that amendment?

The CLERK. Are any copies available, Mr. Wiggins?

Mr. WIGGINS. They have been at the desk.

[Mr. Doar read the amendment as follows:]

The amendment by Mr. Wiggins to section 2(b):

1. Delete all after the word "alone" to and include the word "decision."

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I first apologize to the members for some ambiguity. The resolution does not have number lines. The word "decision" is the second "decision" at the end of that paragraph, and not the word "decision" in the middle of the paragraph.

Mr. Chairman, to understand the amendment, one must first understand the nature of the authority given in the resolution pending before us. Let me state that authority as proposed. It is—if copies have not been distributed, I will defer until they are. It is the section dealing with——

The CHAIRMAN. Has the clerk distributed copies to each of the Members?

The CLERK. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman.

In order to understand the amendment fully in its effect, one must first understand the nature of the authority, subpena authority proposed in the draft resolution. It is proposed to be exercised by the chairman and the ranking member acting jointly. Then if either declines to act, which surely must mean there must first be consultation between them, then either may act alone, except that the disagreement as between the ranking member and the chairman can be brought by either to the attention of the full committee for its resolution and then finally the committee itself has an independent right to authorize the issuance of subpenas.

Now, I propose by my amendment to raise this rather simple yet fundamental question and to request an up-or-down vote on it, should the minority, as a matter of simple fairness, have the right to subpena witnesses—should the minority as a right of simple fairness—as a matter of simple fairness, have the right to subpena witnesses. If you believe that it should, then you should support my amendment because it does not have that right under the proposal before us.

As it is presently constituted, if the minority should wish to subpena a witness and if the chairman should disagree with that decision

it can bring the matter to the full committee and it is resolved by a majority vote here. That subjects the desire of the minority to the will of the majority in this committee.

Now, I submit to each of you that that is not fair nor is it right. It seems to me—and I am sure that all fairminded people should agree—that the minority should possess no less right than does the majority in this situation. I fully expect and support the chairman having the right to request a subpena. But I would hope that he would agree that the ranking minority member should have the same right. As it is now proposed, the minority must go hat in hand to the majority seeking its approval and I anticipate that in such cases the majority would tend to support its chairman and would vote down the request of the ranking minority member.

I don't regard that as fair and so you see, ladies and gentlemen, the issue proposed by my amendment is a simple one, do you or do you not agree that the minority should have the right to subpena witnesses, and if you do, I certainly urge your support of my amendment.

Mr. DENNIS. Would the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from Indiana.

Mr. DENNIS. I would like to say that I very strongly support the amendment which is offered by my colleague from California. I think it is important that we all understand, because this amendment ought to be supported on both sides of the aisle, really and truly it should be. We ought to understand the difference between the two versions.

Now, the motion presented here to us says that authority for subpenas can be exercised by the chairman and the ranking minority member acting jointly, or if either declines to act the other acting alone. Now, that is where we want to stop. And what is unfair about that? You can't act together, either can act alone, neither can act without the other's knowledge because you have to have a declination to act jointly before you act alone so you will know what the other fellow is doing, but you can still go ahead under Mr. Wiggins' amendment.

Now, the language which he seeks to strike out says by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision of the question, which means that any time they don't act jointly you go to this committee and, therefore, the majority decides whether the man can act alone or not.

Now, we leave in toto so the committee can always act as a committee when it wants to, which is proper: the other thing we object to is that if they don't act together, one of them declines, that then before the other one can do anything he has got to go get a majority vote because obviously that is loaded against our side.

Now, you want to be fair and there is enough said here about being fair, and I hope we are going to be fair. I would like to see it, and I hope to see it. But this is partially a political matter and those things will crop in and all I am saying is, and all Mr. Wiggins is saying is, treat Mr. Rodino and Mr. Hutchinson alike, give them both the subpena power, let each of them have to know what the other is doing, but if they don't agree let them go ahead, both of them or either of them. It is so simple, so fair, I don't see how anybody can really oppose it.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Gentlemen, Ms. Jordan and Ms. Holtzman, this proposal, as written, is eminently fair, it is not political, it extends further than I wish. What people should understand and what we ought to point out is that the authority to issue subpenas rest in the full committee, it does not rest in any individual, it does not rest in the chairman of the committee, it does not rest in the minority, senior minority member, Mr. Hutchinson, the authority rests in the committee. The exercise of that authority is delegated by the committee traditionally by the rules and by practice through the chairman. In this instance, because the Republicans want it, the chairman has acceded to their request to give the minority senior member, Mr. Hutchinson, the same right that he has to exercise the committee's authority and to sign subpenas, individually——

Mr. RAILSBACK. Would the gentleman yield?

Mr. BROOKS. Let me complete this—individually or jointly with the chairman. They could also have four or five Republicans and four or five Democrats sign, too, you can have a long list of signatures if you want everybody in the act.

Now, this is what the problem is: The committee has the authority, and we are treating Mr. Huchinson under this—not with my full approval, I don't think it is really the way to do it. I think you ought to leave it to the chairman—but we are treating Mr. Hutchinson and Mr. Rodino, the chairman, exactly in the same fashion. They can sign a subpena. But if the full committee does not approve of that subpena, we can negate it and it is just so much paper. The authority rests in the committee, and that is where it ought to remain. And I would say that if Peter Rodino, our chairman, signs a subpena that we do not agree with as a committee, we can meet and negate that subpena. It would not be the will of this committee if a majority of them opposed the issuance of a given subpena. The same exact limitation exists against Mr. Hutchinson, the senior Republican.

Now, this is the way we operate in Congress. This is the way you operate in a committee, if you are going to operate under any basic rule that gives a majority of the committee the authority that the Congress gives to them and which they have. Now, that is just as simple as I can make it. I think that the amendment is not desirable. I think that we are treating Mr. Hutchinson exactly as we treat Mr. Rodino, and that is they can issue subpenas, they can tell each other or not tell each other. But if the committee does not approve of them, they are invalid, and that is the way it ought to be.

The CHAIRMAN. Will the gentleman yield?

Mr. BROOKS. Yes.

The CHAIRMAN. I merely want to correct the gentleman's impression that the chairman did not acceed to any request. The Chair offered the minority, the ranking member of the minority, the same right that the chairman has.

Mr. BROOKS. Well, it is a very gracious offer on your part.

The CHAIRMAN. Well, I thought that, in the spirit of bipartisanship and to avoid any possible wrangle as to how this might be done, I thought that this was a fair way to do it, and I think that we are

well on the way, and I would like to point out that I don't see that the action on the part of the chairman or the ranking minority member, which might be an action declining to exercise this authority, and then referring it to the committee in any way shows that there is any greater weight given to the chairman over the ranking minority member.

Now, if you are going to presume that each time that a declination does occur and it is offered for review, that there is going to be a majority and a minority vote, that members are going to vote on that basis, why, then, you are injecting this all over again. I am hopeful that this isn't going to be the case, and so far as I am concerned I hope that we are going to consider subpenas on the basis as to whether or not they are going to serve the purpose of this inquiry and hopefully that Mr. Hutchinson and I join at all times—but as Mr. Brooks has so well pointed out, the power actually is initially in the committee, and the committee is providing this authority to exercise the right to issue it in the chairman and the ranking minority member.

Mr. WIGGINS. Would the gentleman yield on that point?

The CHAIRMAN. I yield.

Mr. WIGGINS. I appreciate the chairman yielding. And I feel obliged to point out that he is absolutely incorrect. The power does not vest in this committee, the power vests where granted by this resolution. The power is not in the committee at this time and it will be granted by the House when it adopts the resolution in the form it finds agreeable. And if the House should feel, in a spirit of fairness and equity, that the minority should have the right to exercise subpena authority independently of the majority, then that is where the power lies. There is no inherent power in this committee except as is prescribed in the resolution pending, and it is my purpose to amend that resolution.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I would like to ask the author a question or two on the resolution because my initial intention was to support it, and I want to ask you a question, if I may, on your amendment.

If we strike out the words that you have suggested but leave in subsection (2), by the committee acting as a whole, do we not leave the same power that you have stricken? The committee acting as a whole could deny the minority member, the ranking minority member of the opportunity to issue a subpena, could they not?

Mr. WIGGINS. In response to the gentleman, it is my opinion that subsection (2) is an independent grant of authority to the committee to act separately to authorize the issuance of a subpena and does not supersede the independent grant of authority given to the chairman and to the ranking member.

Mr. WALDIE. So, it would be your opinion that if the ranking minority member or the chairman were to be seeking—were to seek a subpena that the full committee desired them not to issue, there would be nothing we as a full committee could do about that?

Mr. WIGGINS. As drafted, that is my opinion.

Mr. WALDIE. May I ask counsel if he concurs in the responses of Mr. Wiggins?

Mr. DOAR. Yes, I do concur.

Mr. WALDIE. May I ask the chairman then if that is why it was intentionally drafted there is then no power in the committee to curb what we might consider excessive actions on the part of either the chairman or the minority ranking member, is that correct?

The CHAIRMAN. Not according to this amendment.

Mr. WALDIE. Well, I am talking as drafted.

Mr. WIGGINS. Even under the original language.

The CHAIRMAN. The original language gives the committee, acting as a whole or by subcommittee, the authority, the same authority.

Mr. WALDIE. Well, as drafted, does the committee have the right to reverse either the chairman or the ranking member if they believe their subpena power is improperly sought?

Mr. DOAR. No.

Mr. WALDIE. They do not, Mr. Doar?

Mr. DOAR. They do not, not under the resolution as drafted.

Mr. WALDIE. Then neither under the resolution as drafted nor under the resolution as proposed to be amended by Mr. Wiggins, does the committee in fact have any opportunity to curb either the chairman or the ranking minority member?

Mr. DOAR. Not unless the ranking minority—the chairman and the ranking minority member do not agree, then it could be brought to the committee.

Mr. WALDIE. All right. I have no further questions.

Mr. BROOKS. Pardon me. For clarification, Mr. Doar, as drafted, is it your opinion—and you know what I think about this draft—is it your opinion that, as drafted, as submitted this morning, that the chairman and the ranking minority member can issue a subpena which 90 percent of this committee is opposed to and would vote against, that they could issue such a subpena and it would be valid if the committee met and moved that such a subpena be invalidated and negated? Is that your opinion under this draft?

Mr. DOAR. My opinion would be, Congressman Brooks, that the chairman and the ranking minority member could issue that subpena and that it would be valid. If an issue came up to the committee on the subpena, the committee, I would assume, would have the power to overrule that. But I think the subpena initially would be valid.

Mr. BROOKS. Initially would be valid, but it could be negated by the full committee's actions, is that your opinion?

Mr. DOAR. I think if it came up to a question of whether or not the subpena would be enforced, the full committee could conclude not to enforce it.

Ms. HOLTZMAN. Isn't it your opinion, Mr. Doar, that under section 2 that the committee is authorized to require subpenas, interrogatories, et cetera, as it deems necessary so in the event the committee decided that certain information was not necessary, that it could in fact overrule a decision by either the minority member or the chairman and that that qualifies the power under section (b)?

Mr. DOAR. I don't believe, Ms. Holtzman, under the resolution as drafted that the committee would have that power.

Ms. HOLTZMAN. Well, suppose the committee doesn't deem certain information necessary.

Mr. DOAR. Well, if the committee were to——

Mr. SARBANES. Would the gentlelady yield?

Ms. HOLTZMAN. I would be happy to yield to——

Mr. SARBANES. I would like to direct a question to counsel. As I understand all of section 2, 2(a) places the authority for subpenas in the committee.

Mr. DOAR. That is correct.

Mr. SARBANES. Section 2(b) sets out how that authority may be exercised. That is a procedural matter.

Mr. DOAR. That is right.

Mr. SARBANES. But the procedure for exercising the authority does not shift the basic authority given under 2(a) to the committee, to the chairman, and the ranking member if upon reflection the committee feels that authority has been abused, the authority would still be in the committee and they would then have the power to negate the process contained in 2(b), would they not?

Mr. DOAR. Well, I believe that under the resolution that the authority is delegated to the chairman and the ranking minority member, that that authority is delegated. That was the way the——

Mr. SARBANES. Well, I appreciate that they could proceed to act on the basis of the process given to them in 2(b), but it would seem to me that the committee, if it chose, could meet and invoking the power in 2(a) which is placed in the committee, invalid those subpenas if in the wisdom of the members of the committee that is what ought to be done.

Mr. DOAR. Well, the resolution as drafted provides that that authority shall be—may be exercised by the chairman and ranking minority member, so that the exercise of the authority is delegated to the chairman and the ranking minority member under the resolution.

Mr. SARBANES. Well, I find it very difficult to accept the hypothetical, and I have confidence in both the chairman and the ranking member, but if they were to——

Mr. BROOKS. I would like to continue—have you completed?

Mr. SARBANES. I just want to ask this question—if they were to take an action which was indicated a majority clear, overwhelming sentiment of the committee was that it ought not to be done, it would seem to me, under the power in 2(a), the committee could invalidate that, could it not, with the resolution as drafted?

Mr. DOAR. I think the way the committee would invalidate that would be at a time when the question would come up with respect to the enforcement of the subpena, but I don't think—I think under the resolution as drafted that the initial authority was delegated to the chairman and the ranking minority member.

Mr. BROOKS. Mr. Doar, let me just continue and point out that no action by the chairman of any committee, this committee or any committee you ever heard of in Congress, in the House of Representatives, no chairman and no member can do anything that will stand against a majority vote of the committee that authorized it. This is a tradition and a rule of the House and any day that you or anybody thinks that a chairman or a ranking minority member can act contra and opposed to a majority of the members of a committee, this is just not true. That

is not the rule, that is not the practice, that is not the pattern, it is not desirable, that a minority, Democratic or Republican, of a committee would have an authority by any stretch of the imagination to have a controlling effort of the committee. There is no way you can give them that authority. And I think the issuance of the subpena might be valid until it was repudiated, but it can be negated by a vote of a majority of this committee, and I think that any equivocation on that is just utter foolishness.

Mr. HUNGATE. Mr. Chairman, I want to say that I like your draft. I think we could have 37 drafts, we have got 37 lawyers, and they could all be different. And there is some old saying about don't buy a dog and then bark yourself. I think that we must trust somebody sometimes, and I am perfectly willing to trust you gentlemen.

I like Mr. Wiggins'—I trust Mr. Wiggins' construction, the fact that the chairman and the ranking minority member jointly or separately I understand could issue said subpena if the House gives them such authority under this resolution. I believe in that, and I think the House has power, just as it has power to create an entirely new committee or different ones to handle the whole problem and give them that authority. I think if you don't, any defense attorney that can read can read this, and if he is crazy if he doesn't appeal every subpena he gets, and you have to have a committee meeting to go through all this stuff. It seems to me very cumbersome unless we accept the draft you have and the manner in which it is presented.

I would like to ask Mr. Wiggins, the author of the amendment, a question. Mr. Wiggins, wouldn't there be a preliminary veto in either the minority or the majority, Mr. Hutchinson or Mr. Rodino?

Mr. WIGGINS. Well, under the draft resolution and under my amendment, if it is implicit that the ranking minority member and the chairman would make an effort to act jointly, and hopefully all subpenas would be as a result of their joint decision, and so there is the requirement, of course, because it is important that there be communication between the two.

Mr. HUNGATE. I didn't state my question well. I mean under the rule as drawn, (b) (1), don't you think that either Mr. Hutchinson or Mr. Rodino could decline to sign, and that would be a preliminary veto, if the other one wanted to do anything about it he would then have to come to the committee?

Mr. WIGGINS. Well, that is true. That is true. And I would anticipate that in the event of a veto it would be brought to the committee.

Mr. HUNGATE. Well, now, in (b) (1), line 4, "either shall have the right," but now they wouldn't have to exercise that right, would they? Suppose they are going to subpena my Uncle Charlie, and I want it done but I don't want him to know it, I just say, well, go on, but don't include me, and he could do it by himself.

Mr. WIGGINS. In the routine case, Mr. Hungate, I would not expect anything to arise that would require that it be brought to the attention of the full committee. But in sensitive matters—and I don't know how to define that except to say perhaps legally sensitive and perhaps even politically sensitive matters—I would frankly expect either member to decline and the buck would be passed to the full committee, and here we sit as the minority looking at the full committee.

Mr. HUNGATE. Well, I don't understand it that way. Let's see if I am wrong. It says he may decline, then it can be exercised the other acting alone, except that the guy who declines shall have the right to go to the committee. Suppose I don't want to go to the committee, I want him to do it without me being in it? I could let him do it, couldn't I?

Mr. WIGGINS. I agree with that construction.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I am inclinded to support the draft as presented to the committee for this reason. As I indicated earlier, I am anxious to have this hearing concluded expeditiously, and it strikes me that if we give plenary authority to either the chairman and ranking minority member acting alone that we could have an interminable hearing of unlimited subpenas and unlimited evidence and we could have abuse because there would then be no opportunity for the committee to review and to pass on that subject, and I think that we can get through this hearing much more expeditiously with the draft as recommended. Now, I notice the gentleman from California, who is proposing this, voted against the cutoff date and that makes me further suspicious and so I do want to emphasize that I think we will get through with the hearing earlier with the draft as we have it here.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California. All those in favor of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. WIGGINS. Mr. Chairman, on that, the yeas and nays, please.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

The CHAIRMAN. I have a proxy: No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
Mr. DANIELSON. No.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No.

While the clerk is tallying up the results, I would like to announce that I know that the House will meet only very formally for about 10 or 15 minutes and I believe that we ought to go on and dispose of this matter, if there is no objection, instead of taking any break.

The CLERK. Mr. Chairman, 16 members voted in favor of the amendment: 21 members voted in opposition to the amendment.

The CHAIRMAN. The amendment is not agreed to.

Mr. Wiggins?

Mr. WIGGINS. Thank you, Mr. Chairman. I have only one more amendment. It is a relatively brief amendment. It has been distributed, I am told. Has it?

The CLERK. Yes; it has.

Mr. WIGGINS. I will ask counsel to read the amendment.

[Mr. Doar read the amendment as follows:]

Amendment by Mr. Wiggins to section 2(a):
Following the word "necessary" add the words "and relevant".

Mr. WIGGINS. Mr. Chairman, am I recognized?

The CHAIRMAN. Yes.

Mr. WIGGINS. This amendment, ladies and gentlemen, deals with the nature of the material which is to be subpenaed. At the present time, the committee is authorized to require by subpena evidence as it deems necessary to such investigation. The only limiting authority of this committee is the words "as it deems necessary." I proposed by this amendment to add the two words following the word "necessary," "and relevant."

Now, I realize that there are mixed emotions about this, but first let me dispel one possible argument. By interjecting a requirement of relevance I do not submit that question to any judicial review at all. The word "it" refers to the committee, and this is a requirement that the committee itself address the question of relevance. I think that is wholly proper. What is the meaning of the word "necessary" if not modified by the words "and relevant"?

It might mean that which is legally necessary, and I take that to mean bearing upon an issue before the committee. It might mean to be politically necessary, but not bearing upon an issue before this committee. The word necessary is without qualification in any way under the draft resolution.

It is my purpose and intent to confine the evidence which shall be brought to the attention of this committee to that which tends to disprove or to prove an issue before the committee. The only way to so limit the evidence is to interject the concept of relevancy, which is not in the draft resolution. The word relevance has a special meaning to lawyers. This is not a vague concept at all, unlike the word necessary presently in the resolution.

Accordingly, I would hope there would be support for this position. Understandably, there may be disagreement as to what is relevant and what is not, but that judgment is vested in the committee. I do not submit that question to any judicial review in an impeachment context. But I would like the committee to address the question, the committee to determine whether or not a suggested line of inquiry is relevant to an issue before the committee, and the only way to raise that issue is to require relevancy in the draft resolution and, of course,

my amendment is addressed to that. I urge its support. It is not intended to be mischievous in any way. It is intended to be constructive and to confine our search to that which is important and before us and not to extraneous matters. I urge the adoption of the amendment.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I originally had reservations about the amendment and for the reasons that we had a briefing frankly by our minority counsel and counsel was concerned that by using the word—and you correct me if I am wrong—counsel was concerned that by using the word relevance we might be inviting refusals to honor a subpena, court tests—however, after listening to Mr. Wiggins' presentation and the fact that relevant is used with the word necessary and also with the word it—in other words, referring to the committee—as the committee may deem necessary and relevant, I think that his explanation is probably meritorious and I like the idea of imposing that kind of a responsibility on ourselves, that before we just go on fishing expeditions or anything like that, there be—that we consider that the information be both necessary and relevant. I think it is a reasonable amendment, I think it is one that deserves our support.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Let me say that with all due respect to my distinguished and able friend, Mr. Wiggins, who is a fine lawyer and a fine Member of this body, for whom I have the highest respect, I don't believe that we want to add the word relevancy. I think it is more restrictive, it would limit what this committee could acquire to reach a decision in the way of data, information. We on this committee are interested in getting the data that is necessary. After you get the data, you determine whether it is relevant and whether it should be passed on, put in articles of impeachment, discarded, and if it is relevant and it absolves the President from any blame whatsoever, then it would be relevant and we would utilize it. You have to get the information before you can determine that it is relevant.

A court gets information and then they rule on whether it is relevant or not. Why should we have less authority than a court? We are trying to fulfill our constitutional authority and responsibility, and I think to add relevancy would limit severely the staff and the Members in reaching an honest and objective conclusion on this matter.

And I would like to ask the staff lawyers, Mr. Doar and Mr. Jenner both, if they feel that relevancy is more restrictive and if they feel that that would limit the scope of their investigation severely.

Mr. Doar?

Mr. DOAR. Congressman Brooks, I do agree that the term relevant is more restrictive than the term necessary. I do agree that that could restrict the scope of our inquiry, and I further state that it could lead to wrangles and delays with respect to the production of data that, as you pointed out, you must have before you can decide whether or not the data is relevant. And therefore I would recommend to the committee that it stay with the words just necessary.

Mr. BROOKS. Mr. Jenner?

Mr. JENNER. Congressman Brooks, I share the statement made by Mr. Doar and, as Congressman Railsback has indicated, in a meeting

with the minority Congressmen this week, I expressed that view to all of them.

There is this factor, Congressman Wiggins, and you as a litigator realize, what we do is we are compressing discovery procedures because of the need for expedition here. And as you will recall the Federal Rules of Civil Procedure were amended, I think the date is 1962, when we amended those rules, we provide in the discovery rules that as you seek discovery, that which you are seeking in the first instance need not be admissible evidence or relevant if it will lead to the discovery of relevant evidence. And my major theory in my term as a litigator and experiences under the Civil Rules of Criminal Rules, that those—the word relevant originally afforded so much controversy in defense by defense counsel in seeking to impede discovery that the Federal—the Advisory Committee on the Civil Rules, as you will recall, did amend the rules so as to tone down as much as possible the resort to the word relevant made by counsel. I think the draft as submitted will expedite your investigation, the investigation of the whole committee and including necessary is a limitation of primary authority. I realize that this in great part, Congressman Wiggins, does involve an issue of the competence of the committee and the professional staff that is here. We will want to exercise that judgment and we will not be seeking things that are not in our judgment relevant to the discovery needed to bring relevant evidence before you.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. I propose to vote against this amendment for the same reason that I voted for the previous one, and it is that I believe that we should have the widest possible latitude in our subpena power, and I think it would help us to expedite this matter, and this is why I voted for the previous, and the one previous to that also. I don't want to put anything that restricts the power to subpena or anything that may lead to further issues that we should argue, and for this reason I don't believe that this should be included as an amendment to the draft.

Mr. COHEN. Would the gentleman yield?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Just a question of Mr. Jenner. Mr. Jenner, in your opinion then, if we added the word relevant and in keeping with the spirit of the Federal Rules of Procedure or matters that may lead to relevant information, that in essence would equal necessary, wouldn't it, as we have here? They would be one and the same? If you added the "relevant information" or "may lead to relevant information," that in essence is tantamount to "necessary information," so we are really involved in an unnecessary act, if you adopt the——

Mr. JENNER. I would largely share that view. I am not unmindful of Congressman Wiggins' explanation and——

Mr. COHEN. But in terms of the Federal Rules of Procedure, you indicated the spirit of those rules to allow the widest possible latitude at getting at information——

Mr. JENNER. That is correct.

Mr. COHEN [continuing]. And you may subpena, take depositions, interrogatories on information even though it is not relevant but may lead to relevant information?

Mr. JENNER. That is correct.

Mr. COHEN. If you use that guideline, that in essence equals "necessary" within the meaning of your draft?

Mr. JENNER. That is what we intend.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you very much. I want to know if Mr. Doar shares the opinion just expressed by Mr. Jenner that the concept of "necessary evidence" is to be modified by the spirit of the Federal Rules of Civil Procedure, that "relevancy" is interjected in the sense that the information sought must lead to "relevant information"?

Mr. DOAR. I didn't understand Mr. Jenner to say that. I don't think you can predict in advance when you seek information that it may lead to relevant information, relevant evidence. I think that the idea is to give the broadest scope possible to the investigation so that once the material is examined, then the decision can be made as to whether or not it is relevant to the inquiry.

Mr. WIGGINS. Well, now, in view of the fact that you do not share the opinion which I understood Mr. Jenner to have expressed, I am not at all comforted by the words coming from the counsel table. We both understand, everybody in this room understands that the Federal Rules of Civil Procedure are designed to give maximum discovery opportunity to parties in litigation, but that power is not unlimited. You cannot subpena information as a party simply because you deem it necessary, and that is uncontrolled discretion. The other side has some right to object and is referred in a sense by a judge. Here we have no such referee, and I don't concede that the referees have any role to play. Accordingly, it is——

Mr. BROOKS. Would the gentleman yield?

Mr. WIGGINS [continuing]. In a moment. Accordingly, it is our own sense of restraint that comes into play. Now, I want to guide that restraint by a self-imposed limitation, and the intent of my amendment is to limit our restraint in the same way that the Federal Civil Rules limit the search for evidence, and that is it must be relevant, and I certainly would accept the amendment "or lead to relevant evidence." But I do not accept and think it is bad policy and bad law to say that the parties may roam at will simply because the majority of them feel that it is necessary, that term being undefined.

Now I will be happy to yield.

Mr. BROOKS. On that point, I think that we would all concede that this committee is not bound by the Federal Rules of Civil Procedure. This committee helps to write those.

[Laughter.]

Mr. BROOKS. The final authority lies in this committee, and I think that we can decide whether we want to use the word "necessary" or "relevancy," and I think that the counsel is right in pointing out that it would be restrictive to use the word "relevant," it would limit the investigation. I think that everybody wants to get all, I assumed that everybody wants to get all of the facts that are necessary to complete this hearing and then to apply them to the relevancy test which is within the committee. If they are not relevant, they would have no hearing, we would give them back. Nobody is hunting for a fishing expedition. This committee has not indicated, as I see it, that we want

to have widespread hearings and call a lot of witnesses. We are not planning a side show. But I think we ought to give our staff and this committee the full authority to find out all that is necessary for this, and then we as a committee will decide what is relevant. That is our responsibility. It is not the responsibility of the courts.

Mr. McCLORY. Would the gentleman yield to me for a——

Mr. WIGGINS. I shall yield, of course, but before I do so let me say that the bottom line on the Federal Rules indeed is simply fairness, and that is the purpose of the Federal Rules, and it is my purpose in offering the amendment, is to interject in a spirit of fairness that this committee will not and will be restrained from an unprincipled witch hunt. I don't believe that it so intends at the present time, but I would like to see that it restrains itself and confines itself to the issues and to allegations raised by the resolutions and evidence which bears upon those allegations and not extraneous matters which may have a certain amount of political sex appeal.

Mr. McCLORY. Will the gentleman yield to me?

Mr. WIGGINS. Of course, I yield.

Mr. McCLORY. I would like to——

Mr. WIGGINS. Are you still suspicious?

Mr. McCLORY. No; I think the gentleman is proposing a very valid amendment and I am intending to support it. And I just want to ask this question, because I think there is a rational basis for this, and that is that we are going to receive from our counsel on the 20th of February, a historical report with regard to the meaning of impeachable offenses, what are the legal issues involved in this proceeding, and then on the basis of that we would certainly want to subpena only relevant evidence which is relevant to the issues as contained in that report, and that seems to me to be a very valid reason for us to include these words in this resolution, in the amendment proposed by the gentleman.

Mr. DENNIS. Will the gentleman yield?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I simply want to observe that the end result of the argument of my good friend from Texas seems to me to be that we want a vote here that we should go out and try to grab evidence which we do not deem to be either relevant or likely to lead to anything that is relevant. It seems to me that is a rather indefensible position.

Mr. BROOKS. Mr. Wiggins, may I reply to Mr. Dennis briefly?

Mr. WIGGINS. If you mention my position.

Mr. BROOKS. I would say that we are in the position of a grand jury and grand juries do not have to apply the rule of relevance to the acquisition of information and to the indictment of anybody brought before it. You can indict in a grand jury—I think there is no question about it, that we should not have the word "relevance" in there and I would ask the question on the——

The CHAIRMAN. Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. I wonder if Mr. Wiggins would accept, as I understand that he indicated he would, this substitute language, "as it deems necessary and likely to lead to evidence that is relevant."

Mr. WIGGINS. I see no objection to that language.

Mr. DRINAN. I think that that makes more clear what counsel and what we have been talking about, that the dual requirement is there, that it is necessary and likely to lead to evidence that is relevant.

Mr. WIGGINS. Yes; I would accept that amendment.

Mr. DANIELSON. Would the gentleman yield?

Mr. WIGGINS. Of course.

Mr. DANIELSON. I oppose the amendment or the alternate suggested by my colleague, Mr. Drinan. Every time you add another adjective, you add another restriction. It is another qualification. Mr. Drinan and I both know, it is one thing to have long black hair, it is another thing to have long black curly hair. Every time you add another amendment, you add another restriction, and I feel that this committee should not be limited by anything except that which is necessary to reach its ultimate objective.

If I have the time, I yield to the lady from New York.

Ms. HOLTZMAN. I would like to echo what my colleague has said. If we look at the language of just about every one of the prior impeachment resolutions regarding subpena power, the language is pretty bare and simple, and it says the committee shall have power to send for persons and papers, and it is an unqualified power. I don't know that we can accept the standard of relevance as argued in cases of law in the courts, the Federal courts. We have a different standard of relevance to be guided by here, and I know that counsel intends to operate fairly and the committee intends to operate fairly, and I would oppose this amendment as being really restrictive and creating problems and really not within the precedents of impeachment resolutions and impeachment subpenas in the past.

Mr. WIGGINS. Mr. Chairman, I move the question on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California. All those in favor of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. WIGGINS. Mr. Chairman, a rollcall vote, please.

The CHAIRMAN. The clerk will call the roll.

Mr. CONYERS. A parliamentary inquiry, Mr. Chairman. Has there been an amendment to that motion?

The CHAIRMAN. We are voting on the original amendment.

Mr. CONYERS. It wasn't offered by Mr.——

The CHAIRMAN. That wasn't offered by Mr. Drinan.

Mr. WIGGINS. I accepted it by unanimous consent, Mr. Chairman, that is I——

The CHAIRMAN. I don't know that the gentleman offered the amendment.

Mr. DRINAN. Yes, I did. Mr. Wiggins—I didn't hear him accept it.

Mr. WIGGINS. Mr. Chairman, I ask that counsel read the amendment as amended.

Mr. CONYERS. Mr. Chairman. I did not hear any request that it be—that there be unanimous consent to accept the amendment.

The CHAIRMAN. The Chair neither heard the offer of the amendment except that the gentleman asked that if an amendment were offered,

and the Chair did not hear the gentleman from California accept such on the unanimous consent request, and the Chair therefore states that the only amendment before the committee is the amendment offered by the gentleman from California.

Mr. WIGGINS. Would the gentleman yield? Just to expedite time, because I can offer the amendment——

The CHAIRMAN. The question has been called for on the amendment and the Chair has ordered that the roll be called, and the clerk will call the roll on the original amendment.

The CLERK. Mr. Donohue.
Mr. DONOHUE. No.
The CLERK. Mr. Brooks.
Mr. BROOKS. No.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. No.
The CLERK. Mr. Edwards.
The CHAIRMAN. No, by proxy.
The CLERK. Mr. Hungate.
Mr. HUNGATE. No.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. No.
The CLERK. Mr. Mann.
Mr. MANN. No.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
Mr. DANIELSON. No.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. No.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.

The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
Mr. WIGGINS. By proxy, aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. No.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No.

The CLERK. Mr. Chairman, 15 members voted aye, 22 members voted no.

The CHAIRMAN. The amendment is not agreed to.

Mr. CONYERS. Mr. Chairman, a point of information.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I ask for a point of information with regard to the fact as to whether or not there is a stenographic record being made of this meeting.

The CHAIRMAN. There is no stenographic——

Mr. CONYERS. I did not see a stenographer present and I would urge, Mr. Chairman, that the historical importance of legislative history is being made in at least some of the discussion that goes on today, warrants that a record be preserved of the discussion of this debate even in meeting.

The CHAIRMAN. The rules of the House do not provide for a stenographic recording of meetings where legislation is concerned, except where there are public hearings or hearings, executive session or otherwise. However, there are minutes that are kept and these minutes are being kept in accordance with the rules of the House.

Mr. CONYERS. Well, further, Mr. Chairman, I do not recall the rules of the House precluding stenographic records of committee or subcommittee meetings. As a matter of fact, in my own experience, it is a very common practice.

The CHAIRMAN. This is not the practice, it has not been done, and I feel that the minutes will amply record what we are doing. And in view of the fact that it is not a practice of the House, the Chair did not feel that he could take this kind of action at this time, and I feel that the minutes will provide a sufficient record.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. I have an amendment at the desk.

[Mr. Doar read the amendment as follows:]

Amendment by Congressman Butler:
Line 2, after the words "by any subcommittee thereof" insert "appointed by the chairman for the purpose and in accordance with the rules of the committee."

The CHAIRMAN. Mr. Butler?

Mr. BUTLER. Mr. Chairman, there is a typographical error there. It should read "appointed by the Chairman for the purposes hereof and in accordance with the rules of the committee." My purpose, Mr. Chairman, is to make certain that any subcommittee which is given the jurisdiction to proceed with the impeachment has the dignity of any other subcommittee, and that all subcommittees do not have that jurisdiction.

I don't feel real strongly about this. I would anticipate that it would be quickly accepted and then we could proceed on to something else. I ask unanimous consent that it be accepted.

The CHAIRMAN. I would like ——

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I didn't mean to interrupt the chairman, but I would like to hear from counsel on this before——

The CHAIRMAN. I was going to address a question to the counsel regarding the effect of this amendment.

Mr. DOAR. I don't believe that the—with my limited experience with respect to congressional procedures, and I want to say that initially, Congressman Brooks—I don't believe that this amendment would create any problem, but I really say to you that I would defer, I just don't have enough experience to express a judgment. Perhaps one of the——

The CHAIRMAN. Mr. Jenner?

Mr. JENNER. I am in the same leaky boat that Mr. Doar is in and——

Mr. BROOKS. I don't think this amendment does anything. [Laughter.] It is the same thing Butler just said—with all due respect, it just elaborates, it has got to be appointed by the chairman, it has got to be bona fide Members of Congress, they must have been sworn in, be legitimate Members—we could just go on and on with those kind of provisos. I don't think it does any harm. I think it just adds a little verbiage to it and I don't see any—if they want to make it a little longer, it is already longer—well, I won't—it is pretty long. [Laughter.] I don't see any objection.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. Mr. Chairman, the first draft that we received of this resolution by counsel and purportedly they had worked on it, said

"by any subcommittee established or designated for this purpose." Now, it does appear that the language of the first draft which counsel apparently approved, both Mr. Doar and Mr. Jenner, does no more than Mr. Butler's amendment does this time. And if they approved it once, I am wondering why the same language causes such a quandary among them this time.

Mr. DOAR. It is not a quandary, it is just whether or not the Members of Congress like that kind of language in the resolution and whether that language is the kind of language that is customarily found in resolutions of the House, Ms. Jordan.

Ms. JORDAN. Oh, you do approve then of—you did approve of the language established or designated for this purpose?

Mr. DOAR. Yes; but Congressman Brooks pointed out to me that that was totally unnecessary and——

[Laughter.]

Ms. JORDAN. We cannot allow Congressman Brooks to define for this committee what is necessary.

[Laughter, applause.]

Mr. RODINO. That is from a fellow Texan.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. A question to counsel. It is my understanding that this type of language would not encourage any other advisory group or ad hoc groups or anything of that nature that——

Mr. DOAR. Not in my opinion, it would not.

Mr. RANGEL. It would be committees that would be formed according to the rules of the House of Representatives.

Mr. DOAR. It is my judgment; yes.

Mr. RANGEL. Thank you.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Did Mr. Butler ask unanimous consent that the amendment be accepted?

Mr. BUTLER. Yes; I asked unanimous consent that it be accepted.

The CHAIRMAN. Is there objection?

[No response.]

The CHAIRMAN. No objection being heard, the amendment is agreed to.

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. Mr. Lott.

Mr. LOTT. I have an amendment at the desk.

[Mr. Doar read the amendment as follows:]

This is an amendment by Congressman Lott:
Amendment to the Judiciary Committee Subpoena Power Resolution:
At the end of section 2, on line 18, add the following:
"The authority conferred to the committee by this section shall expire on April 30, 1974."

Mr. LOTT. First of all, Mr. Chairman, I would like to make one correction here. This was drafted before we got our final draft of the resolution, so this would be at the bottom of page—no, it would be at the end of section 2, which would be the first paragraph on page 3, and just very simply stated "The authority conferred to the committee by this section shall expire on April 30, 1974."

Mr. SEIBERLING. Mr. Chairman, I make the point of order that this in substance is the amendment we have already passed upon and voted down, and I believe it is out of order for that reason.

Mr. LOTT. May I speak to that, Mr. Chairman? I think that it is totally different in that it applies just to this section, which applies only to the subpena powers and does not have any relation to the report which the other amendment tried to set a date on the report itself.

Mr. SEIBERLING. It has the effect of nullifying all the rest of the resolution and, therefore, has the same effect itself.

The CHAIRMAN. Well, the gentleman is stating an objection and——

Mr. SEIBERLING. I object on the grounds that we have already voted on it in substance.

The CHAIRMAN. The Chair will rule on the point of order, and the Chair feels that the amendment, while it may have the same effect, nonetheless, one talks about the expiration, the other talks about reporting at that time and, therefore, the Chair feels that the amendment is not the same and the Chair overrules the point of order.

Mr. LOTT. Realizing how difficult it is for lawyers to be brief, I shall try to do so, Mr. Chairman, in view of the time. I think that this is entirely different. It does apply just an expiration date to the subpena powers contained in this resolution. I think it would be a very responsible thing to do. In fact, I think it would be almost irresponsible not to say that we will have some expiration date on the subpena powers. I had reservations myself about trying to put a termination date on the report, or when we would have to conclude any investigation. But as far as the subpena powers, this would once again just give us a date that we are working toward. The Members of the House of Representatives I think would be very much interested in that, and I know that the people of America would like to see some date that we are shooting for. We have all talked about April.

If, when April 30 comes, because of whatever might have happened, the investigation has been delayed or there should be any sort of court proceedings, it would be necessary to ask for an extension of this date, it would be very simple for this committee to go to the House, the full House with some brief explanation of why we must proceed further to show that we are not dragging our feet but in fact there are some very substantive reasons for not having concluded, and I would like to ask, Mr. Chairman, that the members of this committee give serious consideration to this amendment which applies only to the subpena powers under this resolution.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I very much respect my friend, Mr. Lott, from Mississippi in what he is trying to do. I am going to vote against his amendment. I voted for that of the gentleman from Illinois, Mr. McClory. I did so rather reluctantly, because while I shared many of the sentiments he mentioned, I also recognized the practical difficulties in actually accomplishing what the gentleman was trying to do.

Now, that amendment failed and it seems to me that if we are going to have an investigation, we had better have the power to subpena as long as we have the investigation. And since we haven't terminated the

investigation, I query whether we ought to terminate the subpena power either.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Could I address a question to counsel. Counsel, I wonder if you could tell me, is this a correct statement of the law, that if we adopt this amendment, after the cutoff date of April 30, no further subpenas could be issued by the committee, but those subpenas that are outstanding would still be valid? Is that a correct statement?

Mr. DOAR. I think there would be doubt about that. It would be just something that I think you could argue about.

Mr. FISH. So there would be no guarantee that subpenas issued a few days before that would be valid?

Mr. DOAR. Not if they were required to appear after the date.

Mr. FISH. Thank you.

The CHAIRMAN. The question is on the amendment offered by Mr. Lott. All those in favor of the amendment, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it. The noes have it.

Mr. LOTT. Mr. Chairman, I would like to ask for a rollcall vote on that.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The. CLERK. Mr. Edwards.

The CHAIRMAN. No, by proxy.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.
The CLERK. Ms. Jordan.
The CHAIRMAN. No, by proxy.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. No.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
[No response.]
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. No.
The CLERK. Mr. Mayne.
Mr. HOGAN. No, by proxy.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. No.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No.
The CLERK. Mr. Chairman, 7 voted aye, 29 voted no.
The CHAIRMAN. And the amendment is not agreed to.
Mr. KASTENMEIER. Mr. Chairman?
The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, the hour is late and I will be very brief, but I do have one question to pose of counsel that perhaps should have been posed before in connection with the endorsement of

the subpenas. And while we dealt with it tangentially, I am not sure that we really crossed the question of whether you considered the course of action taken by the Congress in terms of the Senate Watergate committee's desire to have a statutory base for their subpena, exercise of their subpena power, rather than to, in their terms, force a confrontation with the Executive which they thought would be inappropriate or unseemly, wherein that is to say to compel attendance by a marshal of the Congress or to pursue contempt powers under title 2, United States Code 192, those being the only two alternatives presently available to the Congress.

As you recall, they did request a statutory base so that the subpenas could be enforced in the courts. Now, on that question, have you fully considered whether or not we do or do not need a statutory base for any subpenas issued by this committee?

Mr. DOAR. We have not fully considered that, Congressman Kastenmeier, but my tentative view is that since the jurisdictional provisions of the Federal courts are set by statute, that there may well not be—there is no express authorization for the Judiciary Committee conducting an impeachment inquiry to go into Federal court to seek enforcement of a subpena. Now, there may be a distinction between this committee's inquiry and the investigation by the Senate select committee. But I think you have to assume that there probably is some doubt, if not considerable doubt, that this committee would have that authority.

Then the next question would be whether or not this committee would be wise or the Congress would be wise to seek legislation giving to it the authority or conferring on the Federal court jurisdiction to permit the Judiciary Committee to go to it for the enforcement of its subpenas. I think that is a very serious question and one that this committee might want to consider most carefully.

My judgment would be that such a statute might be some—might take some time in getting passed and becoming a law, and it might tend to delay and drag out the investigation. My second tentative judgment is that, as I understand the constitutional provision with respect to impeachment, that it is a very pure process. The Constitution vests in the House of Representatives the sole power of impeachment and under our constitutional system it seems to me that it might well not be advisable to seek to pass a law calling on another coequal branch of the Government to support the Congress in this action. The Congress here, the House here is functioning as a coequal branch of the Federal Government and its power and its authority comes directly from the Constitution.

But as I say, I would not want to suggest to this committee that they make a final judgment on that on the basis of what I have said this morning, and I would suggest that if the Congressman wishes, the committee wishes that the staff brief that question most carefully.

Mr. KASTENMEIER. I would encourage you to do so because it would be a legitimate question to be raised on the floor of the House when this matter is taken up, because, after all, the Congress has just gone through a similar proceeding in behalf of the Senate select committee to grant it a statutory base for enforcement of its subpenas, so we should be well prepared to devote ourselves to that answer.

Mr. WALDIE. Would the gentleman yield?

Mr. KASTENMEIER. Yes; I yield to the gentleman from California.

Mr. WALDIE. I am very happy that the gentleman from Wisconsin raised this issue. It is a most important one and the committee has not given the kind of careful review of it that it deserves, and I certainly second the suggestion, and hope the chairman will as well, that the staff brief this question carefully.

I don't regard it to be confined to this great confrontation issue between the White House, for example, and this Congress. Indeed, disobedience to our subpenas may well be on the part of some individual not associated with the White House and the kind of flexible authority which we may have to deal with that disobedience in inadequate under title 2, I believe.

Well, I am only trying to underscore the importance of the problem and I am sure you are aware of its importance, and this committee ought to appreciate its importance and be prepared to deal with it appropriately, whether the person in contempt is John Dean, for example, only for example, or President Nixon at the other pole.

The CHAIRMAN. Mr. McClory?

Mr. MCCLORY. Mr. Chairman, I intend to vote for this resolution here in the committee today and to support it on the floor of the House. I do exercise my right to file additional views. It is my understanding that the report will be filed today and I will have those in the hands of the staff today for purpose of presenting to the floor.

I further ask, Mr. Chairman, that when this matter comes to the floor of the House, I realize it is a matter of high privilege, but I would ask and implore you, Mr. Chairman, to recognize me for the purpose of making an amendment for a cutoff date, as I have indicated. I know that is within your discretion, but I am asking that you do recognize me for that purpose at that time.

Thank you, Mr. Chairman.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I am seeking to approach a cutoff date for today. I would like to commend the chairman and Mr. Hutchinson, and all of my colleagues, particularly those who offered amendments for the thoroughness with which this matter has been examined and considered, and I would like to move the previous question at this time.

The CHAIRMAN. The question is on the resolution as amended. Those in favor of——

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. I would like to offer an amendment. I have an amendment at the desk.

The CHAIRMAN. We have already moved the previous question and the gentleman's request comes too late.

Mr. OWENS. I respectfully submit to the Chair, the Chair was aware of the amendment.

The CHAIRMAN. The gentleman conferred with the Chair and had not yet made up his mind as to whether or not—and I thought that there was consultation between the Chair and the gentleman as to whether or not he would or would not, and I could not read the gen-

tleman's mind. I know that the gentleman did approach me for that purpose and the Chair states that the motion is the previous question at this time. If the gentleman will withdraw his motion——

Mr. HUNGATE. Mr. Chairman, I will withdraw the motion.

Mr. OWENS. I have an amendment at counsel's desk and I ask that it be distributed.

Mr. Chairman, like many other members of the committee, I have been concerned that the public is most anxious for a decision on this matter. It was a tough decision for me not to vote for the McClory amendment earlier, except that my judgment was that it was not possible for us to set a termination date at this time for when this investigation would be concluded. So I have prepared an amendment which states—which attempts to enunciate the goals set by the chairman and by many other members of the committee, that we ought to finish by April 30, if it is responsibly possible

My amendment would state that if by April 30, we are not ready to issue a final report, that we issue an interim report as to the then current status of the investigation. I think that the American people are concerned and anxious to know what we are doing. The committee I think strongly feels the same desire, the desire to speed up the investigation, to expedite it.

This amendment would put us on record as saying, in effect, as preparing for a second rabbit test, as the poet laureate of the committee stated earlier. We would be saying to the country on April 30, where we are at, just as we have instructed counsel to state to us on March 1, where the committee is at.

I think it is a responsible amendment and I urge its adoption.

The CHAIRMAN. I would ask the gentleman whether or not it wouldn't serve his purpose as well, knowing how sincere he is about this and recognizing that the committee is determined to go forward, whether or not, in light of the fact that he may file additional views or views with the report that this committee will adopt, that it will not serve the same purpose. I think that the gentleman recognizes that the Chair and every member of this committee has moved expeditiously and all this amendment is going to seek to do is to impose additional burden on the committee staff to prepare a report when it could be going forward at that time if it hadn't completed its work. And I think it is really unwise to impose, if you are looking for expedition, additional work on the part of the staff. I would hope that the gentleman would withdraw his amendment and instead file views. I think that would serve that same purpose.

Mr. OWENS. Mr. Chairman, as the Chair knows, I have the greatest respect for the chairman of this committee and I know that he is genuinely determined that this investigation shall be completed at that time if at all possible, and it is not in any spirit of lack of confidence in him or in the committee, it is rather an attempt on the part of the committee to say to the American people we will either finish, if it is possible, we enunciate the date that most of us have said publicly we ought to reach, if it is possible we will complete the investigation by April 30, if it is not possible for us to complete the investigation by that time, we will at least give you a report on where we are at. It is important, so important I think in these hearings that they be done as openly as possible.

The CHAIRMAN. Well, will not the gentleman's purpose also be satisfied if the Chair at that time, if we haven't completed a report, if we haven't completed the investigation, would make a report publicly to the full House as to the status of the investigation, rather than take the time of the staff to prepare a report which really is going to—if at that time we haven't completed it, is going to take away important time which I think would well be utilized in trying to expedite the investigation.

Mr. OWENS. If the committee decided that the report should contain one sentence, "investigation is not completed," that is a report, and I am not talking about another volume on impeachment materials or saying what we ought to state at all. I just think it would be appropriate and helpful for the committee to go on record and for the American public to know that by April 30, we are trying to finish the investigation, if we cannot, at least we will make a report on where we are at that time.

Mr. SEIBERLING. Will the gentleman yield?

Mr. OWENS. Yes; I yield.

Mr. SEIBERLING. Well, the Chairman has indicated that if by some circumstances we should not be able to complete our work by the 30th, that he would personally be prepared to make a report to the House of Representatives which I gather is all the gentleman is really getting at, and I think it would be inappropriate to complicate this resolution, as important as it is, by adding in something that is really extraneous as far as the resolution is concerned, in view of the assurances of the Chairman. And I would suggest that the gentleman, in light of those assurances, would withdraw his amendment rather than complicate our proceeding.

Mr. CONYERS. Mr. Chairman, may I be recognized?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I too urge our very distinguished friend to reconsider the thrust of this motion. First of all, we have in effect gone over this matter once. But if he truly desires a status report, it is my recollection, Mr. Chairman, that Mr. Doar and staff have already on several occasions this morning again promised that on March 1 they would make such a status report which would speak even sooner than the gentleman wants to be told about where we are. So for those reasons I would urge the withdrawal of this motion or its defeat.

I yield to the gentleman from California.

Mr. WIGGINS. I want to join in Mr. Conyer's observations. I came into the committee room today prepared to vote for the April 30 cutoff, for many of the same reasons that the gentleman suggested. But I was persuaded by counsel, particularly minority counsel, who said that this would hamper the investigation of staff, and he felt it would be unwise. It does seem to me that on March 1, when we have our next status report, that if I for one am not persuaded that the investigation is moving expeditiously, then I for one would certainly support and probably introduce a cutoff date resolution. But at this time while staff is still relatively new in terms of the job confronting them I think we owe an obligation to them and their expertise and their desires that they not be subjected to such a limitation this early on. So I would urge——

Mr. HUNGATE. Mr. Chairman?

Mr. OWENS. I yield to the Senator from Missouri.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, I thank the gentleman for yielding and I, too, would state that I would urge expeditious handling of this matter, and I understand the staff plans so to do and would see no benefit to the public or the committee in wedding ourselves to April 30. If we must have a date of April 15, this is one that contains more meaning for most Americans, and I would urge the gentleman that we work with him for expeditious handling but that he might withdraw this amendment.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. I would like to speak in support of Mr. Owens' amendment. It is no way weds us to the date of April 30. I think it is a very good compromise. It is one thing for us to sit here and talk to our counsel, but it is quite another thing for us to in a public document put in this date so that the public at large will know that we have a target and that they will at least get something out of us by April 30, and I therefore urge and vote for Mr. Owens' amendment.

Mr. HOGAN. Mr. Chairman, I move the previous——

Mr. OWENS. Mr. Chairman, would the gentleman withhold briefly?

The CHAIRMAN. Mr. Owens.

Mr. HOGAN. I thought mine was a preferential motion, Mr. Chairman.

Mr. OWENS. Would the gentleman withhold briefly?

Mr. HOGAN. I will withdraw briefly.

Mr. OWENS. Mr. Chairman, I am unable to see any way in which this amendment circumscribes the authority or imposes a severe or even a significant obligation upon the committee, upon the committee staff. The public is entitled to know what we are doing. Everything we can do to open up the hearings and this process I think ought to be done. The country will take that date, which the chairman has given publicly, the country will take that date and look for at least some answers. It will help keep our feet to the fire. I submit to the members of the committee that it does not do anything harmful to our investigation in any way. It is not in my opinion irresponsible. It is simply a date at which we will say where we are at and which we are shooting to terminate the thing and, if we can't get there, to give a status report. The country is tired, but the country does not want us to be irresponsible, and I submit that this is a middle ground.

The CHAIRMAN. The question——

Mr. HOGAN. Mr. Chairman, I certainly concur with the gentleman from Utah. We have 50 lawyers working on this matter. I think his request is a perfectly reasonable one and I move the previous question on his amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah. All those in favor, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. OWENS. A rollcall, Mr. Chairman.

The CHAIRMAN. The clerk will call the roll.
The CLERK. Mr. Donohue.
Mr. DONOHUE. No.
The CLERK. Mr. Brooks.
Mr. BROOKS. No.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. No.
The CLERK. Mr. Edwards.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Hungate.
Mr. HUNGATE. No.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. No.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
Mr. DANIELSON. No.
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
[No response.]
The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No.
The CLERK. Mr. Chairman, 12 members voted aye, 24 members voted opposed.
The CHAIRMAN. The amendment is not agreed to.
Mr. HUNGATE. Mr. Chairman?
The CHAIRMAN. Mr. Hungate.
Mr. HUNGATE. Mr. Chairman, I move the previous question.
The CHAIRMAN. The question is on the resolution as amended. All those in favor of the resolution as amended, please signify by saying aye.
[A chorus of "ayes."]
The CHAIRMAN. All those opposed?
[No response.]
The CHAIRMAN. The ayes have it and the resolution is adopted.
Mr. DENNIS. Mr. Chairman?
The CHAIRMAN. Mr. Dennis.
Mr. DENNIS. I voted for the resolution and support it but, like Mr. McClory, I may want to file some views. I reserve that right and I would like to know when they need to be in.
The CHAIRMAN. The gentleman has 3 legislative days within which to—3 calendar days.
Mr. DENNIS. I thank the Chair.
The CHAIRMAN. We would like to have it as quickly as possible. If we could have it by the end of tomorrow, we would appreciate it, by midnight tomorrow.
Mr. DENNIS. Thank you, Mr. Chairman.
The CHAIRMAN. Midnight tomorrow.
Thank you. The committee is adjourned.
[Whereupon, the committee was adjourned.]

IMPEACHMENT INQUIRY

Executive Session, Briefing by Staff

TUESDAY, FEBRUARY 5, 1974

HOUSE OF REPRESENTATIVES.
COMMITTEE ON THE JUDICIARY.
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Sandman, Railsback, Wiggins, Dennis, Mayne, Hogan, Butler, Cohen, Lott, Moorhead, and Maraziti.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. If the members will please take their seats, I would like to make, first of all, a very preliminary statement.

I know that last week Mr. Waldie raised an inquiry as to whether the committee could meet in executive session for the purpose of hearing progress reports, and I would like to advise Mr. Waldie that I discussed this matter with the Parliamentarian and the rules of the committee and the rules of the House do require a majority vote before closing either a hearing or a meeting for the transaction of business. However, the Office of the Parliamentarian informs me that the definition of each meeting for the transaction of business, including the markup of legislation, as outlined in clause 26(f) of rule 11, does not encompass and is not intended to encompass a situation where the chairman calls upon committee counsel to give him, members of the committee a briefing and invites any interested members to be present and, of course, during such a session, no motions for the transaction of any business may be entertained at any one of these sessions and no official committee action of any kind can be taken.

However, the mere convening of such a gathering in executive session is not precluded by the rules and does not require a committee vote, and I hope I have satisfied the gentlemen.

Mr. WALDIE. Well, Mr. Chairman, I understand that that apparently is what the rules provide, and I have no objection to that inter-

pretation. I just do not really see any objection to asking the committee for permission for closing the meeting. I am certain that it would have been granted in that instance and in any future instance if the Chair asks that. I guess all I am saying is that the committee could participate in that decision and would probably be supporting the Chair in almost every instance. What I am trying to say and inarticulately, is this is an historical proceeding. It is very sensitive and I think the attributes of willing to be open and candid with what is going on in the committee would help the reputation of the committee in terms of the final results which have to be results as to which confidence attaches from the press and the public.

The CHAIRMAN. Well, I appreciate that and, of course, the gentleman knows that then I would have to schedule a meeting for the purpose of asking the committee to permit me to go into these briefing sessions. And I think that what I did was in the interest of trying to expedite rather than, as you can see, we sometimes do not have a quorum, and I think those members who want to be here and want to be briefed, would appreciate all of the time that they can get.

Before having the special counsel brief the committee, I think that the members would also like to receive a progress report as to the Chair's intent with reference to the committee as a whole, and where we are.

First, and briefly, I thought this was a good opportunity to bring you up-to-date on this matter. There are some current and very important matters that have reached the markup stage or are on the agenda for hearings. The Immigration Subcommittee has reported favorably the Public Safety Officers Benefit Act, and have held hearings just this past week, on the important energy-related issues of offshore oil reserves.

The Subcommittee on Claims is moving toward hearings on legislation to amend the Tort Claims Provision of title XXVIII and also has before it proposals to provide for working capital for the Department of Justice.

The Subcommittee on Civil Liberties is, as you know, wrestling with the question of newsmen privileges, and I understand from the subcommittee chairman that there is a very excellent chance of our considering it before long by the full committee. The same subcommittee has been moving forward with continuing work in the area of parole reform, has held hearings already in connection with six-person juries, three-judge courts, and voting rights for ex-offenders.

In another area, as we all know, and the President made mention of this in his state of the Union message, he is going to be sending up a package on privacy and individual rights this month, which will tie in with the great amount of work that the Civil and Constitutional Rights Subcommittee has been doing in that regard; and in the area of arrest records. That subcommittee is also going to be considering legislation designed to enable the criminal justice system to deal more effectively with the problem of narcotics addiction; and also, what is a priority matter by that subcommittee will be the extension of the Voting Rights Act which, as you know, expires in 1975. I myself will be introducing a major piece of extending legislation in this area.

The Subcommittee on Crime will be continuing its important work on the Community Anticrime Assistance Act, a project that initiated

with the hearing in the first session, and further hearings after that and maybe holding hearings on the eight bills before it relating to speedy trials. The Criminal Justice Subcommittee, as you know, is on the floor this week with the rules of evidence and will be moving ahead with consideration of the massive proposal to revise title XVIII of the United States Code.

My own Subcommittee on Monopolies and Commercial Law will be holding oversight hearings this session with regard to the operation of the Antitrust Division, and will be considering a new legislative proposal I introduced in the House just yesterday to permit the States to bring antitrust suits on behalf of their own citizen consumers. I am hopeful that we can move in this area very shortly.

I thought I would take the time we had here just to inform the committee as to the action of some of the other committees that they are not members of.

And, now, Mr. Doar.

Mr. DOAR. Mr. Chairman, members of the Judiciary Committee, I would like to report to you today on these matters: (1) The organization of the staff, and (2) the status report of the inquiry.

You have before you a document [1] that summarizes the status of our investigation, and also deals specifically with the personnel that have been retained to do this work. I would like to turn to the personnel section first.

At the first page of the personnel section, we have set out a total breakdown of the inquiry staff. At the present time, there are a total of 90 persons employed by the inquiry staff, 39 of whom are attorneys, four are investigators. Of the 39 attorneys, 27 have been designated by the majority, 12 by the minority. Eight of the staff were here when I was retained as special counsel. Six of the staff are detailed from the permanent staff of the Committee on the Judiciary. There is one lawyer and three investigators who have been borrowed from GAO, and the General Accounting Office is being reimbursed for their salaries.

For your information, the legal staff comes from 14 States and from the District of Columbia.

Following the breakdown of the total staff is a list of the lawyers, the 39 lawyers that are on the staff, at the present time, and then a standard résumé with respect to each member of that staff, their residence, their family status, their education, their former employment, and where they were admitted to the bar. I will be glad to answer any questions that any member of the committee has about any member of the staff. Let me say that the résumés are organized through Mr. Davis, which is the first seven or eight résumés, maybe nine résumés, not in alphabetical order because they indicate members of the staff, that have supervisory or senior supervisory responsibility.

Starting with Mr. Altschuler, the rest of the staff is set forth alphabetically, inasmuch as these are line attorneys assigned on particular task areas or constitutional and legal research.

Mr. MCCLORY. Mr. Chairman, may I ask a few questions?

Mr. Doar, I would appreciate information regarding the prior political affiliation or the prior political activities of the staff members, particularly the supervisory staff. It is not that I have any objection

[1] See "Appendix I.—Work of the Impeachment Inquiry Staff as of February 5, 1974," in book III, "Impeachment Inquiry".

to a single one of these members. They all appear to be very highly qualified, and I know you have that feeling, too. But I do not like to be surprised by something that the press reports about some special or particular political activity of some staff member, which then the press will interpret as being prejudicial one way or the other to interests that might be involved in our inquiry. Do you have that information available?

Mr. DOAR. I have some of the information available. I do not know for certain all of the political affiliations, nor am I positive that I know of all of the political activities of any members of the staff. But I will say that each staff member was questioned whether or not they had taken a position on impeachment; and if they had, other than there should be an inquiry, then they were not considered further for the job.

The second thing: We made every attempt we could to see that the members were selected who could come to the staff with an open mind, could be fair and objective with respect to this matter, and would be able to let the chips fall where they may.

The CHAIRMAN. As a matter of fact, Mr. Doar, I would like to interject here for the benefit of Mr. McClory, that at one time during the recess, Mr. Doar called me with relation to an individual who he considered to be very highly qualified, an individual who I know had the professional background, and there was some question as to whether or not this individual had either signed the petition or had sent a letter, or had sent a telegram advocating a position with relation to impeachment.

When Mr. Doar learned that this was the case, he was advised that he was not to hire him, and no other individual was to be hired who had taken such a position.

Mr. MCCLORY. Well, I think that is very fine, and I support that position. I recall—well, I do not want to make any special analogy, but I think there was quite a bit of interest in the staff of the special prosecutor in the *Watergate* case and, especially, and especially some of the prior, rather extensive and partisan political activities which might indicate a prejudicial position, and that is why if there are any persons of that nature, I would just like to know about them. I do not know that I would necessarily express any opposition to any of them.

Mr. BROOKS. Mr. McClory, would you yield to me a moment?

Mr. MCCLORY. Surely.

Mr. BROOKS. In that same vein, I recommended to the counsel a lawyer who had been recommended to me, who was a pretty good tax accountant and was very familiar with the Watergate hearings. By God, Doar wanted to know something about him, and I told him he had worked and been a consultant down at the Democratic National Committee for a while, but that I did not think that would hurt his objectivity, and Doar did not even consider him and we did not hire him, and this is the last we heard of that man; is that not right, counsel?

Mr. DOAR. I did think it inappropriate to hire someone who had worked for the Democratic Committee.

Mr. BROOKS. That was the end of him. He did hire a fine man from my district, whom I have met.

Mr. MCCLORY. Could I ask this further question, just for further clarification on my part?

Mr. BROOKS. You understand I met him after he was hired, gentlemen, which does not make it so "cotton-pickin" funny.

Mr. DOAR. I hope I can live that down somewhat.

Mr. MCCLORY. I find people being appointed to prominent offices in the administration from my congressional district without any knowledge, too, so I guess we all have that experience.

Now, you mentioned the attorneys in the supervisory role, and I think in the supervisory role, as I understand it, what do we have, two counsel?

Mr. DOAR. Did I give you those? We have three senior supervisors, really four, if you include Mr. Garrison in that. Mr. Joseph Woods is from Oakland, Calif. He is a registered Democrat. He has not participated in any active political campaigns. At one time, he was preliminarily considered as a possible appointee for a Federal judgeship in northern California, during the Johnson administration. That is the extent of his political activity. He is the vice president of the Alameda Bar Association, so his activities have been largely with the law.

Mr. MCCLORY. Now, do we have supervisory counsel with regard to each of the task forces that were named?

Mr. DOAR. Yes.

Mr. MCCLORY. And is the supervisory counsel established as far as possible on some kind of a bipartisan basis, or do we ignore that, or would you explain what that situation is?

Mr. DOAR. We did not ignore that. We are trying to find a supervisory position for a member of the minority besides Mr. Jenner and Mr. Garrison, but I have not felt, and I think Mr. Jenner and Mr. Garrison concur with me, that we have found the right person to take that kind of a supervisory position. At the present time, there are three first-line supervisors. Mr. Robert Sack, who is a lawyer from New York City and a former partner of the firm of Patterson, Beltnap & Webb, and I think he is a registered Democrat, but not active in politics. The other, second supervisor, is Richard Gill from Montgomery, Ala., who is a registered Republican; he was not hired by the minority. And the third is Mr. Evans Davis from New York City who is a registered Democrat. None of these people, to my knowledge, have been active politically.

Mr. MCCLORY. Could I ask just one more question, and that is this: Are all of the members of the task forces given equal access to all of the material that the task force is investigating? In other words, or is the material only available to it, or is some of the material only available to the supervisory personnel?

Mr. DOAR. No, Congressman. I have a rule in the office that there is only one filing system and that all of the material relative to that particular matter is in the file, and that any attorney on the staff has access to all of that material. It may be that when we get sensitive material, that Mr. Jenner and I will have to make some further restrictions on a need-to-know basis. But we have not done that yet. And to date, all material is available to all members of the staff.

Mr. MCCLORY. I guess my apprehension is this: I would not want a minority member to be taken by surprise with regard to a substantial amount of investigative activity, and can you give me an

assurance that you are not going to be investigating a particular area or a particular activity or something in a way which would leave me without knowledge or information?

Mr. DOAR. Yes, I can give you that assurance unqualifiedly. I can give you the assurance that there are now members selected by the minority that are on every one of the task forces, that the task forces meet together; and when they have their staff meetings with the senior staff meeting, Mr. Garrison and Mr. Jenner are there, and then everyone knows what is going on in the office.

Mr. MCCLORY. Thank you very much.

Mr. DOAR. If there are no other questions about the staff, I would like to turn——

The CHAIRMAN. Yes, why don't you proceed.

Mr. DOAR [continuing]. I would like to turn to the report on the investigation. It has been broken down into two sections. One is the legal question, and that is under the general supervision of Mr. Joseph Woods who is here with me this morning, and their major project at this time is the research into the constitutional issue of defining for the members what is an impeachable offense under the Constitution. We have scheduled the submission to the committee for their consideration of a brief on this matter on February 20. The status of the brief at the present time is that we have it in outline form, and sections of the brief are being assigned to various members of the legal staff for first draft of the research material that has already been collected.

Some members selected by the minority are working on that brief.

On the factual investigation, this work is under the general supervision of two senior attorneys, Mr. Cates, who many, if not all of you, have met from Madison, Wis.; and Bernard Nussbaum from New York City. I would like to say a word about Mr. Nussbaum. He is a graduate of the Harvard Law School where he had a very distinguished record. He then came to New York City and practiced law in the southern district of New York, in the U.S. attorney's office both as a prosecutor and then in the appellate section where he rose to be the deputy chief of the appellate section before he moved into private practice with a leading trial firm in New York. He was at the time that he joined the staff a partner in that law firm trying cases in the city of New York on a regular basis. The principal practice was in the Federal court. Mr. Nussbaum's principal responsibility is at the present time, aside from coordinating and supervising the work, is to begin to make a list and a selection of documents and memorandum, tapes and so forth that would be necessary for our inquiry in preparation for submitting a list to this committee for ultimate submission to the White House and/or to Mr. Jaworski. It is somewhat difficult for us to make that selection because we have not seen the material, but based upon the information that the Senate Select Committee had, based upon some testimony that Mr. Cox gave to the Senate Judiciary Committee, based upon information that we have from other sources, we are doing our best to make a list of all of that material.

In the agency practice field, we have a list of documents that we are considering requesting, and Mr. Nussbaum has prepared a form, and this form indicates the document, the reason why we want it, and then

he has evaluated on a letter basis, A, B, C, D, or A, B, C, the relative importance of the document at this time. And just to give you an idea, there are probably 25 or 30 of these documents that we have, just in the first few days, that we have begun to prepare from the basis of the information that we think the committee must have in order to complete its investigation. Now, these documents would either be in the possession of the White House or one of the departments of the executive branch of the Government.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback?

Mr. RAILSBACK. Mr. Chairman, after Mr. Doar gets through, and I do not want to interrupt him, I would like to ask him when he and Mr. Jenner plan to make their move as far as consulting with Jaworski in trying to see what can be worked out as far as Jaworski's work product. But, I would not interrupt right now, but I would like to ask him that question after he is through on that point.

The CHAIRMAN. Well, we would like to state first of all, that it would not be before we have the subpena authority from the House tomorrow, and that I can assure you. Then we will discuss that after that.

Mr. DOAR. Now, this investigation or inquiry is divided into six groups, six areas, and I have listed those on page 1 and 2 of the report. And then I have broken down on the following pages 3 and 4, more specific details with respect to the investigation. I apologize to the members for repeating two or three times in this report the point that the fact that we mention a particular event, or a particular allegation does not mean that we think there was any wrongdoing involved or that there was any prejudgment having been made by the members of the staff. But, I did repeat that two or three times in this report because, as it will become a public document, I wanted to make it clear that there was a distinction obvious to all of you between allegation or charges, and evidence and proof.

In the various areas, we have the domestic surveillance activities, and, that it is broken down into the 1969 wiretaps, the Huston plan, the activities of Mr. Caulfield and Mr. Ulasewicz, the activities of the plumbers and the activities surrounding the Ellsberg trial.

With respect to campaign intelligence activities, we are looking at matters involving so-called White House "Dirty Tricks," intelligence activities of the Committee to Re-Elect the President, the Diem cables, the plan to burglarize and fire bomb the Brookings Institution and Operation Sandwedge.

Ms. HOLTZMAN. Would you be kind enough to give me an explanation of what "Operation Sandwedge" is, briefly? I am not sure I am familiar with it.

Mr. DOAR. I just am not familiar enough with that this morning, Ms. Holtzman, to tell you that but I will get that information for you.

Mr. RAILSBACK. What did she say?

Ms. HOLTZMAN. I wanted to hear what Operation Sandwedge was, and Mr. Doar said he would get us the information.

Mr. DOAR. I mean, I am not enough familiar in detail with that particular matter to give it to you this morning, but I will get the information for you.

Then in the Watergate and aftermath, matters which your committee is all familiar with, there is the Liddy plan, the break-in, the

destruction of files, documents and other evidence, payments to the Watergate defendants, the relationship between the CIA and the Watergate investigation, offers of executive clemency, the role of John Dean in the investigation, the firing of Mr. Cox and the Presidential tapes. And I then have listed, I have listed the same matters in the President's personal finance area. The tax deductions on the Presidential papers, deductions and expenditures relating to the private use of San Clemente and Key Biscayne, the sale of the New York apartment, the deductions on the Whittier home, the sale of certain Florida lots and the possibility of additional income being imputed by virtue of personal use of Government facilities, and then improvements to San Clemente and Key Biscayne properties of a nonprotective nature at Government expense.

Finally, there is the investigation with respect to agency practices, and there is the milk contributions, the so-called enemies list in the IRS, matters involving the Antitrust Division in the Department of Justice with respect to ITT, the Vesco matter and there are, in addition to that, maybe 10 or 11 other things that that task force is considering on a very preliminary basis.

I have outlined how this material is being collected and how it is being analyzed, and what steps we are taking to keep ourselves familiar with the progress of the investigation in each of these areas on a periodic basis.

Finally, I summarize again how the office is managed and who are the key people with respect to delivering the staff support necessary to make this law office operate.

This concludes my report, Mr. Chairman.

Mr. WIGGINS. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I, as you know, I visited with you and expressed my concern about the Jaworski situation, and I just want to say in front of this group that I suppose that at some point you and Mr. Jenner, if you are going to approach Mr. Jaworski, are you going to want to advise us that that is your intention, and just how to plan to proceed to see if we can get him to cooperate by either requesting the judge to permit him to cooperate or whatever tack you take, and I just want to say, personally, that I think that this is really, should be one of the first orders of business, and I can understand why you would perhaps want to wait until after we get the subpena power, but I would hope that we could move expeditiously because I think that when we consider that he has had really teams of lawyers that have been researching, literally teams of lawyers that have just got White House information, but they have got other information as well. I think it would help us, and it would help the taxpayers to get a hold of that information, and I think that ought to be one of our first priorities.

Mr. BROOKS. Would the gentleman yield?

Mr. RAILSBACK. Yes.

Mr. BROOKS. I was feeling exactly the same way. I think that Jaworski has a big fat lot of information that would save us a lot of trouble and bother and scrounging around and fishing, and we would just save a lot of money and time.

Mr. RAILSBACK. Either to exculpate or to indict?

Mr. BROOKS. Either way.

Mr. RAILSBACK. One way or the other.

Mr. BROOKS. I think that Jaworski has been publicly playing a little bit coy about this, you know. He took one shoe off but he has seemed reluctant to produce the data, and I think that maybe that judge would be the person that would be able to give us an entree to those documents, and I am sure the chairman has thought about that.

Mr. RAILSBACK. If I can just say one other thing——

Mr. BROOKS. That is in lieu of going directly to the White House or elsewhere. But, if we go just to the White House for documents, we will lose what you pointed out is possibly available, which would be other materials other than White House that they have developed.

Mr. RAILSBACK. The other thing is that there is a precedent. I am not sure exactly how analogous it is, but in the Spiro Agnew situation, Spiro Agnew came to the Congress and met with congressional leaders urging that they consider his case. Elliot Richardson, it is my recollection, at one point was willing to ask the court to postpone the criminal trial of Spiro Agnew so that he could present information to the House Judiciary Committee for its possible consideration. In other words, I think that was—now, that was Elliot Richardson's initiative but yet, I think I am right on that. I think Elliot Richardson, at one point, was willing to ask the court on his motion to postpone so we could present information to the House, who had the preliminary responsibility.

The CHAIRMAN. No, the gentleman is mistaken in that regard. If you will recall, at that time Mr. Finley had introduced a resolution of inquiry which would have mandated that we act within 7 days or, otherwise, he would have had control of the time on the resolution on the floor.

I was in touch with Mr. Richardson, talked with him by telephone, and he stated to me at that time that he was in the process of discussing the matter with the court, and that he did not feel that it would be helpful to the committee to come up there and to disclose any information at the time, which he was then considering, and which would be material to the court's inquiry.

He did say, however, that if we did then take action on that resolution of inquiry ourselves and request that he come down, that he would do so.

Mr. RAILSBACK. That he would petition the court——

The CHAIRMAN. No, no, that he would come down and disclose only such information as he felt he could disclose to us, but that he would not take the matter up with the court. His impression was, as you know, at the time when he presented his argument before the court, that while he was certain that the President, at least, in the opinion of the United States, at least, in the opinion of the Justice Department, his position was that the President of the United States was not subject to indictability, whereas he did not feel that that question had been resolved, insofar as the Vice President was concerned. And, therefore, he felt free to come here if we so ordered him under the resolution of inquiry. But, otherwise, he thought in his discretion that it would not be an appropriate thing to do.

Mr. RAILSBACK. Yes. I thank the chairman. I will take your word for it and then maybe we ought to consider a resolution of inquiry.

The CHAIRMAN. Well——

Mr. HUTCHINSON. I would not advise that.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. If I may direct a question to Mr. Doar.

Mr. Doar, I understand that you have emphasized the point that the areas of inquiry here are not intended to be an exhaustive list and that there are other areas perhaps that are being pursued. As I review the list of those areas being pursued at the present time, it is clear that some of them quite possibly could lead to a criminal indictment, where it is not perhaps for the President but at least it involved criminality or the charge of criminality. Others do not tend to lend themselves to criminal charges, but really might be fairly characterized as a potential abuse of authority with respect to the President. That is a fair observation, is it not?

Mr. DOAR. Yes; it is.

Mr. WIGGINS. Given that fact then, is any historical research being done by the committee with respect to practices in those noncriminal areas by other administrations?

Mr. DOAR. Mr. Garrison and I discussed that this morning and two things are taking place. First, is that the task force leaders are instructed in preparing the material that they are to be careful to see whether or not as best they can, whether the practices that they have under investigation or under consideration were practices that were different than the practices that existed in past administrations, or whether they are just similar in kind, but different in degree, or different in kind. And, second, Mr. Garrison thought it would be a good idea if we had one person assigned to do some background research on practices in former administrations with respect to some of these matters, and I agreed with him that it would be a good idea to do that, and we will do that.

Mr. WIGGINS. Well, I am pleased then and your assurances is being made to the committee that research of a historical nature will proceed; is that correct?

Mr. DOAR. I make that assurance.

Mr. WIGGINS. Mr. Chairman, while I have got the floor, I would like to clear up a question in my mind and that is the proper relationship of the members of the committee to members of your staff. I notice that you have a congressional liaison person and the report indicates that members of the committee should channel their questions perhaps, or comments, to that person. I am not clear whether you feel that a member is precluded from discussing matters with you personally outside of this hearing room, or Mr. Jenner, or, for that matter, any other member of the staff.

Mr. DOAR. Well, I am certainly clear that no member of the committee is precluded from discussing any matter that they wish with either me or Mr. Jenner. I have instructed the staff that if they get inquiries from your office or any other office that they should refer those matters to me, and I would do my best to answer them promptly.

Mr. WIGGINS. The kind of contact that at least I envisioned is not an inquiry with respect to information, but, well, just by way of illus-

tration only: You have a gentleman assigned the major responsibility of legal research. I have no plan to visit with that person, but I may be obliged at some time in the future at least to want to talk to him about my conception of what the law is or may be, only as a resource to that person and not for the purpose of eliciting what the hell is going on in his shop. Would I be, in your view, under the rules, precluded from doing so?

Mr. Doar. No; you would not. But I would like to just, if it is possible, to have the request channeled through my office and we would arrange to have the person immediately talk to you about that, if you so desired.

The Chairman. May I interject? The only reason for Miss Fletcher is to assure that Miss Fletcher communicates with Mr. Doar about the inquiries from the members of the Committee, and arranging those appointments as such. And the whole point of it is that Mr. Doar would make himself or his staff members that are available for that purpose, available for the members of the committee. Otherwise, Miss Fletcher and Mr. Coppock will be available to the Members of Congress generally for their inquiries. But, as such, and Mr. Doar has stated, and this was an understanding, that the members of the committee had access to him, and we would like it to be orderly and arrange it through Miss Fletcher so that we make sure that it is expedited and make sure that it does not go unattended.

Mr. Wiggins. Well. I understand the total answer to be that we really are not precluded from talking to members of the staff and the staff, in turn, are not obliged to answer all of our questions either? But, for purposes of notice coordination, you would like to be advised?

The Chairman. That is correct.

Mr. Doar. Just to expedite it and to get the right person who knows the subject about which you are interested over to you in the first instance. If it turns out that that person does not satisfy you, or you do not think that is the right way to handle it, I would like to know about it and make it right.

Mr. Wiggins. Certainly. I understand and I appreciate the answer. Thank you, Mr. Chairman.

Mr. Waldie. Mr. Chairman?

The Chairman. Mr. Waldie.

Mr. Waldie. In that same area of inquiry, if we are, Mr. Doar, as a member, if we are interested in a particular item, and are desirous of examining evidence in the possession of the special counsel or in your possession, are there limitations on our access to evidence, and, if so, what are the limitations?

Mr. Doar. There are no limitations on your access to evidence at this time. I would think, Mr. Congressman, that the committee might want to make some rules about that, not in a final manner, not that you should not have access to all of the material in the course of your consideration. I think in the course of the preparation that it may well be a good practice for the committee members to not have access to material until it is presented in an orderly fashion.

Mr. Waldie. But those determinations are yet to be made?

Mr. Doar. That is right.

Mr. Waldie. And I presume will be made by the committee?

Mr. Doar. That is right.

Mr. WALDIE. Is that correct, Mr. Chairman?

Mr. WIGGINS. Would the gentleman yield on that point?

Mr. WALDIE. Yes.

Mr. WIGGINS. I appreciate the gentleman yielding. The matter that Congressman Waldie has raised is an important one and I am reluctant to let the matter float until rules are devised that regulate that matter. And those rules may not be in preparation. My request really of you, if the chairman concurs, is that you give some priority attention to that.

Mr. DOAR. I agree.

Mr. WIGGINS. So at least we all are operating under the same restraints, whatever they may be, and they be restraints that the committee itself agrees to. So, I would hope you bring something back to us rather soon, at least in the area of evidence that you are accumulating.

The CHAIRMAN. As you know, this is an area that is being given attention, especially in the light of the continued statements on the part of Mr. Jaworski that he is not in a position, at this time, and states that he is bound by the rules of secrecy and confidentiality to turn over any matters that he feels are confidential to the committee, until and unless he is assured of their absolute confidentiality. And even at this point, he has not stated he will turn over any material because he feels that he is bound, and this is why this matter is, of course, so tremendously important. And I am sure that this will be attended to and is a top priority matter.

Mr. WALDIE. May I continue on precisely that question?

If the House votes us the subpena authority we have sought, the imposition of conditions, no matter what they might be by Mr. Jaworski, including confidentiality or secrecy, would be of no avail, would they?

Mr. DOAR. Well, no. Mr. Jaworski would not have any right to place any imposition in response to a subpena. He has suggested, in his television broadcast last Sunday, that if that occurs that he would apply to the court for directions. If I read or heard, or if I read his testimony correctly, or his interview correctly, that is what he said.

Mr. WALDIE. Now, would the court be able to impose conditions on the ability of this committee to obtain information pursuant to that subpena power?

Mr. DOAR. Well, I think there is a serious question whether the court would have any jurisdiction at all in the initial instance, Mr. Waldie. And I would not want to express a legal judgment as to whether or not the court could do that in the first instance. I do think, however, Congressman Waldie that it might be worthy of consideration of whether or not this committee, in its own judgment and wisdom, might be prepared to place some self-imposed restrictions on that before the issue gets up before any kind of a court.

Mr. WALDIE. Well, in no way do I think we ought to slow down or avoid that issue. But I want to make it clear in my own mind that conditions of this sort, or any other sort, cannot be imposed upon our power to obtain evidence and that is what I am trying to get through my mind with every question I have asked with reference to that subpena. No matter how reasonable the conditions may appear, can any authority impose conditions upon our right under that subpena to obtain the evidence we are seeking?

Mr. DOAR. Well, that is correct. But——

Mr. WALDIE. Now, what is correct? It was a question.

Mr. DOAR. The statement——

Mr. WALDIE. Can any authority impose any conditions on the ability of this committee to subpena evidence it seeks with the power of subpena that you have recommended?

Mr. DOAR. I do not believe they can. But, the question is, how do you enforce the subpena?

Mr. WALDIE. Well, I know, and we have not received any answer to that. You are working, I gather, on that question. That was a question which was asked at the last meeting.

Mr. COHEN. Would the gentleman yield?

Mr. DOAR. There is a problem of how you enforce the subpena that somebody does not wish to comply with.

Mr. WALDIE. Well, I will yield in a moment. But, it is my understanding from the last meeting that we left that question with counsel.

Mr. DOAR. That is right.

Mr. WALDIE. To provide us an answer as to what do we do when they do not, or the President does not comply, or Jaworski does not comply? What do we do, and I presume that answer has not yet been researched?

Mr. DOAR. No.

Mr. WALDIE. I will not yield back. I have no more time.

Mr. COHEN. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I just want to observe that Mr. Waldie is broaching certainly a very interesting and a very important question. The answer may be as he suggested, but I do not think that has ever really been determined, and if Mr. Jaworski or the White House, either one, takes a different point of view on an undetermined legal question, it has certainly got to be resolved some way, and I just wonder how you resolve it except possibly by going to a court and getting a resolution on whether anybody is really out of line legally, or any other way until such a resolution is obtained. I do not suggest that I know the answer necessarily, but it seems to me those are important questions.

Mr. RAILSBACK. Will you yield?

Mr. DENNIS. Yes, I will yield.

Mr. RAILSBACK. In respect to the same line, I am concerned that we may be running into the same problem that the Senate Watergate Committee ran into, which necessitated them having to ask us, and I think this was raised by Mr. Kastenmeier at the last meeting, the Senate Watergate Committee had to get enforcement power from the district court, as far as their subpena power in order to avoid some rather awkward situation like imprisoning somebody in a common jail or going the other route by turning it over to an Attorney General who has to go actually through the criminal process of holding somebody in contempt. I think still we ought to have somebody preparing legislation, and to tell you the truth, I do not see how we are ever going, if somebody refuses to honor one of our subpenas, I do not see how we are ever going to avoid a court test. And I think we are going to have to make a decision, whether we want to be armed with

legislation giving us the same power that we were willing to give to the Senate Watergate Committee in order to have, in my opinion anyway, a much better remedy; that is, by using the district court at least to enforce our subpenas. I am not sure we would want to go so far as to let them admit that we want them to determine questions of legal validity or anything along those lines, but I think it would help to have them to be able to enforce our subpena power.

Mr. SARBANES. Would the gentleman yield?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I think this conversation makes fairly clear that in addition to a legal brief on the nature of an impeachable offense, which in itself is obviously an unclear area and remains to be left to the judgment of the members of this committee in establishing the standards and I assume the brief that is coming to us will recognize that important feature, that there is also need for a legal brief which examines the use of the powers that we have in an impeachment proceeding, does not go to the nature of the standard of the impeachable offense, but deals with the subpena power with the general powers that flow to this committee in carrying forth an impeachment inquiry. It would seem to me before we start moving to solutions of one sort or another, whether it is legislation comparable to what was given to the Senate Watergate Committee or any other sort of solution, that we need a brief which sketches out what the legal judgments are, and then beyond that, of course, we would have to consider the practical judgment. We may have a legal power and choose not to exercise it for other good reasons. But, it would seem to me that we need that kind of legal brief, as well as the one that is being done on an impeachable offense, because there have been a number of questions today, and in our previous meeting which dealt with this area of the legal powers of this committee.

Mr. DOAR. We are beginning—we are working on that now.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, apropos of Mr. Railsback's comment on how we might have to enforce a subpena, I would like respectfully to suggest that this committee, as a branch of the Congress, has the power of impeachment. I think we should consider very seriously before we act to invoke the powers of the court to enforce our subpenas, if we were to ask a court to enforce a subpena, then we would almost necessarily be opening up that subpena to review by the court as to sufficiency and a number of other things. It is my recollection from way back that the Congress has the power to enforce its own process by contempt, by sending out the Sergeant-at-Arms if need be. We may have to arrange to operate on some kind of a contractual basis to have a place of confinement with a jail or the like. But, I do not think we should just precipitously move into asking the judicial department to assist the legislative department in the discharging of its constitutional duties.

Mr. MCCLORY. Would the gentleman yield?

Mr. DANIELSON. I will yield to Mr. Sandman, who has had his hand up for a long time, and then I will come right back to you, Mr. McClory.

Mr. SANDMAN. One of the things, as I understand it, that Mr. Jaworski has imposed as his major objection to all of these things is

that he does not believe that he has the right to turn over something of a confidential nature because it is now before a Federal grand jury. Is that not really his contention?

Mr. DOAR. That is one of his contentions.

Mr. SANDMAN. That is his major one, though, is it not?

Mr. DOAR. Well, I am not sure that it is his major one, because much of the material we have asked Mr. Jaworski for, in my judgment, does not fall within the grand jury rule. There are documents, there are witness' statements.

Mr. SANDMAN. Once we resolve our own procedure as to whether or not we are functioning in the nature of a grand jury or whether or not these things are private or should be public, we will have answered almost all of those things; will we not?

Mr. DOAR. Well, once we resolve, or the committee resolves how it would handle documents that are received from Mr. Jaworski, then that would be one area out of the way. Mr. Jaworski really has four points: One is that this committee has not established procedures for insuring confidentiality of documents, until they are needed in the process that this committee has.

Mr. DANIELSON. I will not be able to yield further. My time is about up.

Mr. MCCLORY. I just want to concur with what the gentleman said. I do not believe we should subject ourselves to the Judiciary in order to enforce our subpenas. But, I think we should establish our own mechanism, if the time comes that we have to have some enforcement.

Mr. DENNIS. Would the gentleman yield?

Mr. DANIELSON. I am entirely in accord on that. I hope we will not have to reach that extreme position, but I think that prudence requires that we be prepared in advance so that we will have a method of executing our process if we need to.

Mr. DENNIS. Would the gentleman yield?

Mr. DANIELSON. I will yield to Mr. Dennis, yes.

Mr. DENNIS. I was just wondering if we go ahead and follow the gentleman's thesis and stay out of the courts, and arrest Mr. Jaworski, or whoever refuses our subpenas, whether the gentleman is also going to suspend the right of habeas corpus at that point?

Mr. DANIELSON. I appreciate the gentleman's comments. It adds a little levity to a serious situation. However, the point of the matter is, I think it would be imprudent on our part to not look beyond today, and to make some preparation for the contingencies that may develop farther along in this inquiry.

Mr. HUTCHINSON. Mr. Chairman?

Mr. BROOKS [presiding]. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I simply want to make this one observation. I think that this committee should avoid confrontations, either with the President or with the court, and I am still of the frame of mind that I cannot believe that the White House wants to face a confrontation with this committee, because it has been my observation that the White House has been losing these confrontations right and left, and I think that if we now—of course, I mean if we subpena somebody and they simply are contemptuous of us, that is one thing. But, I am talking about subpenas to the White House or

subpenas to Mr. Jaworski. I would think that once armed with the subpena power that subpena power ought to be used as a matter of last resort, and not be first resort, because I still hope that we can get what we need, that we can get what we need through negotiations because these are reasonable men.

Mr. BROOKS. Mr. Hutchinson, the chairman who is temporarily absent, has made crystal clear to this committee that it is his hope that we would write letters, would discuss with the individuals, the court or the White House or Mr. Jaworski or other pertinent groups first, before we ever issued a subpena. He has made that clear. That is the basis of our presentation of subpena power, is that we would ask people first. And I think that the chairman, and I think, and this reflects generally the committee feeling, as I understand it, and the chairman, that we would do this first.

Mr. DANIELSON. I would like to state that I fully agree. We are going to try to conduct this, I am sure, in a professional manner, and then go on from there if we need to.

Mr. BROOKS. That was the understanding, was it not, counsel?

Mr. DOAR. Yes, it was; no question about it.

Mr. BROOKS. Mr. Mezvinsky?

Mr. MEZVINSKY. If I may switch to a topic that is in the report. On page 4 you mention the Joint Committee on Taxation and their investigation. What are you doing on that, as far as access to their information? Do you have any idea when they are going to report as to those matters? I think it has a bearing certainly on our investigation. Are you in close contact, will we have access to all of the materials, the tax returns that committee has at its disposal, Mr. Doar?

Mr. DOAR. The chairman has had a meeting with Chairman Mills about the material and my understanding is that when the report is finished that we will have access to that material. In addition, Mr. Sack has made contact with the chief counsel over there to see what the status of their investigation is; to see what materials can be made available to us now, and to try to get as much of that information on an ongoing basis as possible.

Mr. MEZVINSKY. Mr. Doar, could you tell us from your information now what is the status of their investigation? Do they have a time table for their reports? Have they given any indication when they hope to finish their work?

Mr. DOAR. My understanding was about 2 weeks ago that the report was going to be completed in 30 to 60 days. I do not have any further information on that.

Mr. MEZINSKY. And then you are saying that we have access to that information now?

Mr. DOAR. No, we do not have access to it now, but we are making an attempt now to see if we can get some access to that material on an ongoing basis.

Mr. MEZVINSKY. Thank you.

Mr. BROOKS. Mr. Butler.

Mr. BUTLER. Mr. Doar, just with reference to the area which you have described as constitutional and legal research, how large is that group and do they overlap the factual investigation groups? You state that as legal questions arise they are referred to the section for

research and analysis. Is there available to us the questions which are being researched by this group and a progress report on that? Will that be forthcoming?

Mr. DOAR. Well, we have five attorneys and a law student working in that section right now, and then we have some of the people that are working on factual questions assisting on particular problems. I do not have before me a list of all of the matters that are being actually researched at this time, besides the ones that I have mentioned which would be the constitutional question of what is an impeachable offense, and the other is this whole question about the enforcement and the use of the committee's subpena power. But, we will have a list of those questions and that material would be available to members of the committee if they desired it.

Mr. BUTLER. All right.

One more question: With reference to the question of judicial review, is that a possibility of a judicial review of an interim action in an impeachment proceeding and could the sufficiency of the impeachment article be tested in the court before trial, and are these items being researched?

Mr. DOAR. Well, that item, the matter of the procedure of impeachment and the question of judicial review, interim judicial review on the articles are being researched; yes. I do not know of any authority that would provide for that. I will say that, Congressman.

Mr. BROOKS. Mr. Butler.

Mr. BUTLER. I would be surprised myself but I would be interested.

Mr. BROOKS. Mr. Butler, of interest to you is the English procedure on that out of the Jefferson Manual Process: "If the party does not appear, a proximation will be issued giving him a day to appear. On their return, they are strictly examined. If any error is found in them, a new proclamation is issued, giving a short day. If he appears not, his goods may be arrested and they may proceed."

Mr. BUTLER. Thank you.

Mr. BROOKS. I do not want San Clemente, however.

Mr. BUTLER. I yield back the time to the gentleman from Maine.

Mr. BROOKS. Mr. Owens.

Mr. OWENS. Mr. Chairman, I was just going to suggest to Mr. Doar, or to the members of the committee, that it might be helpful at our next briefing session next week to invite the entire staff, let us be introduced to them briefly, and have a look at them and I suppose it might be helpful to them to see the members of the committee as well. I would suggest that at least to the chairman. It may be helpful to us.

Mr. BROOKS. I will pass that message on to the chairman.

Mr. OWENS. Then I was going to ask: I assume if we wanted to come over and look over the plant and try to get a feel for what you are doing that that is an acceptable procedure?

Mr. DOAR. Yes: it certainly is. I would hope that all of you would come over and let me take you around and introduce you to all of the lawyers over there while they are working and have a chance to meet each and every one of them. I think that is a better way to meet the staff than have them all come off work and come over here, frankly.

Mr. OWENS. Well, my comment, though, I was thinking in terms

of staff morale, and that they would be interested in looking at the curious bunch that they are theoretically working for, too.

Mr. DOAR. Well, from that standpoint.

Mr. OWENS. I just thought it would be helpful if we did that for both. And I suppose any examination of evidence, that we do it in your office, and I assume that the rules are that no evidence leaves the office, either for staff or for members?

Mr. DOAR. That is the rule at the present time, yes.

Mr. OWENS. Could you just give us briefly a breakdown on how the mail is going and what kind of mail it is? Now, you point out in here that you received 366,000 pieces to date and, as I recall, it is about 80 percent proimpeachment and 20 percent anti-impeachment. Is that approximately right?

Mr. DOAR. Yes, I think it might be a little higher than 80 percent. They come in between 500 and 1,000 pieces a day, and it is perhaps a little higher than 80 percent.

Mr. OWENS. Still arriving at 500 to 1,000 pieces a day?

Mr. HUTCHINSON. Would you yield?

Mr. OWENS. Yes.

Mr. HUTCHINSON. I want to observe that the very large volume of mail in my office on the issue, runs just about the reverse. There is just about 80 percent in favor of the President and so——

Mr. OWENS. Well, mine is about a 50–50 breakdown and I do not think that you can imply anything from any of those, but, I was interested.

Mr. RAILSBACK. Wayne, would you yield?

Mr. OWENS. Yes.

Mr. RAILSBACK. Does that count these little letter newspaper things, now, that people are cutting out on both sides. Are you counting those?

Mr. DOAR. I do not know.

Mr. RAILSBACK. I am literally getting swamped by this media compaign, on behalf of the President. And I am getting a lot of those cutouts and I am wondering if you are figuring those in?

The CHAIRMAN. No.

According to Ms. Howard, who has charge of the compilation, she advises me that the letters and telegrams have been identified singly. Those petitions and others are not counted as such but are single items, and we have received some 350,000 pieces.

Mr. WIGGINS. Mr. Chairman, in this area, I guess because I am from southern California and a Republican, I am constantly being interrogated about the famous, if you will pardon the expression, bull - - - - response received by certain Republican groups who sent a resolution to some members of the Judiciary Committee and the Judiciary Committee itself, and I have given them all of the assurances that I can that, you know, it has been looked into and that it is not apt to happen again. And I have done that because of my faith in the staff that we have done so, but would you assure me now so that I am speaking from personal knowledge that some steps are taken to preclude that kind of an unseemly thing from happening?

Mr. DANIELSON. Would the gentleman yield?

The CHAIRMAN. Before I yield, let me say that Mr. Danielson called that to my attention and I immediately took it up with the staff. I

would like to point out that frankly, if one examines that letter and the envelope, one would find that the envelope has a cancellation on it with a stamp. The Judiciary Committee does not use stamped envelopes. They use franked and anyone that might have been toying with something like that I am sure would not have been on the staff. And it certainly could not have occurred there, as we find together with the fact that the envelope, as I recall, was dated; the cancellation date was the 14th of January and the letter was dated, I think, the 10th or the 9th of January or December. I forget. It may have been one or the other. Do you recall that, Sam?

Mr. GARRISON. I think it was December.

The CHAIRMAN. December. And all that one has to consider is that, first of all, a letter being sent from California where this letter was purported to have been sent from dated the 10th or the 9th, it would have had to come all the way here, and then gotten first to the Judiciary Committee where it was addressed and from the Judiciary Committee, where it is in with another mountain of mail, it has to get—it does not get answered by the Judiciary Committee staff, it gets answered by the staff that is conducting the impeachment inquiry and this is supposed to have been sent back. And the envelope, as I said, had the cancellation date of 4 days later. So, it seems to me, at least from my examination of it, although I instructed the staff to check the postmark and the station where it was mailed from in order to see just whether or not it actually was sent out of any place near here, or where it might have been sent from, but the two points that ought to be borne in mind are, No. 1, that the envelopes that we send out are franked envelopes and do not carry stamps. And I do not know that anybody in there carries a stamp of that sort, a rubber stamp of that sort. And I would hardly expect it but, nonetheless, I thought I would point this out.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I would have confidence that that is not being done by our staff, and I assume we will doublecheck that. I also think, though, that assuming we satisfy ourselves on that score that we ought not to stop there. I mean, if Segretti, if a Segretti-type person is at work engaged in such activity, I think it would be worth some effort at investigating and trying to locate who it is. It is obviously——

Mr. OWENS. Obviously some devilish force.

Mr. SARBANES. What?

Mr. OWENS. It is obviously some devilish force operating.

Mr. SARBANES. Some sinister force but I think it is the kind of thing that we ought not simply shrug off, if, with a reasonable amount of investigation we might be able to locate who is doing this.

Mr. DANIELSON. I do not know who has the time.

The CHAIRMAN. Mr. Danielson?

Mr. DANIELSON. I would like to assure my colleague, Mr. Wiggins, that I have been getting the same thing. I did not know that he was being subjected to it also. I thought I was the only one being favored. But, I have taken it up with the committee and I have responded to Senator Bob Stevens, who seems to have taken this up in southern

California, and I have assured them that steps are being taken by the staff to be positive that nothing is coming out of here of that nature. I am of the opinion that it is a Segretti-type or dirty-tricks-type operation.

The CHAIRMAN. Well, I would suggest again as you recall, John, that I instructed that we find out what postal station, since there was a number of the postal stations, where that letter was purported to have been mailed from.

Mr. DOAR. We did look into that, Mr. Chairman. That stamp was from the main post office and the No. 48 does not give you any lead as to which sub-post office or branch post office that it would have come from. So, there is no way of tracing that further. At least, that was the information we got.

The CHAIRMAN. Would the main post office be able to tell you where, what drop it was, what box it was in?

Mr. DOAR. No.

Mr. DENNIS. Mr. Chairman?

Mr. HUTCHINSON. Would the gentleman yield?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Before we get away from this subject of the mail being received and so on, do I understand, Mr. Chairman, that you say that only letters and telegrams as such are being counted, and that the coupon returns are not? Now, I do not think that any member of this committee is going to be influenced by the volume of mail on this issue, because this issue is not going to be decided by the volume of mail. But if you are going to put out figures about how the mail is running, why it seems to me that you ought to count coupons which come in along with the rest of the mail. They carry stamps on them and they are just a different method of communication. I hope that you will count them, Mr. Chairman.

The CHAIRMAN. Well, I undoubtedly did not make myself clear. I was referring to the fact that when petitions are sent that carry names on the petitions, they are not counted—it is a single petition, not a number of names. But, coupons which are letters, along with telegrams that are coming in, they are being counted; they are counted, as well.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Doar, I would like to come back to your report you are going to file and the legal brief on February 20. Could you tell us whether or not it is going to be in the form of a recommendation after your staff has done all of the legal and historical research in terms of whether you and Mr. Jenner are then going to recommend a working definition as such for this committee to use as its standard in applying the facts as developed? Is that what your report will do on February 20?

Mr. DOAR. Well——

Mr. COHEN. Now, we all have the Burger's Book and the impeachment materials that have been put together by the Judiciary Committee. I am wondering what exactly do you intend to do with that particular brief?

Mr. DOAR. We are going to try to attempt to define for the committee, as best we can, in a nonfactual context, our legal opinion of what constitutes impeachable offenses. Now, I think, Mr. Congressman, that

that is somewhat difficult to do in a nonfactual context, and that we will perhaps be only able to give you a guideline or a frame for which you can examine the facts as they are presented to you in a context.

Mr. COHEN. Well, the only reason that I am raising the question is, as you know, there are two prevailing schools of thought as to whether it must be an indictable offense or whether it can be something less than an indictable offense, undermining the Constitution. I am wondering whether you are going to make a recommendation with respect to either of those two?

Mr. DOAR. Yes. I think we will make a recommendation with respect to that. I really think that it is not my understanding that there are two—there are two views, but I would not say they are both prevailing views. It seems to me from my research to date that the general view is that an impeachable offense does not necessarily have to be a criminal offense.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I would like to find out pursuant to our discussion about this staff that was hired, how many are black and women on the staff at this point.

Mr. DOAR. I did not understand.

Mr. CONYERS. How many members of the staff are black and how many are women?

Mr. DOAR. Of the 90 members of the staff, there are 10 black staff members; 4 of them are attorneys.

Mr. CONYERS. Well, the figure that we are using in here is 39.

Mr. DOAR. Of the 39 lawyers, 4 of them are black.

Mr. CONYERS. What about women?

Mr. DOAR. Of the 39 members of the legal staff, 2 of them are women.

Mr. CONYERS. And then on another point I would like to commend the chairman for determining that we ought to keep a record of these sessions. I think that is a very important decision made by the Chair.

The CHAIRMAN. I might say that we have done so, and in order that the record just be preserved for historical purposes. I think the committee members will recognize that we are trying to keep the costs down, and we are going to have just a number of copies, and we can make them available or reproduce them afterward, but, otherwise, there will be just, I think—we are ordering at the present time four copies for the committee's record.

Mr. Dennis?

Mr. DENNIS. Mr. Chairman, in view of various things that have been said here this morning, I would, I think, like to make three brief comments in three different areas.

The first addresses itself to the last interchange between Mr. Cohen and Mr. Doar. I have not arrived at any castiron conclusions about what is an impeachable offense, but I would differ somewhat with Mr. Doar on his suggestion that there are not two distinct theories about whether it needs to be an indictable offense or not. I think there are two distinct theories and it is also my personal belief, at the present time, at least, that whether or not such an offense needs also to be a crime or not, that in about 999 cases out of 1,000, including the facts of this one, insofar as I presently know them, anything which arises to that seriousness and that dignity will, in fact, also be a crime.

Since we are going to have a brief rather than just a legal memo, I just throw that out so that it will not be considered that everybody is necessarily 1,000 percent in agreement about everything.

Second, on the matter of mail, since it has been brought up, in my particular area, after the so-called Saturday night massacre, it ran about 4 to 1 against the President. It is now about 72 percent in his favor to 28 percent against. I hasten to add that I think both that the statistics of the committee should be largely irrelevant for our purposes here. I assume we are not going to decide this great constitutional issue on the question of the stacks of mail.

Third, I have been rather surprised at the inquiries here which suggested that there might be rules which prevented committee members either from talking to staff or seeing facts. I merely state that as far as I personally am concerned, that is an inherent right of any committee member which could be foreclosed, if at all, only by a vote of this committee, not by any staff decision. And I would add to that, however, that if we are to exercise that right, then it becomes exceedingly important that in the particular matter we act as we would as lawyers with respect to confidentiality and not as we might act as political animals.

Thank you, Mr. Chairman.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. If I could just pose one last question on the mail. What do we do with the mail when we get it? Do we respond to it in any way?

Mr. DOAR. Yes; we are responding to the mail.

Mr. OWENS. To all of the mail?

The CHAIRMAN. All of the mail is being responded to and I might say that that was a matter that, if you will recall, I initially stated that although there is considerable mail, 350,000 pieces to date, I thought that with such a momentous question as this is, in the minds of all of the people who write, that we should provide them with at least an acknowledgement or a reply, stating that we are considering what they have called to our attention. As a result, since you recognize that 350,000 pieces of mail would take a long time, and we figured out how much it would cost if we were to do it manually or if we were to employ clerks, so we have contracted with a firm, and under great security, because I think it is going to be important to remember, that any of those people who have written in, whether they are pro or against, I think could be the subject of some kind of concern on the part of each of us as to, well, whatever might occur and I think we are taking absolute precautions to insure that that list, once provided to this mailing firm is in our hands. And we are in the process, however, of sending out replies.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Is a response also mailed to those people who send in those little slips?

The CHAIRMAN. All of the mail is replied to. If they have given us an address and a name, each one is acknowledged.

Mr. MARAZITI. I might ask permission to make an observation. I have no objection, Mr. Chairman, to the statistics being publicized by

the Judiciary Committee. Certainly, no one here is going to be influenced by the number pro or con. We are going to consider the evidence. And I concur with the observations of the ranking member, that I think the slips should be counted, too, and I will tell you why. I think the wrong impression is being created, and one of my constituents disagreed with me the other day and she happened to be my wife. And I said, "Eileen, look at my mail, it is running 10 to 1 in favor of the President." She said, "well, there must be something wrong, Joe, because the statistics of the Judiciary Committee show this overwhelming figure the other way." And I am wondering perhaps if there might be a difference. I don't say there would be if the slips were counted, too. I am counting the slips and maybe that is why I get this tremendous response.

The CHAIRMAN. All of the mail is being counted and, as I stated, whether it is a letter or a telegram or a coupon. The only thing that is not being individually counted is the petition which carries maybe 10,000 names or 5,000 names. We are not counting those as 5,000 or anything of that sort. And I might also add that the mail that is addressed to me, or as chairman of the Judiciary Committee comes in, and we have not tried to assess this, and so I have not made, except for purposes where anyone inquires, I have told them, but all I stated was that we got 350,000 pieces of mail. And if they asked me the next question, I would say that I could tell you they were running 12 to 1 or 15 to 1 for impeachment. They were running, when we first got the mail, they were running about 30 to 1 in favor of impeachment. They have gone down to 12 to 1, and each time something occurs we find that it may be somewhere in the vicinity of about 8 to 1, 4 to 1 and it balances out right now at about 12 to 1. But, this is the broad cross-section. I cannot tell you, if you were to say to me, do they come in the main from California, from the East or something like that, I think that that is being broken down, but we have not as yet categorized it to that extent.

I yield to the gentleman.

Mr. BROOKS. I sent out a letter to 160,000 constituents in the district that went 60 percent for President Nixon, and in the letter I pointed out that if the evidence indicated to me it was justifiable that we indict him that I would vote for Articles of Impeachment without hesitation and try and remove the President. And if I did not think that the evidence was of that nature, I would vote to keep him in and forget it. And, so, I left it up basically to my own judgment as to the facts and I would reserve my judgment until then.

Now, my replies from that letter have been one letter giving me hell and about 200 letters saying you ought to go on with the investigation, or just saying that is a fine position. I think that that indicates that the people in my district want an honest evaluation of the matter on a basis of the facts and as you can vote your conscience and be perfectly clear about it. I do not think there will be any problem in my district. I can vote to impeach or not to, depending on the evidence and I think this is really the thought of the American people. They want an honest evaluation, and I do not think there is any need to be adding up the written replies and subtracting them.

The CHAIRMAN. I might also add in further clarification that when some of the letters that I have gotten of those 350,000 talk about im-

peachment, any number of those people are pretty clear that they are looking for us to give them an answer to the questions. They pretty well understand what impeachment means. I might say that there are a lot of others who just are pretty adamant and say "impeach and find him guilty, et cetera," which, of course, very frankly while we read them, I am sure that all of us are aware of the fact that this is not what is going to, at least it is not going to guide me, in my position because I do not think that they really understand what the process is all about in that case. But, there are many thoughtful letters from many people across the country who are saying that we ought to inquire and we ought to do it expeditiously.

Mr. Moorhead.

Mr. MOORHEAD. Mr. Chairman, my mail has also been running about 4 to 1 in favor of the President. We have gotten a little over 4,000 in favor of them and a little over 1,000 against him. But, what I have noted is a lot of those who are against the President are sending duplicate letters one right after another. We send a form letter back in reply and I got a letter from this one gal last week that said, "Dear Mr. Moorhead, don't send me another one of your form letters: I have five already." Which means she has been counted five times.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman, all of us are fettered with form letters about this matter and the House Judiciary Committeee is on the face of the envelope. I read one that I have just opened:

"Please support the Office of the President and let the President get on with his job." This is from California. This is pursuant to very misleading ads spending hundreds of thousands of dollars by some lobby out there that says it is nonpartisan and nonprofit. That is what it says on the face of the ad and they have the names of local Congressmen in Waltham and Fitchburg, Mass., and I think there is a question of propriety on the pressure they are putting on us and I take this if they are from out of State and just throw them away. And I an not going to acknowledge them. But, I would be very happy to send them on around to the House Judiciary Committee if you want to impound them along with the others. However, on the question of counting these things, these things are worth nothing they do not even come to the question: "Please support the Office of the President." All of us do that. "Help the President get on with his job." All of us are for that. Before we get caught up in numbers of people and weighing names, it just says, House Judiciary Committee on the face of the envelope. Does that mean I throw it away or do something about it?

The CHAIRMAN. I think that is a judgment you will have to make, Father Drinan. And insofar as impoundment is concerned, as long as you do not consider impeaching me, why we will be glad to have them if you think you would like to send them over.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. SEIBERLING. I have gotten several letters from people who are for impeachment, denouncing me for supporting the ad. That is how misleading it is, the way they show the names of the Congressmen and it looks like they are sponsoring the ad. And I have even considered putting out a release clarifying the matter. That is how much those are worth.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I want to revert back to this letter that Mr. Wiggins and Mr. Danielson raised that came in from California, because the more I sit here and think about it the more I think it is a serious and potentially a very serious situation. As I understand it, a Women's Club in California addressed a letter to the House Judiciary Committee.

The CHAIRMAN. That is correct.

Mr. SARBANES. Supporting the President or something of that sort?

The CHAIRMAN. Yes.

Mr. WIGGINS. The facts, if you will yield?

Mr. CHAIRMAN. I will be happy to yield.

Mr. WIGGINS. Essential to any inquiry is who had access to the letter and it is my understanding that the resolution was sent to the Judiciary Committee, but that copies of the resolution were sent quite broadly and, of course, it is possible that the BS response was to one of the copies rather than to the original.

Mr. SARBANES. I see. Well, I think it is necessary to pursue the matter enough to get some kind of a resolution and explanation of it. I mean, I just do not think that we ought to dismiss it lightly because we ought to have some assurances that nothing within our own operation is a myth and then beyond that, if it is necessary, some assurance that there is not some effort being made to discredit the work of the committee.

The CHAIRMAN. Well, as I stated before, counsel has been instructed to inquire into this and we have not gotten a report as yet. I consider it serious enough to try to find out whether it is an effort to discredit the committee or whether it is something that may have just occurred. I am hopeful that it did not occur within the committee and I am hopeful that there certainly is enough security to assure that no one is carrying around a stamp with, excuse me, "Bolshik" on it, and he stamps the envelope and I think that this is important for us to look into. And I am hopeful that we get a reply.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Let's remember that this is one instance out of many, many hundreds of thousands that happened in early December and we are in February now and there has been nothing since then. I don't think we need to go on a witch hunt amongst the counsel of the committee or anything else. You know, I beg to differ with some of my colleagues. I do dismiss it lightly. It happened a long time ago and it has not happened again, and any number of explanations as to how this could have happened could be given. I got something in the mail yesterday from the same California organization and I am going to write them back and tell them that I just do not believe our committee had anything to do with this. It either got misdirected in the mail or this came back from some spurious source.

The CHAIRMAN. Well, without unduly imposing on the work of the staff, we are inquiring to determine whether or not there was any effort to just discredit the committee.

Mr. Railsback.

Mr. RAILSBACK. I just want to agree with what the gentleman said.

I do not think our staff did that. I, for one, I agree with what you have said. I treat it very lightly and I would hate to see us encumber the time of our staff with something like that. Turn it over to the Post Office Committee. Let us turn it over to the Post Office Committee if we are going to investigate it.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I think before we let the matter drop, the inquiries ought to also ascertain whether the contents, in fact, were accurately described.

Mr. SEIBERLING. On that note, I move we adjourn.

The CHAIRMAN. A motion has been made to adjourn. Although we do not entertain motions, nonetheless we will adjourn.

[Whereupon, at 11:55 a.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Executive Session, Briefing by Staff

THURSDAY, FEBRUARY 14, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:45 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Kastenmeier, Edwards, Hungate, Eilberg, Sarbanes, Seiberling, Drinan, Rangel, Jordan, Thornton, Owens, Mezvinsky, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Lott, Moorhead, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. Good morning.

I guess we will proceed. Before we do, I would like to formally announce, since the ranking minority member is not here, that we have with us a new member and new addition to the committee, not new to the Congress, but we have Mr. Delbert Latta. [Applause.]

The CHAIRMAN. Mr. Doar, will you proceed?

Mr. DOAR. Good morning, members of the committee.

This morning I have a number of matters to report on, and with your permission after each item I have finished reporting on, I would ask Mr. Jenner to add such comments as he has, and then move on to the next item.

The first matter that we wish to report to you is that on Monday at 11 o'clock, Mr. Jenner and I met with Mr. St. Clair at our offices in the Congressional Annex. And the purpose of the meeting was to discuss, generally, ways that we could begin to discuss the materials and the documents that were necessary to this committee to obtain, if it were to complete a full and thorough inquiry into the question of possible impeachment of the President.

The CHAIRMAN. Pardon me, John, before you go on from there, I would like to make clear, you possibly may have read it in the press, but Mr. St. Clair had written me a letter at the instruction of the President requesting, or informing me, that he was making himself available at

the instruction of the President with counsel of the committee. And I talked with Mr. Hutchinson about the receipt of this letter, and we both agreed that we would acknowledge the letter, first, by telephone, and then advise Mr. St. Clair that we would arrange a meeting. And a meeting was then arranged and no one was advised. The press was not advised as to when this was to take place, and it was to be a preliminary meeting. And this is the meeting that Mr. Doar is talking about.

Mr. DOAR. We explained to Mr. St. Clair how we viewed our responsibility as counsel to this committee; that we were not prosecutors, that this was not a lawsuit in any sense of the word and that we came to this point in the inquiry without any preconceived notion one way or the other with respect to what the facts would show. But, that we thought we had a responsibility to examine all documents, papers, materials, that we thought were necessary to a thorough, complete, search for the truth. And we hoped that it would be possible for Mr. St. Clair to work with us in getting and examining this material as expeditiously as possible.

We pointed out to him that this was a matter that everyone wanted to handle with dispatch, and that it did not seem to us appropriate or proper that this can be regarded as a kind of an ordinary kind of litigation between two attorneys for parties to a lawsuit. Mr. St. Clair agreed that this was a different kind of a proceeding and said that he was anxious to discuss ways in which access to material, examination of material could be obtained as expeditiously as possible.

We then started to discuss specific materials. First, we discussed material that was in the possession of the executive department, such as the Department of Justice, the IRS, and we said the first thing we were interested in knowing is how this material was filed, so that we would be able to make a careful examination of specific matters and be sure that we had not, on behalf of the committee, overlooked any material. Mr. St. Clair asked me for an example of this and I said, well, one example would be the ITT file that the Antitrust Division has, and we discussed how that would be filed within the Department of Justice. He said he would find out how those files were organized, and later that day he called back and said there was a man in the Department of Justice that one of our staff members could go to see to get an idea of just exactly how the files were organized so that we could approximately make a request to examine them, and be sure that we were not overlooking anything.

We then discussed the files and documents and materials that were in the White House. We said that there were certain documents that we know we wanted to examine and, specifically, those were the documents that Judge Sirica had ordered the President to turn over to the Special Prosecutor and also the documents that he turned over voluntarily to the Special Prosecutor. Mr. St. Clair indicated that there was approximately 700 documents that had been turned over by the White House to the Special Prosecutor.

At that point, Mr. St. Clair indicated that it would be important for him that—of course, he had no authority whatsoever to agree to anything and that this was a very preliminary meeting and we understood that. We also made it clear that we were not speaking with any authority; we were exploring procedures, means of acquiring or pro-

cedures for acquiring these materials, and we understood each other completely there. But, he did say that he felt certain that he would want to know, and what the President would want to know how the committee intended to handle documents, materials, and that if a decision were made that such documents and materials were to be turned over to the committee, and by that he was interested in the security and the control of the documents, and the confidentiality of the documents pending the time that the committee made the decision as to how the documents would be made available to the public, or if they would be made available. And we indicated to Mr. St. Clair that we were prepared to meet with the committee promptly to discuss with them our judgment that such procedures or policies should be adopted by the committee so that the White House, as well as Mr. Jaworski would know exactly how this committee intended to control material that it received pending a final determination of what use it would make of it.

He pointed out that there were serious charges pending against people that had been employed by the White House, and that he did not want to, nor did anyone at the White House want to be accused of, I think he used the word "dumping" those cases, which I took to mean causing it or making it more difficult for the prosecution of those cases by the public release of documents that might be used in the prosecution of those cases by turning them over to anyone when they would be thereafter immediately released to the public. And we then discussed the question of where we stood with respect to our brief, which we were preparing for the committee on what is an impeachable offense. And Mr. St. Clair asked us if we would entertain any materials furnished by him and we said, yes, the staff, the inquiry staff, would receive any suggestions or any memorandum from him or from anyone else and that this material should, of course, be submitted to us and not to the committee.

He then finally asked about what procedures the committee intended to follow with respect to evidentiary hearings, and we said that the committee had not decided that as yet, but that I indicated that it was my view that the proceedings were not adversary in nature, that the committee, the proceedings before the committee, were analogous to a grand jury proceeding, that it was not an adversary proceeding and that it was not like a trial. And he indicated that he thought there was some historical support for there being some aspects of it being more like a trial, rather than a grand jury proceeding. I said, well, that is a matter that the committee would have to decide, and it had not reached that point yet.

That was about the conclusion of the meeting except I think that Mr. Jenner, as I recall, did ask him if he would authorize the Special Prosecutor, Mr. Jaworski, to release to the committee the documents which he or the White House had released to Mr. Jaworski. And he had promised to consider that, too, and again returned to the question of how the committee would control and manage the documents pending the completion of the investigation and consideration by the committee of what they would do, what it would do with the documents.

That concludes it, and Mr. Jenner has called my attention to the fact that later he called back. First he said he would be submitting

to us this week a brief on what is an impeachable offense, and then he later called back and said he did not think he would have the material to us by this week, and that he would submit, might take advantage of submitting, a reply brief. And I said, well, that's fine, but again I pointed out to him that this was not an adversary proceeding, that he did not—that whatever materials that he was submitting would be submitted to the staff for its consideration, not to the committee, as if on the one hand we were counsel and he was the other counsel appearing before the committee. He said he understood that fully and he did not want to—he did not want me to think that he had made any decision that he wanted to appear before the committee in any way, shape, or form. But he said it just might well be that the matters that he wanted to call to our attention with respect to what is an impeachable offense might not be ready until after the 20th of February.

Now, it is clear that the material that he would submit to us would be those authorities or things that he thinks are authorities that would construe the definition of an impeachable offense to be limited to criminal offenses.

Mr. Jenner.

Mr. JENNER. Thank you, John.

Mr. Chairman, ladies and gentlemen of the committee, in that particular connection, that is, whether impeacable offenses under the Constitution are confined to indictable offenses. I remarked to Mr. St. Clair that apart from the decision of this committee one way or the other on that issue, that I was confident that this committee would not permit itself to be painted into a corner of having to find a statute or common law authority with respect to what is a crime. And he acknowledged that, well, he could not say much about my statement, but I took the liberty of saying that it was my judgment that you would not permit yourself to be painted into a corner, a technical corner in that respect. Both John and I——

Mr. BROOKS. Mr. Jenner, did you have your paintbrush in your hands when you suggested that to him?

Mr. JENNER. No. It was in my head.

Mr. Doar and I assured Mr. St. Clair that we would maintain professional confidentiality, and we regarded this meeting as a meeting between two professionals or set for professionals. He brought two gentlemen along with him. And we have maintained that to the point, may I say, that several reporters asked me this morning, said they have been trying to find out when the meeting was held and had not been able to find out. We have said nothing and permitted nothing to be said about that meeting.

We also indicated, both Mr. Doar and I, in one way or another that it was our judgment that this committee was of the opinion that this awesome duty that is granted to you, or as some say imposed upon you under the Constitution is overall and pervading, and that this committee was of the opinion, and the House of Representatives was of the opinion that it is in the nature of a supremacy over the other two coordinate branches of the Government in conducting this inquiry. He did not comment on that, but we thought it was well that we conveyed to him the overall view of what we think is the overall view of this committee as to its supremacy in conducting an impeachment inquiry.

Now, you will notice that Judge Gesell in his ruling with respect to the Watergate Committee did voice that possible exception when he said it his opinion, in his opinion, it could well be that impeachment proceedings, in his statement with regard to documents, when he refused to permit the Senate Watergate Committee to have them, might not be applicable to this committee.

Mr. Doar has reported to you that Mr. St. Clair, throughout the whole meeting, and I would like to emphasize that just to touch more, did take the position that he thought he had authority, that he could come and cross-examine witnesses and it would be in the nature of a trial. And both Mr. Doar and I voiced our professional opinion that this was not ordinary, this was not litigation of the character that he had in mind. It was an inquiry——

Mr. RAILSBACK. Mr. Chairman?

Mr. JENNER [continuing]. By this overall committee. I think that summarizes it.

Mr. RAILSBACK. Could I ask a question? I just want to say to both our counsels that I think that, personally, I have had a chance to do some research on this, and I think Frank Polk did a memorandum on this, and I think that St. Clair may very well be right about the right of either the respondent to be present himself, under the 20th century precedents, and also, in any event, to have the right to have counsel present, and the counsel should have a right to cross-examine, particularly if there are any open hearings, and you find when you research this, at least Frank Polk did, and this seems to be the whole history of the progression of impeachments toward giving respondents the right to have counsel present in the form of an adversary proceeding. And I think it would be done by a matter of legislative grace. I do not think they have any right, but I think it has been done as a matter of legislative grace.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. On that point, I agree with Mr. Railsback and I would remind the staff that it would seem to me that this is a decision for the committee to make rather than for the staff to make. And in this same context, do I understand you to say that the committee will not be given the material which the President's lawyers send up?

Mr. DOAR. No, you did not understand me to say that. But, you did understand me to say that if Mr. St. Clair sends material up, that he sends it to the inquiring staff, not to the committee.

Mr. HOGAN. But then the inquiry staff will make it available to the committee?

Mr. DOAR. If the committee desires it.

Mr. HOGAN. Well, I would certainly think the committee would desire it, rather than just get one perspective.

Mr. DOAR. Well, there is just no question about that. It would be made available then. But, the point is that we just wanted to make clear with Mr. St. Clair that it is our opinion that we were not saying that he had a right to submit materials directly to the committee.

Mr. HOGAN. I see. Well, I would strongly urge, Mr. Chairman, that the committee be given access to any material that is made available.

The CHAIRMAN. Well, I think when Mr. Doar and Mr. Jenner get through with the presentation concerning procedures with relation

to the documents and especially the need for confidentiality, that we will get to that point in the discussion and, at that point, I suppose certain policies will have to be undertaken. But, this is merely a means of transmitting and certainly we are going to rely on the staff and the counsel who are there to search the materials out and select the materials and make these presentations to us. And whenever any member, certainly after it has been called to the committee's attention, I am sure that if any member is interested in looking at any particular document and the committee adopts those rules, that is fine.

Mr. HOGAN. If I might continue, Mr. Chairman, in this same connection, I am wondering in what form the report on impeachable offense will come to us? Will it come as a finished document?

The CHAIRMAN. Why don't we go on with this now, with this report, and we will get to that. We are going to discuss the question as to the meeting which is going to take place on the brief and the presentation on impeachable offenses.

Mr. DENNIS. Mr. Chairman, I have a question on this?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. On what they were saying, I would like to express my general concurrence with what Mr. Railsback said and what Mr. Hogan said. But, my question is on another point.

Are you gentlemen going to, or have you done, any legal research or briefing on this very important question as to whether or not we, in fact, do have an overriding and supreme power here? I can appreciate there is probably very little authority on it. But, it seems to me that if you folks do not work out an agreement, which I hope that you will, that we are coming right down in that case to a serious constitutional impasse, and if there is anything that can bolster either of you along on what is certainly an undecided question, in my opinion, we should have it on both sides of it.

Mr. DOAR. We are undertaking that type of research, and when it is finished we will provide that to the committee.

Mr. DENNIS. I appreciate that.

Mr. DOAR. And the same is true with respect to Congressman Railsback's question about what are the precedents with respect to procedures, committee procedures. But, we are not ready at this time to give the committee the benefit of our view on that. That is all.

Mr. MCCLORY. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, I took occasion yesterday afternoon to spend 2½ hours over in the Congressional Hotel getting a firsthand concept of what this investigatory operation consisted of, and I found it very illuminating and very impressive. And it was entirely, as far as I was concerned, insofar as the quality of the work being done there, the good, efficient organization, and the bipartisan nature of the undertaking in every aspect of the entire inquiry being undertaken by the staff at the present time. It was entirely satisfactory and I do feel—I think that some of the things that we are talking about are a little bit farther down the road. But, at the present time I am very concerned about our completing the investigatory work and getting all of the materials before, at least before the staff, and I think that we do have to move rather rapidly toward resolving a couple of questions.

(1) This question of do we have supremacy with regard to the other two branches of the Government;

(2) Do we have to subordinate our authority to the jurisdiction of the court, or just rely on the good will of the executive branch? I firmly feel that we are supreme and that our jurisdiction is plenary.

The other thing I would like to mention is I think it would be a terrible mistake for us to make demands and then have the confidential material made public, which could be highly prejudicial to the executive, to the judiciary and to the litigants. And I would hope that we could arrive soon at some kind of procedures which would vest in our special counsel, and special counsel for the minority, and possibly in the chairman and the ranking member, a degree of authority which would permit the irrelevant, the confidential, the materials that might be revealed but would not be relevant to our inquiry, to be sifted out so that what would come before the committee would be those essential things which we are after, but which can only be prejudicial in the sense that it would have a serious impact on our impeachment inquiry.

The CHAIRMAN. Well, I am happy to hear the gentleman express himself in that way because this is what, frankly, counsel and staff is endeavoring to work up. And I think they are prepared to discuss at least preliminarily some of the suggested rules and procedures that might be adopted which, of necessity, relate to confidentiality and the responsibility of this committee.

Now, remember that we are not the ones who are looking to impose this on ourselves to restrict the opportunity of members to get all of the available material before them to make a responsible judgment. I, for one, believe that every member has that right. However, there is this pressing demand which is something that could easily lead to a confrontation and just delay our work and, that is, that the continued suggestion that the committee show that it can at least in matters relating to ongoing cases and where the rights of individuals are affected, that the committee is going to exercise its responsibility insofar as confidentiality is concerned. I think that the committee can, and I think that is necessary that these rules of procedure and some of these policies as to confidentiality and responsibility be worked up, and that is what Mr. Doar, I think, is ready to talk about now.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Yes, Mr. Hogan.

Mr. HOGAN. Mr. Doar, when he was commenting on his meeting with Mr. St. Clair, said that they told Mr. St. Clair that they were going to get all documents that were necessary. Now, I notice that he did not use the word "relevant" and we went through this once before. And what I am concerned with is who decides what is necessary and what criteria they use to make that decision?

Mr. DOAR. Well, the committee and on behalf of the committee, the counsel for the committee would decide what was necessary. And the criteria that we use would be a matter of judgment as to the subject areas that we were looking into, and then examine all materials with the idea that we were looking for relevant evidence, but that we would have to make the judgment as to whether or not it was necessary, the document was necessary to the inquiry.

The CHAIRMAN. Mr. Doar.

Mr. Doar. In looking at the question of the committee's responsibility with respect to the security and control of documents, what we did was to examine the rules of the House and to examine the rules of other committees of the House with respect to classified material and other sensitive materials that those committees received from the executive branch of the Government or from other sources. And based upon that examination, plus some preliminary consultation with the research staff, the congressional research staff, we thought that these ideas, or those policies, were worthy of suggestion to the committee for its consideration this morning.

First, with respect to documents that were received during the course of the inquiry, that those documents would not be available for examination by anyone other than members of the staff and by the chairman and the ranking minority member, until such time, if it was necessary to hold an evidentiary hearing, until that evidentiary hearing begins. At that time, each member of the committee would be provided with a detailed index of every document which the staff had obtained in the course of its inquiry. This index would be organized in a way whereby a committee member could quickly and expeditiously identify particular documents that he or she might be interested in examining.

Of course, the staff in the first instance, in the course of the evidentiary hearing, would be presenting to the committee, under such procedures and rules that the committee decides, that is, whether the hearing would be open or closed, a great number of these documents which it considered, which the staff considered to be relevant to the inquiry. And the committee members would have these documents before them, as well as a list of every document or if there were tapes, transcripts, memorandum, anything and everything that the staff had received, and at some time during the hearing procedure, that the hearing would recess for sufficient time to enable any committee member, if he or she desired, to examine any and every document that the staff had acquired. That the committee would have a rule or a policy that material would not be made public except by majority vote of the committee. If a member felt that there was a particular document that was relevant to the inquiry that the staff had not presented or recommended for consideration, he or she could recommend that the staff or that the committee consider that additional document.

We would hope that we would be careful enough and thorough enough and objective enough so that in our presentation of the material at the evidentiary hearings that the committee would feel in the main that we had done a satisfactory and professional job of pruning and separating the relevant material from the material that was not relevant. But, as I say, at that time, the committee members, each of them would have the opportunity to examine this material and all of the material at a place designated by the committee under rules that the committee would establish with respect to copying or not copying, but not for the purpose of removal and not for the purpose of making public.

Mr. Brooks. Would you yield?

Mr. Doar. Yes, sir.

Mr. Brooks. Do I understand, basically, what you are trying to do is not to keep from the committee, you and Mr. Jenner, any of the

documents, any of the tapes, any of the transcripts, anything that you would acquire?

Mr. DOAR. That is correct.

Mr. BROOKS. But that you wanted an opportunity for the staff and for the senior Republican and the chairman of this committee, working with the staff, to try and get your package together and be ready to submit for an evidentiary hearing before this committee and, at that time, an index of all of the material that you have would be available, and the material would be available to members on request plus a copy of the actual documents, transcripts, as such, that you felt were relevant and a part, and should be a part of the evidentiary hearing?

Mr. DOAR. That is our suggestion.

Mr. MCCLORY. Would you yield to me for a question?

Mr. BROOKS. That sounds all right to me. I have heard of it before.

Mr. MCCLORY. The thing that kind of concerns me is this right of any committee member to look at any material which has come into the possession of the staff and which would appear in this index. Do I understand that the index would include those materials which were considered by the staff as being irrelevant, which you had received?

Mr. DOAR. It would include every bit of material.

Mr. MCCLORY. Well, the thing that concerns me then is this: There could be highly irrelevant material which a committee member could examine and then exposed it to the public, and then it could be highly prejudicial to a person, maybe not involved in the proceeding or with the proceeding itself. I mean, my concept of the Senate Watergate hearings is that wholly extraneous material has been received on TV and exposed to public rejoicing, I guess, but also to individual humiliation.

Mr. DENNIS. Would the gentleman yield?

Mr. MCCLORY. And I would prefer, myself, that the staff would be sort of in the position of the prosecutor appearing before the grand jury where you do not give the grand jury everything, but you give the grand jury the relevant material that you think should be presented there to proceed with the prosecution or exonerating materials which they should have before them.

Mr. DOAR. Well, Congressman——

Mr. MCCLORY. Could he answer that question?

Mr. DENNIS. Well, I would like you to yield at some time. I am not in any hurry.

Mr. MCCLORY. I just want an answer.

Mr. DOAR. Congressman McClory, that would be one way to do it, but we do not assume that if a committee member examines any material that we had collected, even though we had decided that it was not necessary, or it was not necessary or it was not relevant to presenting it to the committee that that assumes, then, it would become released to the public right away.

The committee would operate under rules that the House, we have been advised, and other committees of the House—this committee has handled material in that way in the past, that it was not to be a matter for the public, and I just do not believe that this committee would

operate irresponsibly. If there was a document that you, for example, or anyone else felt should be brought to the attention of the committee, and it was brought to the attention of the committee, then the way that those documents would be made available to the public would be through committee action.

Mr. McCLORY. Do you think if you adopt that procedure that it will not impair your ability to get cooperation from the White House and from committees of the Congress and other agencies?

Mr. DOAR. Well, we are discussing with the legislative research staff precedence for this with the way the House Armed Services Committee handles classified documents, and we are told that this is the way it has been done. And I cannot answer whether or not this would impair our ability to get documents from the White House. But, I do think that it really is not appropriate for us to decide what members of this committee should choose to look at it if they decide to look at it, in the last analysis, and before making a decision on this very important matter. I just think that there is a difference between our role here and the role of the Special Prosecutor.

Mr. McCLORY. Well, I agree with that providing it does not impair in any way our ability to get materials and get them promptly.

I yield back.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Well, thank you, Mr. Chairman. I just would like to observe that certainly Mr. McClory has put his finger on an important point which you may recall I made here the other day, that this committee has got to act like lawyers rather than like politicians where this material is concerned. But, on the other hand, I agree with Mr. Doar rather than the other thought, subject to our acting that way, because the idea that we cannot see this material as members of the committee until it has been winnowed out is getting pretty far, in my judgment, and if you do not have an index even where you can look at it and see whether there is anything else, that leaves it entirely, completely to the staff to determine the whole scope of the investigation, and I, for one, would be very slow to agree to that kind of a proposition.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Well, I would hope there is not an implication in the remarks of the gentleman from Illinois that he feels, that unless the White House is satisfied as to the internal procedures in this committee, that they are going to take it upon themselves to withhold information.

Mr. McCLORY. If the gentleman would yield?

No. I am suggesting that the decision should be the staff decision, but I would be willing to abide by the decision of the staff as to whether or not it involves national security, or diplomatic privacy or something of that nature, and not leave it up to 38 members of the committee to decide, with the realization that maybe have other motivations and just to get at the salient facts in this inquiry, are going to impel the investigation by an individual member. But, I am not fully decided on that.

Mr. SEIBERLING. Well, I just think that if the committee adopts the rule that the members will not release information gained from the staff without approval of the majority of the committee, that we are all mature, responsible men and lawyers, and we will abide by it.

The CHAIRMAN. You know, I might remind the members, and I am sure they know the rules of the House. But any material that is discussed or presented in executive session, as you know, is not to be disclosed unless the majority of the committee so orders.

Mr. Doar.

Mr. DOAR. Well, that summarized the recommendation.

Mr. Jenner, do you have anything to add to that?

Mr. JENNER. I would only say that Mr. Doar and I and our colleagues have regarded the members of this committee as not only men and women of congressional integrity but also professional integrity and responsibility, and we have proceeded on that basis and we will continue to do so.

There is this serious background, may I suggest to you, ladies and gentlemen, that in considering these, our efforts to construct a confidentiality principle for you for your consideration, for your amendment or adoption, as the case may be, that some of this material obviously will be in the area of relations with foreign governments. It will be very, very top secret, and it is the desire of every lady and gentleman of this committee to protect with respect to that. The White House certainly will be sensitive in that connection, and will wish some reassurance, I am sure. I am sure the White House has confidence both in the professional integrity and the congressional integrity of the ladies and gentlemen of this committee, but we have to give the White House something more than Mr. Doar's and my professional assurance.

Then you have the problem to face with Mr. Jaworski in this connection. He is very sensitive about interference with fair trail after he returns these indictments, as he has said he plans to do the latter part of this month. So, in dealing with Mr. St. Clair, representing the White House, and in dealing with Mr. Jaworski representing the Department of Justice and the Special Prosecutor, Mr. Doar and I have the practical problem that we would like to get the material without being faced with a confrontation that several of you ladies and gentleman have properly raised.

The decision as to how we can accommodate these conflicting interests is for your wise judgment, and we are presenting to you the pros and cons so we can reach an accommodation here that will assure them, will enable you fairly to obtain materials that we think are necessary and that you think are necessary for this investigation, and still protect the country against indiscriminate and unwise disclosure before the material is actually presented to you.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I am wondering if they are presenting this to us—I take it they are presenting this to us for a future action, when we are in committee? I mean, I do not think we can resolve it today.

The CHAIRMAN. No. These are matters that we thought we would discuss now and then formally present to the committee for adoption. I think they are similar to some of the policies, as you know, that are adopted as a matter of fact and followed during the Ford confirmation proceedings. And I think that to the credit of the committee, I think there were no leaks, and the members saw only the evidence,

and the only restriction really was the restriction that was placed on us by the FBI, when we were restricted to a panel. Prior to that, just the chairman and the ranking minority member. But——

Mr. RAILSBACK. I just want to say, Mr. Chairman, that I, for one, like their prosposal. I think the idea of keeping it very, very secret until it is ready to be presented is good. But then I also like the idea of giving us an index. I think every member of the committee at some late point anyway, has to have access to all of the evidence. And the other thing is, I would like to suggest that you also consider what happens when the evidence is presented and what evidence should eventually be made public, because even though Leon Jaworski may not like it, if certain evidence becomes public, in my opinion at some stage of our proceedings, the evidence on which we either exonerate or impeach is going to have to be made public. Otherwise, the public is not going to buy what we are doing.

Mr. DOAR. Well, under that, Congressman Railsback, that would be a decision of the committee by majority vote.

Mr. RAILSBACK. Yes.

The CHAIRMAN. As Mr. Doar has suggested, and I think it would be similar to the actual present rule of the House, that the matters that had been presented, which are evidentiary during an executive session, are matters that the committee then feels they ought to disclose, and I feel that that is a committee action.

Mr. RAILSBACK. Yes. That should be a priority over anything.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I certainly appreciate the high confidence which both of our counsel have expressed in the integrity of each and every member of the committee, and I certainly will strive on my part to deserve that confidence. Well, I thought that Mr. Doar was making or placing a somewhat unwarranted reliance on what he said the record of other committees has been in handling highly sensitive material. It is my impression that there have been some rather outrageous leaks from other committees of the House and Senate, and I feel that we, the members of the committee, of course, appreciate that staff cannot impose any restrictions on us, but I feel that we as a committee should make very sure that there are not such leaks. We should, like Ceasar's wife, be sure that we have restricted ourselves and not leave it to staff. But, I think that we should have rules that would prevent any indiscriminate revealing of sensitive and irrelevant information.

Thank you.

Mr. SARBANES. Mr. Chairman?

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. I want to make sure I understand this proposal. As a matter of first instance, you and Mr. Hutchinson will see all material; is that correct?

The CHAIRMAN. All of the material will be made available to us.

Ms. JORDAN. You will see it as a matter of first instance, you and staff?

The CHAIRMAN. That is correct.

Ms. JORDAN. The two of you—and when we say "staff" are we talking about Mr. Doar and Mr. Jenner——

The CHAIRMAN. That's right.

Ms. JORDAN [continuing]. Or are we taking about the task forces? Are we talking about the two of them?

The CHAIRMAN. That is correct.

Ms. JORDAN. And the two of you?

The CHAIRMAN. That is correct.

Ms. JORDAN. Seeing all of the material as a matter of first instance?

The CHAIRMAN. That is correct.

Ms. JORDAN. And we are relying on Mr. Doar and Mr. Jenner to see that there are not leaks from the staff of that information?

The CHAIRMAN. Absolutely.

Ms. JORDAN. All right.

Mr. DENNIS. Mr. Chairman?

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. I will yield.

Mr. DENNIS. No; I yield to the gentleman.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman, in listening to this discussion, I cannot help but raise the question that maybe I should not even raise and take the time to raise now, but I was appalled by the statement made by Mr. Jaworski on nationwide television concerning one of his witnesses, and I was wondering whether or not this committee has put any limitations on the activities of the staff in making such statements or similar statements nationwide, which might hamper the activities of the committee itself? I do not think I have to allude to the crazy, ridiculous statement that was made by Mr. Jaworski.

The CHAIRMAN. I think Mr. Latta is referring to the statement regarding the credibility of one of the witnesses.

Mr. LATTA. That is correct.

The CHAIRMAN. Our staff has not made any such statements. And, as a matter of fact, I was prepared to, if the question had been asked of me on "Issues and Answers" when I appeared, that we are not to in any way comment on the credibility of the evidence or the reputation of any witness that may appear before this committee.

Mr. Butler.

Mr. BUTLER. Mr. Chairman, was it my understanding that the staff, the counsel, was not going to have any press conferences except in your presence and that is the policy that we have adopted?

The CHAIRMAN. That is the policy that we have adopted.

Mr. JENNER. We have voluntarily adopted that also, sir. We have voluntarily adopted that in any event.

Mr. BUTLER. A moment too late, perhaps, but we have got it now. Thank you.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I just want to understand the detail. At the time there is any public hearing, and you gentleman at that time have decided what documents you are going to introduce and so forth, at that time we get the index of all documents you have received up until then; is that correct? And I assume then that if we have a later hearing, and you have got some more documents, you would update the index; is that correct?

Mr. JENNER. That is correct.

Mr. DOAR. Right.

Mr. DENNIS. At each time those that you propose to present, we also get copies of the document itself?

Mr. DOAR. That is correct.

Mr. DENNIS. Is that correct?

Mr. JENNER. Yes.

Mr. DENNIS. All right, now, on a more general question, is it possible—of course, we all have certain thoughts, I suppose—but is it possible at this time to give the committee any more specific idea in a general way, if that is not a conflict of statement, as to what you are going to try to get from the White House in the way of documents? What subject matter, what does it touch?

Mr. DOAR. Well, in a general way we asked the White House for the material that he had turned over to Mr. Jaworski. And the second thing we asked Mr. St. Clair if he could give us is the indices of how certain files were maintained. For example, we asked him if he could give us the indices to the "Plumbers" file and to certain files of some of the key officials of the White House, such as Mr. Haldeman, Mr. Ehrlichman, and Mr. Colson. With respect to the Department of Justice, we spoke about the ITT file. That was the nature of the general type of request we made.

Mr. DENNIS. What has been turned over to Jaworski?

Mr. DOAR. Well, there are a number, seven tapes, which have been turned over plus the memorandum and transcripts of the tapes, and then there have been 700 other documents turned over to Mr. Cox and Mr. Jaworski, some of which are logs of telephone records of various individuals in the White House. And then Mr. Jaworski has had a lawyer over in the White House going through some of the relevant or necessary, pertinent files, and if there is a document that they find necesssary to their investigation, then it is photographed and turned over. Specifically, what those documents are we do not know.

Mr. DENNIS. Thank you.

Mr. DRINAN. Mr. Chairman?

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. If I may return to the immediate future and I address the question both to the Chair and Mr. Doar, the previous time schedule, I understood, we were to have a hearing on or about February 20 for the purpose of, or dealing with the question of what is an impeachable offense, and that March 1 there would be a general report from counsel. My question is: Is there such a hearing to take place on February 20, and is our staff, Mr. Woods and others, bearing the burden of the presentation on the question of what is an impeachable offense?

The CHAIRMAN. Yes. It is the intention to go forward with that for February 20. And it is going to be a presentation by the committee counsel. The one question that I did want to discuss for the moment was whether or not February 20, which is Wednesday and this brief [1] is being prepared, which I am sure will be ready by then for distribution on that day is that correct, Mr. Doar?

Mr. DOAR. That is correct.

---

[1] See "Appendix II.—Constitutional Grounds for Presidential Impeachment, Report By The Staff of The Impeachment Inquiry," in book III, "Impeachment Inquiry".

The CHAIRMAN. Whether or not it might not be better for the members to have the brief in their hands on the 20th and be able to go over it and digest it a bit for the next day, and have the presentation the next day so that the members might be in a position to inquire, I think, more intelligently and have the benefit of the brief because otherwise it is going to be a presentation without having had the opportunity to first examine and study the brief. It is a pretty intensive piece of work and a pretty good study to have before you, I think, before you actually do get the presentation. And I thought that it might be better that way.

Mr. KASTENMEIER. Unless, Mr. Chairman, the brief might be available late on the 19th.

Mr. DOAR. I do not think it will be.

The CHAIRMAN. Well, it is not. This is the problem we are confronted with, and very frankly we have just, if I may say so again, and I would urge every committee member to visit where the committee staff and the committee counsel is working and see the operation and how late they operate. They are doing what I consider to be a tremendous job under real stress and strain in order to try and meet the deadline. And I am not talking about 5, 6, or 7 o'clock. I am talking about 10, 11 o'clock, every night, Saturdays and Sundays included.

Mr. MCCLORY. If the chairman will yield, I would say that I left there last night at 7 o'clock and, as far as I could see, almost the entire staff was still on hand, on the job when I left.

The CHAIRMAN. Well, Mr. Doar left me after 9 and went back with Mr. Zeifman and the others, and we had not even had dinner yet. And I think that they really deserve all of the confidence that they have really shown they deserve because they are really doing a tremendous job. And I think we have got to recognize this.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. As far as I am concerned, I think your suggestion is an imminently sensible one. I would value such an opportunity to look at the brief myself.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. I want to get back to what Mr. Doar and Mr. Jenner said about the intentions or the apparent intentions of Mr. St. Clair. And I am not certain they indicated what exactly would be his intention, that he first volunteered to offer some information about the nature of an impeachable offense, and then did I understand correctly that he apparently is holding that a criminal offense is required, and could we anticipate that we would, after your brief has been made public that he would come with a counterbrief, indicating that a criminal offense would, in fact, be required.

Mr. DOAR. Well, you are correct except the use of the word "counterbrief". I mean he would come with something to the staff that would develop his analysis of the historical materials and his reasons why he thinks that an impeachable offense should be confined to criminal offenses. So, you could anticipate, whether we get that from him before Monday or not, it is just up to him.

Mr. DRINAN. Well, I personally think it would be very unfortunate if the White House took that particular approach and really con-

taminated the atmosphere and made that a great issue in the American mind. I would feel that the majority of this committee, the vast majority, on the basis of the evidence that I have seen would say that a crime, a felony, is not required for an impeachable offense. And I would want to have the brief and have the committee make that clear before any argument from the highest level come out indicating that we are all wrong.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Doar pointed out to the committee that the Special Prosecutor has a man over at the White House examining documents and in some cases he is getting copies. Why would not this committee do the same thing?

Mr. DOAR. We suggested that and Mr. St. Clair did not reject it.

Mr. EDWARDS. He did not object?

Mr. DOAR. He did not reject it.

Mr. EDWARDS. I see. Thank you.

Mr. DOAR. As a matter of fact, he said if certain members of the committee—he said certain members of the committee staff might have to secure security clearances and we discussed the procedure whereby that could be considered.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Thornton.

Mr. THORNTON. Pursuing that for a moment, while I am inclined to assume that all security protections will be taken within the staff, I would think it very important with regard to any materials that do affect national security and so forth, that a clearance be required before staff members themselves have access to that material.

Mr. DOAR. And we would intend to do that. We will adopt those procedures.

Mr. HOGAN. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, in brief reference to the remarks of my friend from Massachusetts, I think historically we might point out that Mr. St. Clair's presumed position was that of Luther Martin, when he represented Justice Chase. It was that of William F. Evers when he represented President Andrew Johnson and that of Simon Rifkin, when he represented Justice William O. Douglas a couple of years ago before this committee. So, the matter is not without some rather respectable authority on the other side. And while I would not prejudge the law, it would certainly shock me that we could not have both sides of the matter presented to this committee.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. We have had a very worthwhile discussion here, but I wondered whether Mr. Doar had finished briefing us on all of the matters that he had planned to brief us on and, if not, I would suggest that the hour is getting late and we ought to get on with it.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I do have two other matters I would like to brief the committee on.

The first is, I would like to report that the Senate select committee met on the 7th of February and unanimously voted to provide this committee everything that they have in their files.

That probably is not news to the committee, but they also agreed to provide duplicate copies of their computer tapes, and they have put most of the material on tapes there, and it is a far easier thing for us to process that material if we have a duplicate copy of the tape than if we have just printouts of certain parts of the tapes. So, arrangements are now being made to get those tapes. They will be kept in a secure safe in our offices and arrangements will be made through the computer people at the Library of Congress to run sections of those tapes or particular printouts of those tapes whenever we think they are necessary to our inquiry.

Mr. McCLORY. Would the gentleman yield for a second?

Mr. DOAR. Yes.

Mr. McCLORY. Did the tapes include material that the staff has unearthed in addition to the material that has been presented to the full committee at the hearings?

Mr. DOAR. Oh, yes, much, much material. I understand that Mr. Jaworski also has these tapes and that they have followed a procedure of, in some instances, adding to the tapes.

The other matter that I would like to report to you is that on the 8th of February, members of the inquiry staff met with members of the Joint Committee on Internal Revenue Taxation with respect to the investigation that that committee is conducting with respect to the President's income tax returns.

And our staff members were given a general breakdown of what that staff was doing, where they were conducting field investigations. We were told that they were conducting field investigations in San Clemente and also in New York, and that they had obtained a file copy of certain papers of the President's accountant and that we had inquired whether material could be made available to us during the process of their investigation. And a staff member indicated, Mr. Woodworth indicated, that he did not think he could make much information available to us until they released the report to the committee, which he expected would be toward the end of February. But, he said he would be glad to talk with our attorneys about specific matters and that was the extent of it.

Mr. BROOKS. Pardon me, would the gentleman yield?

Mr. Chairman, I would hope and I suggested it earlier, that we could have somebody out of 39 lawyers, that kind of sits with them as close as possible so that we have as much rapport with that committee as we can.

Mr. DOAR. Congressman?

Mr. BROOKS. Somebody that could assign——

The CHAIRMAN. We have assigned someone to that.

Mr. BROOKS. Who?

Mr. DOAR. Two people. Mr. McKeithen and Mr. Reum.

Mr. BROOKS. They meet with that staff on a steady, continuous basis?

Mr. DOAR. That is right.

Mr. BROOKS. Well, this is what I wanted to be sure we have because I do not want them just to turn that over to you, to our staff at the

last minute. I want a couple of boys who have been in there checking it out.

The CHAIRMAN. That has been going on.

Mr. BROOKS. Right.

The CHAIRMAN. Are you finished Mr. Doar?

Mr. DOAR. The last matter I would like to report to the committee is that we are beginning to conduct interviews, and two lawyers will be going to Los Angeles to confer with the district attorney of Los Angeles County. And, as a matter of fact, they are on their way now, and I just wanted the committee to know that as requests come up for conducting of interviews with Mr. Jenner and myself, we consider whether or not it is appropriate for that to be done, and if we think it is, we authorize it.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. A quick question in that regard.

Can we on the minority side, assume that every time an interview is conducted, there will be a minority attorney present?

Mr. DOAR. No, you cannot. You can assume that the general rule will be that we would make every attempt, but I think it is unwise and I believe Mr. Jenner—he can speak for himself—thinks it unwise if we make it an automatic rule. We would hope that in the course of this investigation that all members of this committee would have enough confidence in the members of the staff that they would not feel that that should be an automatic requirement.

I would like to explain to the Congressman why I think that is necessary. Sometimes it is a good idea to have a supervisor go with a younger member of the staff to conduct an interview. It is not usually a good idea to have three people at an interview. And if a supervisor goes, then he will either go with one lawyer or it may be two, one of them from the minority and one from the majority, and every time that we think there could be any problem with that we will make every attempt to take that into consideration carefully. But, we just do not want, I personally do not think it is wise to make an automatic rule about that.

Mr. HOGAN. Well, I most strenuously disagree with you. I could not disagree with you more and I would think the minority ought to discuss whether or not that is a right we would insist on.

The CHAIRMAN. Well, I think that the committee is well aware of this. I think the committee is trying to work through a unified staff and unless the committee deems otherwise, we will leave it to the counsel to make that kind of decision. If the committee were to decide otherwise, then we would take Mr. Hogan's suggestion.

Mr. HOGAN. Mr. Chairman, may I continue?

The CHAIRMAN. Are you going to continue on the same vein?

Mr. HOGAN. I want to ask about the form of the report. I have been trying to seek recognition for the last hour.

The CHAIRMAN. You have been given recognition four or five times.

Mr. HOGAN. Are we operating on the 5-minute rule, Mr. Chairman?

The CHAIRMAN. No, we are not operating on the 5-minute rule. This is merely a briefing session.

Mr. HOGAN. May I be recognized to ask a question?

The CHAIRMAN. Go ahead and ask the question.

Mr. HOGAN. I am concerned about the form of the brief. Now, as Mr. Dennis observed, the precedents are subject to different interpretations. Now, I am concerned, are we going to get one interpretation, or are we going to get both interpretations, and will this brief be published and made available to the public? And if so, will there be an opportunity for separate and dissenting views? We keep saying it is not an adversary proceeding, but in effect, it is an adversary proceeding, and both points of view, both perspectives, should be brought to the attention of the committee. And I am concerned that we might—everyone seems to be going along in a friendly, palsy-walsy way. I would like to see more of an adversary element so that we could be assured of getting both perspectives on every issue.

Mr. DOAR. Well, we are going to do our best to file as objective and as responsible a legal brief as we can. And to summarize, and to set forth the historical precedents that tend to point one way or the other, where there is a matter, or if there is a dispute about it.

I would assume that once the brief were filed with the committee that it would become a public document. I would assume that—I do not really know what the rules of the committee would be with respect to minority views, but I guess that would be up to the committee.

Mr. DENNIS. Would the gentleman yield?

Mr. MCCLORY. Would the gentleman yield?

Mr. HOGAN. Will the staff not make any conclusions on the basis of this material?

Mr. DOAR. No, we will make a conclusion. We will give you our legal judgment.

Mr. MCCLORY. Would the gentleman yield?

Mr. HOGAN. That is the part that I do not like. Yes, I yield.

Mr. MCCLORY. The brief will not give an opinion with regard to specific charges that are pending in this inquiry?

Mr. DOAR. No, absolutely not.

Mr. MCCLORY. Furthermore, the brief of counsel is going to be a guide for this committee and I, as a member and I would imagine other members are going to be governed by the brief or their own research or whatever legal information they want to select as a basis for acting, proceeding further in this hearing. Is that right?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I would like to express the hope myself that the brief will be a good disquisition on the law setting forth the matters on both sides and perhaps more of a memorandum for our information than the highly partisan kind of a brief which I would file, if I were trying to prove one side or the other. I do not want to get in a position here where I have to argue with my own counsel or something like that.

The CHAIRMAN. Well, I think what the committee has sought to do in retaining counsel, highly professional objective counsel, is to seek counsel's recommendations or opinions after they have researched the matters that seem to be confounding people for a couple of hundred years. Now, if the committee is not disposed to receive this, the committee may do or each individual may do as he sees fit, and make his own judgment. But it would appear to me that what is attempted to

be done here is to present the efforts of tremendous research and analysis of the precedents, the cases, and whatever legal historians have put forth which will help the committee in its deliberations insofar as the question of impeachable offenses are concerned.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Now, if that is not something that the committee member finds to his appetite, he may discard it and the committee will ultimately have to make a judgment.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Before this meeting ends, I want to commend counsel for a theme that I think has been reflected through the report this morning, by both Mr. Doar and Mr. Jenner, for their concern, as I perceive it to preserve and protect the importance of the members of the committee rendering their own judgment with respect to the issues that are involved in this matter. I think that is very important, and I think the report you have given in terms of your discussion, with Mr. St. Clair and your view as to the role of the committee in this investigation, your view as to the nature of what the proceeding is, and also the procedure you have put forth on the availability of materials: all is premised on protecting and making certain that the members of the committee have the ultimate judgment in this matter, which I think is exactly where we are in it. In the end, the 38 of us must render a judgment, and I think you have clearly recognized that. I disagree strongly with any suggestion that staff should have available to it materials which in the last analysis would not be available to members of the committee.

I am prepared to follow a procedure that limits us in a time frame and not a procedure which, in the end, would require me to make a judgment on the basis of less information than, for example, had been available to staff. And I think the proposal you have recognizes that. It shields that for up to a point and beyond that makes it available. But it also suggests protective restrictions at that point. And I wanted to make that comment because I think it is important. I think the position of the members of the committee has to be protected by counsel.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. On the question of procedure, Counsel, your people are going to interview someone in Los Angeles, I believe you mentioned. A report will be made of that interview, either an affidavit or a report by counsel. Does that then become a document which will be in this index which will be available to us, or in what way will we be made aware of the fact of that interview and in what way will we be given access to it?

Mr. DOAR. Well, it would be a part of this index. But in addition to that, in the course of the status reports to the extent that the material would be, we felt, pertinent and should be brought to the committee's attention, we would bring it right along at that time.

Mr. BUTLER. All right. One more question:

Earlier in an earlier briefing when you dealt with the questions of subpena, depositions, and interrogatories, I had the impression, if I remember correctly, that you were going to prepare a set of rules whereby the depositions would be taken and submitted to the committee for our appraisal. What is the status of that?

Mr. DOAR. They are not ready yet. These procedures are not ready. We are working on those.

Mr. BUTLER. Thank you.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I just wanted to be clear now where we stand today with Mr. St. Clair. He has met with you; you have had your initial meeting. He has given an indication of the question of confidentiality and so forth. Where do we go from here?

Mr. DOAR. Well, we would hope that we would do two things: First, on the basis of this discussion this morning, Mr. Jenner and I would prepare and submit to the chairman, with our recommendation that it be circulated to the committee for its examination, these procedures that we have discussed with the hope that these could be adopted by the committee next week.

Second is that we would prepare a list of materials that we wanted to get from Mr. St. Clair and pursue ways in which we could start to examine the material.

Mr. MEZVINSKY. Will you, in regard to the brief, I gather you have made it clear to him that you would hope that his arguments would be presented prior to the submission of the brief to the committee rather than after the submission of it?

Mr. DOAR. No. He said that he wondered if he could bring some material to our attention, and we said, of course. And he said he thought he could get them to us by the end of his week, and we said, fine. And then when I talked to him about another matter later in the week, he said that it might be that I was too optimistic about when that brief would be finished, and I might want to take advantage of submitting what he called a reply brief. And I then said, well, you understand that this is not an adversary proceeding and that you should submit it to the staff. And I pointed out that, of course, any member of the committee that wanted it, it would be made available to them.

Mr. MEZVINSKY. OK.

Mr. BROOKS. Mr. Mezvinsky, will you yield?

Mr. MEZVINSKY. Yes, I will be glad to yield to the gentleman from Texas.

Mr. BROOKS. In relation to that same point, was it your impression that Mr. St. Clair and Leon Jaworski thought that your proposal, as we discussed today, suggestions as to security and treatment of those papers. did that meet with their agreement?

Mr. DOAR. Congressman Brooks, we did not discuss this with either of them.

Mr. BROOKS. All right.

Mr. DOAR. We did not discuss it with either of them.

Mr. JENNER. We told them we are going to work something out and present it to you, ladies and gentlemen, and when you had, in turn, advised us so we could speak responsibly for you, then we would present the confidentiality proposal.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. There was a report on the television last night, that the White House and Mr. St. Clair, or someone over there had ad-

vised the committee staff that the White House could not legally give any material to the committee that was in the hands of Mr. Jaworski for purposes of the grand jury. And I wonder if you could comment on the truth or lack of it of that statement?

Mr. JENNER. Well, for myself, and I am sure Mr. Doar, we can tell each one of you ladies and gentlemen that that was never said in any respect, either directly, inferentially, at all, during the course of the meeting of Mr. Doar and me. It just was not, was not even in the atmosphere. And where that came from or who was casting that out in order to get a reaction from Mr. Doar and me, or from one or more of you ladies and gentlemen, I do not know. But the fact is that did not occur.

Mr. SEIBERLING. Well, if anyone at the White House has made a statement, then it was not communicated to the staff?

Mr. JENNER. It was not.

Mr. SEIBERLING. Thank you.

Mr. DOAR. But I also say that in talking to Mr. St. Clair this morning, although he did not refer to this, he said to me that he has made no statements.

Mr. SEIBERLING. Thank you.

The CHAIRMAN. I would hope that we recognize this; that we do not get in a bind, however, with both the prosecutor and Mr. St. Clair regarding the question of confidentiality; that we impose this upon ourselves. We do not have to spell it out so that they in turn may say, no, we are not in accord with your rules. There is no reason why we should wait for them to agree to what our rules of confidentiality are. I think that this committee having adopted certain rules, certain procedures, imposes this restriction on itself.

There is a motion to adjourn.

All those in favor say aye?

[Chorus of "ayes."]

The CHAIRMAN. The committee is now adjourned.

[Whereupon, at 12:07 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Briefing by Staff

FRIDAY, FEBRUARY 22, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:20 a.m. in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Cohen, and Froehlich.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel; Hillary D. Rodham, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. This meeting will come to order.

I want to announce that Mr. Waldie, the gentleman from California, has specifically asked me to announce that he tried to return to Washington, but due to the snowstorm in Chicago, is unable to attend this morning's meeting.

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, is this a meeting of the Judiciary Committee as differentiated from a hearing?

The CHAIRMAN. This is a meeting.

Mr. HUTCHINSON. Would the chairman please inform the committee what the rules of the House provide with regard to television coverage of a meeting of the committee?

The CHAIRMAN. The Chair is prepared to advise the gentleman from Michigan that there is a distinction between a hearing and a meeting, and the rules as they relate to permission to allow television broadcasting and other media other than the written press in attendance at a meeting. And according to rule 11 on page 398, clause 33A, it is the purpose of this clause to provide a meeting in conformity with acceptable standards of dignity, propriety, and decorum, that committee

hearings that are open to the public may be covered by television broadcast, radio broadcast, and still photography, or by any such methods of coverage. That relates, of course, to a hearing. In 33(c):

Whenever any hearing conducted by any committee of the House is open to the public, that committee may permit by a majority vote of the committee, that hearing to be covered in whole or in part by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage, but only such written rules as the committee may adopt in accordance with the purposes, provisions, and requirements of this clause.

And 33(d) states that:

The coverage of committee hearings by television broadcast, radio broadcast, or still photography is a privilege made available by the House and may be permitted and conducted only in strict conformity with the purposes, provisions and requirements of this clause.

That is, of course as the rules apply to hearings.

But in section 376, clause 26(f), where we discussed the question of meetings:

Each meeting for the transaction of business, including the markup of legislation of each standing committee or subcommittee thereof shall be open to the public except when the committeee or subcommittee in open session, and with a quorum present, determines by a rollcall vote that all or part of the remainder of the meeting shall be closed to the public; provided, however, that no person other than Members of the committee and such congressional staff, such departmental representatives as they may authorize, shall be present at any business or markup session which has been closed to the public.

This paragraph does not apply to open committee hearings. If, therefore, in my judgment and in accordance with the Parliamentarian's rulings in these areas, distinguishes hearings from meetings and provides, therefore, that whereas hearings may be open to the public, and television and other media, broadcasting media, recorders, et cetera, may be permitted; nonetheless, they are prohibited at the meetings.

Mr. HUTCHINSON. Well, Mr. Chairman, in view of the interpretation of the Chair, with which I agree, and in view of the fact that we want to protect the procedures of this committee against objections made on the floor of the House, in that this committee may not be complying with the rules of the House, I must respectfully object, Mr. Chairman, to the presence of television coverage at this meeting of the committee.

The CHAIRMAN. Well, objection being heard, then I would request that television and other broadcasting media, tape recorders, any polygraphic material be removed from the room, and only the written media remain.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SEIBERLING. Do I understand the chairman to be ruling that there is no way this committee can authorize the presence of television cameras at this meeting?

The CHAIRMAN. The committee is under a strict prohibition if it is to conform with the rules of the House and the committee cannot override the rules of the House. And if we were to do so any of the actions that would be taken at this committee meeting would be invalidated.

Mr. SEIBERLING. Well, I must say I am learning something.

Mr. DANIELSON. Mr. Chairman, I respectfully move that we resolve ourselves into a convention of the whole committee for the purpose of

discussing the rules for the impeachment inquiry staff, and the procedures for handling the impeachment inquiry material.

Mr. DRINAN. I move to second.

Mr. DANIELSON. That this be a convention rather than a meeting at this time?

Mr. HUTCHINSON. Well, Mr. Chairman, I would raise parliamentary inquiry. I think that is wholly unprecedented. I do not think——

Mr. DANIELSON. There are very few precedents, Mr. Chairman——

Ms. HOLTZMAN. Parliamentary inquiry, Mr. Chairman. It is my recollection that at the meeting of this committee, at which we voted for the confirmation of Mr. Ford for Vice President that television cameras were present and that no objection was made. And I would think that in view of that——

The CHAIRMAN. I regret that the Chair has already ruled. The Chair is ruling in compliance with the rules of the House, which the Chair is in no position to interpret, other than in the manner in which the House rules provide.

Mr. BROOKS. Parliamentary inquiry, Mr. Chairman.

Would not that ruling be set aside and not pertinent if this committee moved that it be a briefing session, a hearing on the status of the inquiry to be submitted by Mr. Doar and Mr. Jenner, and even Mr. Garrison?

The CHAIRMAN. In reply to the gentleman's inquiry that could be the case, but we would be unable to transact the business that is necessary to be transacted for the committee at this point.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. We could not transact any business at a hearing. We can only transact business which is the business of this Committee on the Judiciary at a meeting and this was a formal meeting which was called for the purpose of transacting business.

Mr. BROOKS. Can we not recess this meeting which has been scheduled until 11:45, and in the meantime have a briefing session and talk about it publicly, and then have the session which has been duly notified, notification having been duly given to all the members, et cetera, in advance of this meeting, have this meeting recessed until 11:45, and take a vote on anything we need to vote on at 11:45, between 11:45 and 12 noon, when I understand that Mr. Hutchinson plans to depart.

Mr. HUTCHINSON. Where did you get any idea that I planned to depart at noon?

Mr. BROOKS. The chairman told me that you had a plane leaving, and that that is why we were meeting early at 10 o'clock instead of 10:30. But, I do not know.

The CHAIRMAN. Well, the Chair would like to state that the gentleman from Michigan does have a commitment and has requested, and I do want to accommodate him, but I am sure that the gentleman from Michigan is free to make up his own mind as to whether he is going to stay or not.

Mr. HUTCHINSON. Well, I can stay a little bit after 12 noon, understand. I have a plane that leaves at 2:30.

The CHAIRMAN. I believe the Chair has already ruled. However, in whatever transpires from here on in, though, it is the instruction of the Chair to the television media and to the broadcast media and the

others in the written press that for the conduct of the rest of the meeting, regretfully I must inform them that we would be in violation of the rules of the House, and with objection having been heard——

Mr. DANIELSON. Mr. Chairman, parliamentary inquiry?

Was the motion I stated a minute ago recognized by the Chair?

The CHAIRMAN. I recognized the motion that was made for convention. That would not be a meeting.

Mr. DANIELSON. Well, then——

The CHAIRMAN. And there is no such—that would—that would not contemplate any kind of a meeting where we would be able to transact the kind of business that we would have to transact. There is no such provision in the rules of the House.

Mr. DANIELSON. On my parliamentary inquiry, would not my motion constitute, in effect, a motion to recess this meeting in order that we can discuss the items which have been laid before us on the table? The House in its normal procedures resolves themselves frequently into a Committee of the Whole of the House in order to relax parliamentary inquiries.

The CHAIRMAN. The objection, however, had already been heard and already been ruled on, and I believe that that comes a little too late.

Mr. MCCLORY. Mr. Chairman?

Mr. THORNTON. Mr. Chairman?

The CHAIRMAN. Mr. Thornton.

Mr. THORNTON. Did I not understand the Chair to rule that under the rules of the House this was a meeting, and that further television and media coverage by live television was in violation of the rules of the House?

The CHAIRMAN. That is correct and I have so instructed the media, and I requested them——

Mr. THORNTON. I would suggest that the media is continuing to observe the proceedings.

The CHAIRMAN. Well, I would respectfully request that the media cease from televising the proceedings and in view of the ruling of the House, and that objection has been heard.

Mr. DANIELSON. Mr. Chairman? Mr. Chairman, I withdraw my motion that we resolve ourselves into a convention and I do hereby move that we recess the meeting until 11:45 a.m. today.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Parliamentary inquiry. Do I understand the rules of the House provide that this would be a public meeting, that the written press would be present?

The CHAIRMAN. That is correct.

Mr. HUNGATE. Thank you.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I suppose all of us would enjoy having our sessions televised. I have been a strong proponent of not televising committee meetings, but sessions of the House of Representatives, which is under consideration. It seems to me what we are dealing with here now is a rule of the House and notwithstanding what our individual desires

might be, it seems to me that uppermost in our minds should be the expeditious resolution of this entire subject. It seems to me that any other action than that which you have suggested, Mr. Chairman, is going to be a delaying action and I am going to be opposed to it. I do not want us to recess. I want us to act promptly on the business before us this morning and proceed with the impeachment inquiry in the orderly way, in accordance with the orders and the rules of the House. [Applause.]

Mr. DANIELSON. Mr. Chairman, I withdraw my motion, thank you.

The CHAIRMAN. There will be no demonstration from the audience. The gentleman has withdrawn his motion to recess.

Mr. Doar, will you—how about those lights?

Mr. HUTCHINSON. Turn off those glaring lights, please?

The CHAIRMAN. Yes. The equipment is being removed. Will you give them an opportunity to remove the equipment.

[Short pause, during which time all TV cameras, still cameras, and recording devices were removed from the hearing room.]

The CHAIRMAN. Mr. Doar, will you proceed now with your status report?

Mr. DOAR. Good morning, members of the committee. Before making my status report, I would like to introduce to the Judiciary Committee the lawyer seated at my far right, Ms. Hillary Rodham, who is a member of the impeachment inquiry staff.

Our inquiry is going forward with respect to the analysis of facts in the public record, and the records of other committees of this Congress, in an expeditious way. We hope very much that we will be able to, on March 1, as I agreed, to present to the committee a detailed status report on the factual investigation, where we are, what remains to be done, and how we propose to go about doing it.

The areas of investigation that we are concentrating on continue to be the same areas that we indicated to you on February 5. More work is being done. Individual lawyers are beginning to prepare and send forward for review résumés of the facts and chronologies of the particular events or activities that are the subject matter of this inquiry. We have received all of the materials, or substantially all of the materials that were in the possession of the Senate Watergate Committee. Included in those materials are three computer tapes that the Senate select committee used in the preparation of their hearings. We will work out an arrangement whereby we can obtain computer printouts from those tapes of particular matters that are of interest to us, and that procedure will begin the first of next week.

We are preparing lists of witnesses that we wish to interview and assigning lawyers to begin to get ready to make contacts with those witnesses. Some of the interviews have already begun, a few, and we would expect that by the middle of next week that this interviewing of witnesses would be going forward in a fairly major scale.

Last night at 5, Mr. Jaworski furnished to the judiciary, furnished to me for the Judiciary Committee, a detailed list of all documents, tapes, memorandum, logs, and so forth, which he had requested and received from the White House since the Special Prosecutor's investigation began. This list that we are using now to prepare our letter which we will send out to Mr. St. Clair requesting certain documents,

tapes, and other materials from the White House. We intend to send this letter out promptly.

We have not received from Mr. Jaworski the list of materials which he requested from the White House but which he did not receive. Mr. St. Clair indicated in a letter to Mr. Jaworski that he had not yet arrived at a position as to whether or not Mr. Jaworski should release information about matters which he had requested and not received, as well as about materials which the White House had furnished to Mr. Jaworski which had not been requested. We intend to go to Mr. St. Clair and ask him, say to him that we would like this list, and we have told Mr. Jaworski the same that we would like this list as well, and they are considering that matter.

I do not know that there are any particular details that I should call to the committee's attention. We are arranging for daily transcripts of the trial of the Federal District Court for the Southern District of New York, in which Mr. Mitchell and Mr. Stans are defendants. We are arranging, as I say, for particular interviews and we have a number of letters prepared to send to some of the departments of the executive branch for specific materials. We do have lawyers assigned for continuous contact with the Joint Committee on Internal Revenue Taxation, with respect to their staff studies and we have, as I reported last week, have held discussions with an attorney in the Department of Justice with respect to their files.

That concludes my status report. I wonder, Mr. Chairman, Mr. Jenner would like to add to that?

Mr. JENNER. Mr. Chairman, ladies and gentlemen of the committee, I have participated with Mr. Doar on all of these matters and will not burden the committee further, other than to say that, if you will permit me to say, the so-called minority staff and it is only so-called because it is not a majority staff, in that it has been integrated and lawyers, those lawyers are participating in the teams, and in the investigations. And Mr. Doar, as we go along, and I talk all of these matters over together, including the communications from Mr. Jaworski, as well as the communications with Mr. St. Clair, so that we think that the staff, we know that the staff, and I want to assure you this whole staff is participating in all of this investigation.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Could I ask counsel if Mr. Jaworski, when you visited with him indicated any willingness to produce things other than the White House list and, in other words I think once before you indicated that he had kind of suggested that maybe you ought to go to the White House. I am wondering about the other materials Jaworski has acquired, and I wonder if you have been able to work out anything with him, or what is the status of that?

Mr. DOAR. We have not been able to work out anything with him. His position with respect to those materials are that some of them are grand jury materials, and, second, that he would like to know, be advised, as to what rules of procedure this committee will adopt with respect to the security, control, and use of that material. I told him that I expected this committee would act on that matter this morning and he was very interested in that and asked to be advised as to what

the results were, and we will notify him promptly and then renew our request for non-White House materials.

Mr. RAILSBACK. I see. In other words, you are going to see what happens with the rules that we have pending before us to act upon, and then you do intend to immediately renew your request?

Mr. DOAR. Yes.

Mr. RAILSBACK. And see what his response is and then you will be prepared with recommendations in the event that he does not honor our request as to what we should do?

Mr. DOAR. Well——

Mr. RANGEL. Mr. Speaker, or Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Counsel, is it my understanding that as it relates to the White House, itself, that no formal requests have been made at this time for any information?

Mr. DOAR. No formal request has yet been made.

Mr. RANGEL. Thank you.

The CHAIRMAN. The Chair would also like to announce when these requests are made, while there will be no specifics as to what those requests are going to be about, that the committee will be advised that those requests will be made of the White House.

Ms. Holtzman.

Ms. HOLTZMAN. Mr. Doar, I just want something clarified. I was not sure that I understood some remark you made. Have you said that Mr. Jaworski has taken the position that with respect to the list of documents not furnished by the White House that he has requested, that he cannot turn this list over to the committee unless he receives permission from the White House. Is that the position he is taking?

Mr. DOAR. That is not the position that he took. He did say that he would like to see that worked out with Mr. St. Clair and since Mr. St. Clair indicated in a letter to Mr. Jaworski that he was still considering, that he was going to await further advice from us about that before he made a decision.

Ms. HOLTZMAN. But he has not stated that?

Mr. DOAR. No, he has not stated. He has stated quite the contrary that he is independent and makes his own judgments in these matters.

Ms. HOLTZMAN. That is reassuring.

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Doar, with respect to this list of documents that we might or might not request, which are the documents that Mr. Jaworski has requested and not received, would it be workable or feasible at all of you to consider meeting informally with Mr. Jaworski to try to determine with him, and with yourselves, as to which might be the most relevant as far as our inquiry is concerned, with the expectation that perhaps the relevant material would be listed in this list and perhaps at some time made public, and with the further thought that we would then be in the position where we would be able to proceed to receive those materials that are relevant to our inquiry, and not those which might be extraneous to our inquiry, and yet relevant to some other proceeding that Mr. Jaworski might have. Is that a feasible way for you as our counsel—for you to help resolve this problem, if it becomes a problem?

Mr. DOAR. Well, I think it is, Congressman McClory, in part, a feasible way, provided that with respect to these lists of materials that Mr. Jaworski is willing to let us examine the material so that we can see what are clearly not necessary for this investigation. And I do not think there is any problem about that once the matter or the principle is established with respect to these lists.

Mr. MCCLORY. I feel very confident myself that we are going to have full cooperation from Mr. Jaworski and from Mr. St. Clair at the White House insofar as our investigation is concerned. I hope that that is the case.

Mr. DOAR. Well, I hope so, too.

Mr. MCCLORY. And I would like to use whatever means possible to see that kind of cooperation fulfilled without the alternative of the confrontation which could be possibly unproductive and, at the same time, delaying and have other aspects that I do not like to anticipate.

The CHAIRMAN. I would like to——

Mr. DOAR. Could I make three comments? I think we are proceeding on the base of three principles: (1) We expect and intend to work as hard as we can to achieve cooperation with Mr. Jaworski and the White House, consistent with our responsibility to this committee to get all of the material necessary for the inquiry.

(2) We will do everything we can to do this in a way where there is no confrontation.

(3) We will meet with these gentlemen regularly but in view of the fact that we are under a mandate for this the committee to act expeditiously, we will make our requests promptly, we will expect prompt response, and we will make the requests in writing so that in 1 month from now, or 2 weeks from now or 3 weeks from now, there is no question in anybody's mind as to what were the steps that we took, and Mr. Jaworski took and Mr. St. Clair took with respect to cooperation between the three of us.

Now, I want to make it very clear that Mr. Jaworski and Mr. St. Clair agree with this procedure, that the request should be in writing. That does not mean we would not meet. That does not mean we would not sit down and talk things out. It does not mean that if there is something about a letter that one or the other of us does not understand, that the lawyers would not talk. But, it does mean that the basis of our discussions is going to be on the basis of a written exchange.

The CHAIRMAN. I would like to state for the benefit of the gentleman from Illinois that we have discussed this kind of a procedure at great length. I think that the staff has been instructed, too, quite clearly that it must do everything that its responsibility requires this committee to perform and that, as such, we want to do everything possible, knowing that this is the intent of the committee, to avoid a confrontation, but at the same time, we are aware of the fact that we have a mandate, that we have been requested time and again to act expeditiously. And the public is looking for expeditious action. The Congress has asked that we act expeditiously, and we hope that any delay will not be forthcoming from our side, if we do, indeed, have sides in this. And I believe that—I think that this is going to be the policy of the staff, because it is the policy of this committee. But, the committee, I am sure, wants the responsibility of this committee discharged, and must

of necessity urge that in every area there must be cooperation from Mr. Jaworski and from the White House.

Mr. McCLORY. Mr. Chairman, may I just make one further comment and, that is, this: I do not want any of our demands or any necessary or relevant information withheld as a result of any informal conferences or any decisions made by others. I want the decisions to be made by you, by our counsel, and I do not want to be misunderstood on that.

On the other hand, I do not want us to roam off in any areas that might not be relevant or necessary, if by informal meetings, it can be determined that such extraneous material may not be essential to our inquiry.

Mr. BROOKS. Mr. Chairman?

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, at the point at which it becomes clear, if it does develop, that Mr. Jaworski will not honor our requests, is there clear indication whether or not he will resist our subpenas?

Mr. DOAR. Well, I do not have any answer for that, because it is not clear. He has not taken a position on that.

Mr. OWENS. Has Judge Sirica taken any position on that because Mr. Jaworski has looked to him for guidance?

Mr. DOAR. We have not talked to——

Mr. OWENS. There is no indication how they would treat a subpena from this committee?

Mr. DOAR. No, there is not, and I do not think it would be well to speculate about that Congressman Owens.

Mr. OWENS. And there is nothing from the White House as to how they would treat a subpena?

Mr. DOAR. No, there is not. There is no indication about that at all. We are going to make this request and we hope and expect that there will be cooperation. We will try to make the request in a way that the materials are quite clearly necessary for the inquiry and, of course, we cannot ask for everything. We do not intend in the first request to cover the whole field that we might ask for. It would be unreasonable and inappropriate to expect us to have to ask for everything at one time. We will ask for, make a reasonable request, that we would hope that Mr. St. Clair would find that not too burdensome to get it back to us very quickly, and then we could continue on in this process of beginning to get the material, and sift it and analyze it as expeditiously as possible.

Mr. OWENS. And you have not contacted Mr. St. Clair or Mr. Jaworski on any time frame of what you would call reasonable at this point? I mean, there is no deadline attached?

Mr. DOAR. No, but I do not think it is going to be a great problem. If you look at the list of materials, for example, that Mr. Jaworski obtained from the White House, it is my opinion, as a lawyer, that it would not take very long to assemble that list of material if we asked for that, and deliver it to this committee. I mean, it is not a matter of weeks. It is a matter of just a day or two.

Mr. DRINAN. Mr. Chairman?

Mr. DOAR. It is not looking for material through a whole bunch of files.

Mr. Brooks. Mr. Chairman?

The Chairman. Mr. Brooks.

Mr. Brooks. Mr. Chairman. I wanted to ask counsel if we are now drafting a letter, as I understand it, to go to the White House to be addressed to the President or delivered to Mr. St. Clair or delivered to the President?

Mr. Doar. Well, we have addressed a letter for——

Mr. Brooks. For the chairman?

Mr. Doar. No, a letter to the lawyers, from me to Mr. St. Clair. We have also been drafting a letter from the chairman to the President.

Mr. Brooks. Right. Both of them will include the list of material, data, et cetera, that you require?

The Chairman. Well, if the gentleman from Texas will just desist for a moment?

Mr. Brooks. Sure.

The Chairman. I believe that the letter to Mr. St. Clair will outline the specific requests, and that will come from counsel. We are still deliberating as to what the form of the letter to the President will take, but we are considering that and discussing that with the ranking minority member to determine what form it might be.

Mr. Brooks. Now, Mr. Doar, you have the list now that you need of the materials, you have it in mind, that which you want to request of either the President through Mr. St. Clair or of the President directly, if that should be the decision of our chairman?

Mr. Doar. Congressman Brooks, we do not have the entire list but we have the beginning of a list of material that we want.

Mr. Brooks. When do you anticipate having the facts necessary to submit such a letter, should the chairman desire it?

Mr. Doar. We have it ready right now.

Mr. Brooks. Now, do you have such a letter prepared for Judge Sirica or for Leon Jaworski?

Mr. Doar. No, we do not.

Mr. Brooks. Are you in the process of preparing a letter to the judge or to Jaworski?

Mr. Doar. We are not in the process. We are considering whether that would be a wise course, but we are not actually in the process of preparing the letter.

Mr. Brooks. Counsel, the reason I asked is that I understand that Mr. Jaworski has some material other than that acquired from the White House, and to get that material we either have to go to the source or get it from him.

Mr. Doar. Yes.

Mr. Brooks. Now, are we making plans to get that material from the source?

Mr. Doar. No.

Mr. Brooks. Or from Jaworski?

Mr. Doar. As I explained to Congressman McClory with respect to that material, that is the non-White House material, Mr Jaworski and I talked yesterday generally about material and specifically about the rules of this committee, with respect to how that material would be handled. And I told him about this meeting this morning, and that the matter was going to be considered and told him that as soon as this

meeting was over, if the committee acted, I would be back to him about that material.

Mr. BROOKS. This afternoon?

Mr. DOAR. Yes.

Mr. BROOKS. Hopefully. Now, another question on Mr. St. Clair and the Attorney General on material that we want from other agencies within the Government. Are we going to make that request to the President, his lawyer, St. Clair, or will we make those requests to the Attorney General to provide it to us from other Government agencies?

Mr. DOAR. Well, no final decision has been made on that, but it is my professional judgment that the appropriate way to do it would be to advise Mr. St. Clair of the request and, at the same time, send a formal letter from the chairman or from myself, depending upon the judgment of the chairman, to the head of the executive department to which the request would go.

Mr. BROOKS. The head of whatever executive department it happens to be?

Mr. DOAR. Yes. I believe that is the traditional way the House committees make requests, and I think it would be appropriate that we follow that tradition. I do think that inasmuch as Mr. St. Clair seems to be generally in charge of the documents and materials that will be made available, that it would be appropriate, and just good sense, to let him know when we are making these requests.

Mr. BROOKS. Now, that is fine.

Now, counsel, one other question. I keep getting inquiries from my district, from everybody I talk to in my district, and you cannot pick up the phone without people wanting to know are you really going to be able to finish by April 30. And I wonder what your evaluation is of our time schedule now? Now, if they produce this material for you next week, in accordance with the letters, as Mr. McClory seems to be hopeful that they will do—I do not have any judgment on that—but if they do, if they do produce it next week, do you think then we would probably be on a time frame to get the report March 1 as you indicated and then to have additional evidentiary reports during March, and that would absolutely enable us to complete action on this by April 30?

Mr. DOAR. Well, Congressman Brooks, I just cannot give you a judgment at this time on this because I do not know what the material is. I do not know what the material is and I do not know how long it would take to examine, to listen to the tapes that are necessary to this inquiry. But, I hope that—we are mindful of the necessity for speed. We are trying to organize our work so that we can move as fast as possible, but I just do not think it would be—that I can give you a professional judgment at this time as to an April 30 date.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Doar, would you give your judgment on this: Is there any reason at all why the White House might be able to justifiably withhold information that you request?

Mr. DOAR. Well, I do not believe there is with respect to material that is necessary to this inquiry.

Mr. DRINAN. If Mr. St. Clair challenges the necessity, what happens then?

Mr. Doar. Well, the steps as outlined and directed by this committee would be that before a subpena would be issued the President of the United States would have been notified by letter from the chairman with respect either specifically or generally to the nature of the materials requested. If Mr. St. Clair would either say no or say nothing, so that there was no response, then it would be my responsibility, I feel, to come back to the committee and ask the committee to approve a subpena for the material.

Mr. Drinan. Why not have subpena in the beginning?

Mr. Doar. Well, because the committee has felt and I think wisely, that it is appropriate in view of the fact that we are dealing with the President of the United States, that it is appropriate to request that material by letter before issuing a subpena, and give the President and his lawyer an opportunity to make the material available to this committee voluntarily.

Mr. Drinan. How long should that period be, assuming this is readily accessible.

Mr. Doar. Well, I do not like to make a judgment——

Mr. Drinan. The whole Nation is waiting, and we have been waiting for a long time and I would just say that the track record is bad, they have withheld and I suggest that we ought to put a time because afterward, then we are beginning to say, well, give him some more days and I am going to urge later on that we do put a time, on the assumption that there is no reason, as you say, why he can withhold. He can challenge the necessity but aside from that he must give the material, and the burden is upon the White House to suggest that they cannot produce it within 72 hours.

Mr. Doar. Well, Father Drinan, I agree with you 100 percent that there is no reason for any delays. I just think that there is no point in writing that in a letter, saying these many hours or these many days.

Mr. Drinan. It is done pretty regularly in lawsuits.

The Chairman. Well, if I might answer, I think, Father Drinan, that that is a matter we will judge as we go along. I think that the committee will have to act responsibily and recognize that we are not dealing with just a situation that is the ordinary, routine situation. I think that we will act responsibly and make the necessary requests, and carry out our responsibility under the mandate given to us by the House of Representatives, and not wait inordinately in order to do the people's business. So, I think that putting a time limit of 24 hours or 48 hours, I think is something that we would have to really seriously consider.

Mr. Sarbanes.

Mr. Sarbanes. Mr. Doar, I wanted to follow up on the question that Mr. Brooks asked. It is my understanding that now you will have the chance to focus on the factual report, which is to come to us, I take it, at the end of next week if it can stay on schedule; that part of that report will be hopefully some ability to sketch out not only where we are, but where we have to go and have a better idea at that point perhaps of what the time schedule may be with respect to this matter. Is that not the case?

The Chairman. May I, before I recognize the gentleman, Mr. Fish, may I state that this is a meeting and we would like to, before we

proceed too far, understand that a lot of the questions that are being asked are going to be really predicated on whether or not we immediately this morning adopt these rules of procedure for the handling of impeachment inquiry material, and I think that we had better recognize this so that these rules, which we have imposed on ourselves, which are in conformity with the House Rules, will be adopted. And I am sure that they will give us a better basis to move forward.

Mr. Fish.

Mr. FISH. Well, thank you very much, Mr. Chairman.

I will try to be very brief.

Mr. Doar, certainly I approve of the procedure you just outlined of written notification to the President and to Mr. St. Clair, and the coming to the committee for approval of the subpena if your notification is either objected to or there is no response.

Now, it seems to me there is one remaining step and perhaps you are not prepared to comment at this time, but let us assume the subpena is authorized by this committee, it is issued and the subpena is then either rejected or ignored. What would be the step after that?

Mr. DOAR. Well, I do not—I am not prepared to advise the committee on that this morning, Congressman Fish. There are a number of alternatives that the committee might wish to take. I think they would want to consider that very carefully and I think I just would leave the answer at that.

Mr. FISH. Do you think that further legislation by the Congress is needed to clarify this area?

Mr. DOAR. I would think that the committee would want to think awfully carefully before recommending any further legislation. In my judgment, it would not be needed. It might be the committee might decide, as a matter of policy, what further legislation would be needed and it would be presumptuous of me to say anything about that.

Mr. COHEN. Would the gentleman yield?

Mr. FISH. I yield to the gentleman from Maine.

Mr. Doar, just to follow up on that question, do you intend to have your staff make recommendations to this committee in terms of what the alternatives are to enforce a subpena?

Mr. DOAR. We are studying that now.

Mr. COHEN. And is my understanding correct that you anticipate in the next week or 10 days even to make some recommendations to us?

Mr. DOAR. Well, I do not know that it would be within a week or 10 days. We are under awfully great pressure with respect to the timetable and the things that this committee wants us to do. And I just would like to say one thing, and, that is, that some of the questions that are asked are very, very serious and involve very serious matters. And as your lawyer, the best way we can serve you is to set aside some time to think. And I do not want to, under the pressure of time, not reserve for myself, and Mr. Jenner on our staff, time to think before we make recommendations about alternatives on matters as serious as you have asked me about this morning. So, I hesitate to say it will be within a week or 10 days. We know what our responsibilities are. We are working as hard as we can. But, as we go along the thing I fear and worry about, frankly, is that we do not move so quickly and so fast that we have not thought through completely and fully for our client,

the Judiciary Committee, just exactly what the course or the result of following one course or the other might be.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman.

Mr. Doar, I am trying to get the principles of the procedures. You outlined three, I think. One was to avoid confrontation wherever possible; another was to request documents or materials that would be written requests, so there would be no question as to what had been asked for. And I missed the other point.

Mr. DOAR. To move expeditiously.

Mr. HUNGATE. Thank you.

Mr. DOAR. So that there would be no suggestion that delay, or that there was a time delay on the part of this committee or the staff.

Mr. HUNGATE. Thank you.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. I just wish to supplement Mr. Doar's comments that he and I and the staff do have these serious concerns for this committee, and that we will report what we think professionally, responsibly. The matter on which Congressman Cohen asked, and the other very serious questions of legislative status under our Constitution, it is true, Congressman Cohen, that a research team is preparing material on the serious questions that you asked, and we will have the alternatives, possible alternatives for all of you to consider when and if that item of confrontation is presented to you for your decision.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Along these lines, gentlemen, if we should reach that situation, what has been referred to here and which you would indeed consider a very serious one, I assume you will give consideration, among other things, and before deciding on how to proceed with regard to the White House as to whether or not much of the same material might be obtained from the Special Prosecutor, who has already gotten it, some of it?

Mr. DOAR. We certainly would give serious consideration to that. We are mindful of that, Congressman Dennis.

Mr. DENNIS. Thank you, sir.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I wanted to ask you whether or not in this letter that you are sending to Mr. St. Clair, you intend to ask whether he will safeguard the materials you request, pending his determination to turn them over to you? And I think it is a serious problem, and we have seen questions of tampering with documents, and I would think that we would want to make sure that no such question arises in any form in this inquiry.

Mr. DOAR. Well, we will take that into consideration. And I think that is a valid point, and that Mr. St. Clair would accept that as an appropriate suggestion. And I am sure that he will be prepared to, or I believe, I am sure he will give us his assurance that he will do so.

Ms. HOLTZMAN. Well, can we get something more specific besides assurances in the sense that the documents are being kept in a safe place, and the person who has custody of them and so forth during the pendency of our request?

Mr. Doar. We will do our best to handle that in a way where we have those assurances.

Mr. Jenner. Mr. Chairman, there is a delicate inference here or implication, and may I suggest that the staff, Mr. Doar and I and our compatriots, we do not want to be undertaking the negative pregnant of suggesting an invidious conduct and intent on the part of the President or any of those who are working with him. But, Ms. Holtzman, we do have that problem in mind, and if you will afford us the professional delicacy to see how we can handle it, we do intend to.

Ms. Holtzman. Let me just respond by saying I had not meant any implication, and I wanted, by procedure, to avoid any such implication from being made or raised at any point.

Mr. Mezvinsky. Mr. Chairman?

The Chairman. Mr. Mezvinsky.

Mr. Mezvinsky. I, too, so you are on notice. I think the enforcement procedures of the subpena are vital for our committee and for our deliberations, so I would hope that we do get that guideline because I think that is very significant. I might ask, I presume, and I want to see whether it is proper, that Mr. St. Clair and the White House is on notice that they will be receiving a letter soon. Have you met with Mr. St. Clair since your first discussion?

Mr. Doar. No, we have not, but he understands the letter will be coming.

Mr. Mezvinsky. Does he understand that with the request we are hoping for an expeditious response?

Mr. Doar. He understands the need for expedition. There is no question about that.

Mr. Mezvinsky. OK.

The Chairman. Mr. Sandman.

Mr. Sandman. Mr. Chairman, may I suggest that if we are ever going to reach any kind of final date, when we are going to conclude our work, that we cease all of these hypothetical questions and let us get on with the purpose for which we came today.

Mr. Rangel. Mr. Chairman?

The Chairman. Mr. Rangel.

Mr. Rangel. Can we discuss—will we have the opportunity to discuss these procedures today, this morning?

The Chairman. Well, we are going to, if all discussion is completed now, and I think Mr. Doar has completed his report. I hoped that we could get to those so we can adopt them.

Mr. Rangel. Well, is counsel going to go through this?

The Chairman. Counsel will read them and if there are any questions counsel will explain them.

Mr. Rangel. Well, we have the copies. I do not know why we have to read them. I have some questions as it relates to procedures of members of the Judiciary Committee.

The Chairman. Well, if the gentleman will defer. I believe that for the benefit of each of the members counsel should read the rule. It will only take a few minutes.

Mr. Seiberling. Mr. Chairman, parliamentary inquiry.

As he reads them, will we bring up questions we have with respect to each one of these paragraphs or should we wait until it is all read?

The CHAIRMAN. I would suggest that the counsel read them all and, hopefully, since this has been a matter that has been discussed before the committee in its entirety at a briefing session, and since this was a matter that was a subject of discussion before the Democratic Caucus and the Republican Caucus, I would hope that we are not unduly delayed, because, the final draft of those that have been worked out after there had been some question. And I would hope that we recognize the urgency of adopting these Rules of Procedure so that we can get on with the requests that are necessary for the evidentiary matter that is going to be important for our deliberations and decision, and that we recognize this material as such.

Mr. Doar.

Mr. DOAR. Procedures for handling impeachment inquiry material: [1]

(1) The chairman, the ranking minority member, the special counsel, and the counsel to the minority shall at all times have access to and be responsible for all papers and things received from any source by subpena or otherwise. Other members of the committee shall have access in accordance with the procedures hereafter set forth.

(2) At the commencement of any presentation at which testimony will be heard or papers and things considered, each committee member will be furnished with a list of all papers and things that have been obtained by the committee by subpena or otherwise. No member shall make the list or any part thereof public unless authorized by a majority vote of the committee, a quorum being present.

(3) The special counsel and the counsel to the minority, after discussion with the chairman and the ranking minority member, shall initially recommend to the committee the testimony, papers, and things to be presented to the committee. The determination as to whether such testimony, papers, and things shall be presented in open or executive session shall be made pursuant to the rules of the House.

(4) Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the inquiry staff. No member shall make any of that testimony or those papers or things public unless authorized by a majority vote of the committee, a quorum being present.

(5) All examination of papers and things other than in a presentation shall be made in a secure area designated for that purpose. Copying, duplicating, or removal is prohibited.

(6) Any committee member may bring additional testimony, papers, or things to the committee's attention.

(7) Only testimony, papers, or things that are included in the record will be reported to the House; all other testimony, papers, or things will be considered as executive session material.

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. In other words, Mr. Doar, all of these procedures are especially designed for the impeachment inquiry, they are derived from the Rules of the House of Representatives?

Mr. DOAR. That is correct.

Mr. DONOHUE. And are the special procedures adopted to implement these rules by various House committees?

[1] See "Appendix III.—Procedures for Handling Impeachment Inquiry Material," in book III, "Impeachment Inquiry".

Mr. DOAR. That is correct.

Mr. DONOHUE. Is that correct? And certain policies followed by the Judiciary Committee during the hearings on the Vice-Presidential nomination of Gerald Ford?

Mr. DOAR. That is correct.

Mr. DONOHUE. Of course, the established rules of the House or the committee will be followed, such as the rules of the House and of the Committee on the Judiciary, pertaining to closed hearings and meetings; is that correct?

Mr. DOAR. That is correct.

Mr. DONOHUE. Thank you very much.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Mr. Doar, as I understand paragraph 2, before any presentation is made that the committee will have before it all of the evidence that has been collected by staff?

Mr. DOAR. The list of all of the evidence.

Mr. RANGEL. The list of the evidence.

And then No. 3, counsel and special counsel will then get together with the chairman and ranking minority member to recommend to the committee that out of this list, or from the list, what evidence will be made available to members of the committee?

Mr. DOAR. Well, we would have done that before that time and we would be prepared to go forward with the presentation to the committee with respect to testimony, papers, and things, and that would be all presented to the committee in accordance with the way the committee determined to have it presented. That would be all. We would be ready to proceed when the list was made available or immediately thereafter.

Mr. RANGEL. First of all, since we know there will be a presentation and testimony, then part 2 really means that prior to this we will get a full list of all of the information that staff has compiled?

Mr. DOAR. Right. That is correct.

Mr. RANGEL. OK. Then as to what information from the list we actually have access to, will that be determined by the chairman and the ranking member and staff?

Mr. DOAR. No. The committee members have full access to all material. That is covered by section 4.

Mr. RANGEL. Well, does the section 3 mean in the part that indicates that a recommendation is going to be made to the committee?

Mr. DOAR. Well, Congressman Rangel, we are going to have just a great number of documents and things in our possession. We already have. Our job, our assignment, is to organize that and present the relevant material. We hope that we do a good enough job for you, and a full enough job and a fair enough job, that every member of the committee would agree that we have selected the relevant material. In the event, however, that a member of the committee felt that we had not presented a document or testimony or material, he would know that we had that material, and the index would be organized so we could quickly get into it, and it would be available for his examination, and then to bring it back to the committee to present it under the rules of the House and the committee.

Mr. RANGEL. Thank you. You have cleared it up to my satisfaction.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I would like to ask a couple of clarifying questions.

First of all with respect to the interaction, paragraphs 2 and 4, paragraph 2 says that "at the commencement of any presentation at which testimony will be heard or papers and things considered, each committee member will be furnished with a list of all papers and things that have been obtained by the committee."

In paragraph 4 it says: "Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony."

Now, I wonder if reading those two together that it is understood that if the staff is able to make available, prior to the comencement of any presentation, a list of the papers and things and so forth, that that will be done so that we may intelligently evaluate what is being presented in the light of the knowledge of what other material is there, because if we have to go after the fact and look at the material, and then raise questions about whether additional material should be taken up, I think we are going to delay matters. And I would wonder if we can get a clarification on that point.

Mr. DOAR. Well, with respect to the list, sir, the list to the extent that we could make partial lists available prior to the commencement of the proceedings, and that seemed like an efficient and effective way to proceed, we would do that. But, with respect to the examination, that would have to await and I believe appropriately, await the presentation to the committee. As I say, if we present this in as fair and as objective and thorough way as possible, it would be my hope that the material would all be presented, that any member of the committee would be interested in, and the documents and things that would be presented would all come to the committee at the presentation.

Mr. SEIBERLING. Well, now, the list that is referred to in paragraph 2 is not the same as the index to your files that we discussed at the last meeting: is that correct? We will have an index prior to the commencement of these presentations so we know what you have?

Mr. DOAR. Yes. I would be happy to go over that list, index of files, right now with the committee or go over it at our office, and that is available right now.

Mr. SEIBERLING. All right, now, one other question which I would just like to clarify.

Item 6 says that: "Any committee member may bring additional testimony, papers or things to the committee's attention."

And, of course, we would have that right under the House rules anyway. But, I would like to make sure there is no implication here that if a member feels that after reading, after going over all of the evidence that relates to a particular point that additional evidence should be sought, that that member retains the right to bring to the attention of the committee that point, and to request that the committee consider instructing the staff to seek additional evidence on that point? I would like to ask the chairman if that is understood?

The CHAIRMAN. That is clearly understood.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, thank you for recognizing me. I address my comment to the committee as a whole and to counsel, of course, and in the nature of a suggestion on additional rule. And I would suggest that immediately upon the receipt by the committee of any testimony, papers or things, copies thereof be made and be furnished to the source of the evidence and the counsel for the President. I make that suggestion for three reasons: One deals with the problem of security and tampering. Obviously, there is less likelihood of tampering being proved if several people have copies of the same thing. Second, it is consistent with the Civil Rules and it has a high element of fairness in it, that any evidence before this committee be made available to counsel for the other side. And, third, for the reason of expedition of our hearings, when we get to that point. I am not sure that we have settled upon the question of whether the counsel for the President may be present, but should we start bringing evidence upon a counsel it seems likely to me that he is going to ask for a delay, for the opportunity of inspecting that evidence and our whole proceedings will be interrupted by reason thereof.

Accordingly, I do suggest some language such as I have just read as an additional rule for the procedures of handling this impeachment inquiry.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Congressman Wiggins, I respectfully suggest that that would not be appropriate. There is no other side in this inquiry at this stage. And I do not think that the procedural rules that you suggest would be appropriate to get into this morning.

I do say, however, that when I did talk to Mr. St. Clair about documents in the Justice Department, he said whatever documents you would take out of a file would you make available to us a copy of that document, and I said, of course.

Mr. WIGGINS. Well, as long as that is done, then I have no problem. But, if we should ultimately decide, Mr. Chairman, that counsel for the President is entitled to be present during the taking of testimony, and we have not reached that but at least it has been discussed informally, that it seems likely to me that our taking of testimony is going to be interrupted considerably as counsel for the other side makes inspections of copies and thinks about the physical evidence which may be presented at that time.

The CHAIRMAN. I would also like to add to the gentleman's clarification that these rules, as you know, which we are considering, are in strict compliance with the rules of the House, do not go beyond the rules of the House, and I really, I think, designed initially to insure that the self-imposed rules give some degree of assurance without seeking the approval of Mr. St. Clair or anyone else who wonders about our ability to act responsibly. And I think this is really at the base of all of this. And I would think that anything else other than that, than is being suggested, is not related to that particular point.

Mr. WIGGINS. Well, I am satisfied with the assurances of our counsel, that it is contemplated that the normal procedure would be to make

copies available to counsel for the President. Is that what I understood you to say, Mr. Doar?

Mr. DOAR. Well, you do with respect to materials in the Department of Justice. Now, if we got a document from some other source, I would not anticipate that at first we would Xerox that and send it over to Mr. St. Clair, no, not with every document. But, if we requested documents and he facilitated us in getting them, of course he would have copies of all of the documents that were requested in the White House and he facilitated us getting them from the Departments, certainly we would make copies of them.

Mr. WIGGINS. Well, I will be happy to yield to the gentleman from Illinois. But, I will say before I do yield, I do think that the policy which perhaps is that now being established but at least the indication is that copies of materials coming into the possession of the committee from sources apart from the White House, and which may be used for evidentiary purposes before our hearing will not be made available to counsel for the President, will in the long run be a source of trouble for this committee and we ought to at some point confront it.

I yield to the gentleman from Illinois.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Yes, thank you.

I want to thank Mr. Wiggins and also the Chairman.

In respect to Congressman Wiggins' suggestion, I have this problem with it. It seems to me aside from documents that are produced by the White House, there would be other material that those of us on the House Judiciary Committee, for instance, would be subject to certain procedures that even we would not be permitted to see that material until it is determined that it be presented to us. And the other thing is, I would be wary of turning over material to somebody other than the House Judiciary Committee if we are, in fact, determined to insure the confidentiality, and be able to give Leon Jaworski assurance that the criminal cases that he is allegedly pursuing, that we would not be undermining his prosecution of those criminal cases.

On the other hand, I want to say, and say emphatically, that the trend has been and I want to emphasize this, the trend has been in recent impeachment cases, that the respondent either has had a right to be present himself, or his counsel has had a right to be present and possibly in those cases where we may be taking depositions, say, to perpetuate testimony rather than discovery, it might be wise in that case to prevent respondent's counsel or Mr. St. Clair being present. I want to point out to our members here, particularly those on the minority side, that the proposed rules that we are considering are a little bit different than the draft we had before us. And Congressman Sandman has pointed out very substantial deviation, whereas in the draft that we had before us we were to go into executive session initially to determine whether we wanted open hearings or hearings in executive session.

Now, you have used language in these proposed procedures that would require us to follow the general rules of the House. And it seems to me that there is a substantial difference. And I wonder if it was, if it was meant to be or not?

Mr. DOAR. We went over those rules with Mr. Zeifman and Mr. Polk, and we were advised that this language is exactly the same as the

language that was there before, that the formal rule and this rule is exactly the same. You are going to have to go into executive session with respect to determining whether or not you want to consider matters in executive session.

Mr. RAILSBACK. Mr. Doar, under rule 4 of the draft that we had before us, it read this way: "The special counsel and the counsel to the minority will initially recommend the testimony, papers and things to be presented to the committee, and during the hearing the committee shall decide in executive session by a majority vote." I think these are the significant words: "The committee shall decide in executive session by a majority vote with a quorum present, whether such testimony, papers and things shall be presented in open or executive session." Now, what you are suggesting is to follow the rules of the House which would require everything—in other words, there would be open session and there would have to be a specific vote to close.

Mr. SARBANES. Would the gentleman yield?

Mr. RAILSBACK. Yes.

Mr. SARBANES. I am very frank to say to you and there was an example of it at the beginning of this meeting this morning, that I do not see how the committee of its own authority can proceed to establish any procedures that are contrary to the rules of the House. I mean, we must operate within the framework of those rules of the House.

Now, I would have been perfectly happy to have had the television stay here this morning, but I think the objection that was raised is consistent with applicable rules and the Chair's ruling followed those rules. I do not see how we can have any procedures established by the committee that are contrary to or exceed any authority given to us by the rules of the House.

Mr. RAILSBACK. Yes. Let me say to the gentleman that I was prepared to have television stay. I think several of us would have been prepared to have them stay. I do not see much purpose, really, in excluding them.

What I am directing the question to is, there is apparently a difference and I just want to know if that is true if, in other words, it seems to me that I wanted to point it out to all of the members, first of all, that whereas in the draft we had before us, we were to have met in executive session, and then decide whether they are to be open. Now, we are following the rules of the House. That is the intent or what?

Mr. DOAR. Yes, it is the intent that you follow the rules of the House. But, it was my understanding that you would have to decide to go into executive session to then decide whether or not you would go forward in open hearings, or in executive session. But, that would be a step in an open hearing under the rules of the House, and Mr. Zeifman and Mr. Polk and I went over this, and they said that you are saying exactly the same thing, but it is liable to confuse someone and you ought to strike that out and put in pursuant to the rules of the House.

Mr. RAILSBACK. Well, just so we all understand that. I think some of us had a different idea about it, because of the language that was in the draft.

Ms. HOLTZMAN. Would the gentleman yield?

The CHAIRMAN. Well, frankly, we would have been subject to criticism in anything we might have done, had we not been comporting

and in conformance with the rules of the House. It might have invalidated anything we might do, so I think this language is much better, and this is at the advice of both the general counsel of the committee and the minority counsel of the Committee on Judiciary who conferred with the Parliamentarian on the question.

Mr. DENNIS. Mr. Chairman?

Mr. RAILSBACK. I yield, if you are seeking recognition.

Ms. HOLTZMAN. Thank you, Mr. Railsback.

I was confused a little bit by Mr. Doar's answer. I thought that the rules of the House provided that a decision to hold a hearing in executive session or for taking of testimony in executive session must be made in open session, and I think your statement was contrary to that. I would like to have that clarified.

The CHAIRMAN. No, I do not believe I understood it that way. I believe that all Mr. Doar said was that the language was changed in such a way so that we would understand it was pursuant to the rules of the House.

Ms. HOLTZMAN. OK. Thank you.

Mr. DENNIS. Would the gentleman yield?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Doar, may I ask you a practical question and, that is, if we follow the rules of the House as I understand what you have said, someone here would have to make a motion that we go into executive session to consider whether or not the presentation of certain bits of evidence should be in executive session. Would he have to make that announcement here?

Mr. DOAR. I believe that is the way the rules of the House provide.

The CHAIRMAN. That is correct.

Mr. SANDMAN. Now that immediately exposes that individual whomever he may be, as trying to do something in executive session, which the media never treats very kindly. Now, why do we have to go to that kind of a burden?

Mr. DOAR. Because the rules of the House provide it.

Mr. SANDMAN. Let me explore this one thing. I think the big flaw that we have in all of this, in trying to get information, for example, that Jaworski has, which is of a criminal nature, that is being presented to a Federal grand jury in a criminal case, involving other people besides the President, he has a reluctance to turn some of this over because he does not want this kind of information made public, which would otherwise hurt innocent people. I am not talking about the President.

Now, if we give him assurances of our pledge of confidentiality, how do we then keep it without going through all of the procedure here and trying to make the media believe we are trying to hide something, which we are not? I think you are more prone to get this information more quickly, if we would operate under the rules that were submitted to us in the first place. Mr. Railsback and I and several of us here were ready to move the adoption of the whole thing. We think it is that fair. But, I mean, why was this one changed, which I think is the most important of all?

Mr. DOAR. Well, the rule was changed because it was my understanding that in order to go into executive session that the committee

would have to vote to do that in open session, and that does not mean in open session any of the subject matter that would be discussed would be laid out. You would say that you had a matter that you thought, you would say, that should be considered initially in executive session, and the committee would then vote to do that. I do not think Mr. Jaworski would be troubled by that since it is consistent, since it is required by the rules of the House, and there would be no disclosure as to the subject matter of what the discussion would be.

Mr. SEIBERLING. Would the gentleman yield?

Mr. BROOKS. Would the gentleman yield?

Mr. SANDMAN. If I have the time I will be happy to yield.

Mr. BROOKS. Mr. Chairman, I was just going to comment that the reason those rules were so designed, undoubtedly was to put the pressure on members and require that you make the motion to go into executive session in open meeting. Prior to that rule, the adoption of that rule some years ago, you did not have to do that. You could do it with a lot less publicity, and a lot less pressure. But, the reason they put that rule in is because they want members to understand that if we are going to go into executive session, if the chairman is going to move it, if an individual member is going to move it, that you have got to have a pretty good reason. And I do not mind moving that this committee go into executive session, if we have a good reason for doing it.

Mr. SANDMAN. May I present a real good reason?

I have been led to believe that we are functioning somewhat as a grand jury. Now, if this procedure is followed, as I understand it, then everything we do is going to be open to the public. Is this true or not?

Mr. DOAR. No.

Mr. BROOKS. No; it is not.

The CHAIRMAN. May I for the purpose of some clarification, just call to the attention of the committee that under the rules of the House, rule 11, 26(f), and this is the rule of the House, each meeting for the transaction of business, including the markup of legislation of each standing committee or subcommittee shall be open to the public. Therefore, if we are to conduct any business whatsoever, no matter what that business may be, that the meeting must of necessity be open to the public. Now, if we want to close that meeting for any reason, because it is considered that material may be defamatory or degrading, or maybe something of that nature, that should not be open to the public. Then we turn to another rule which states that if the committee determines that certain evidence that may be given may defame or degrade that that meeting may be one which may require a closed session, an executive session. But, this would have to be by a majority vote of the committee.

Mr. SEIBERLING. Would the gentleman yield?

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Could we proceed with the reading of the rules for impeachment inquiry and possibly return to this. I am afraid we are not going to get to the rules.

Mr. DENNIS. We have read the rules.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Doar, in the Ford hearing after many weeks of work, we were suddenly confronted with the fact that a substantial part of the evidence was going to be kept from the members of this committee. The Department of Justice and the FBI said, yes, we have conducted an investigation but we are only going to let a few members, or two members, in effect, review the information. Now, is there any chance whatsoever of that happening in this proceeding? Can you imagine under any circumstances evidence being withheld from all the members of the Judiciary Committee?

Mr. DOAR. I cannot. I cannot imagine that. These rules do not intend that. If, of course, the FBI or somebody would say to me that we will give you this material if you and only you, or if only you and Mr. Jenner, or only you and Mr. Jenner and the ranking members, the chairman and the ranking minority members, would look at it, I would say I have no authority to accept the material, and I would report back to the committee promptly.

Mr. EDWARDS. Well, thank you, Mr. Doar. That is exactly what the chairman did in the Ford hearing when the Department of Justice refused to allow us to review this material, and a compromise was worked out. But, I thank you for your response.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

A brief comment, first, on the point raised by Mr. Wiggins. I am willing to go along with the idea that it may be premature at this time to thrash all of the details of that out. But, I would like to take the occasion to go on record of believing personally that when and if we come to the point where we are having hearings involving the President that we should extend him the right to be present in person or by counsel and to participate although we do not need to decide that today. And if we do that, then I think at that time it would be very fair, in accordance with usual civil procedures, to give his counsel an opportunity to have copies of the matters which we may have before us at that time.

Now, second, just a brief clarification here of the rules on a couple of points. On the draft we had before us it said specifically that if we wanted to examine some of these additional papers on the list, that the staff had not presented except on the list, that there would be a recess so that could be done. Here it merely says reasonable opportunity, with which I do not quarrel, but I assume there is no intention by the change in language to whittle down the opportunity; that there still would be opportunity to go over the next day or whatever might be necessary to make a reasonable examination.

Mr. DOAR. Yes, that is true. We just felt it was better language. There is no intention to whittle down the opportunity and, in fact, that is the whole intention, is that the committee have a full and ample opportunity to examine the material.

Mr. DENNIS. And then No. 6 would give us the right, after such examination, to bring that matter or any other matter, which we might have discovered, before the committee and seek to have it placed in the record, and give it consideration also; correct?

Mr. DOAR. That is correct.

Mr. DENNIS. And along with the same change, I noted that in the draft we specifically provided that there might be minority reports. Now, I do not think that is necessary because I think we can always file minority reports. But, I assume there was no intent by leaving that out to suggest that that could not be done?

Mr. DOAR. No, sir, there was not.

Mr. DENNIS. I thank you.

Mr. DANIELSON. Mr. Chairman?

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I hope we forthwith adopt these procedures. But, I do have one question of the counsel and that is in terms of Mr. Jaworski. While these for our purposes appear to be reasonable rules, theoretically, of course, they do not guarantee Mr. Jaworski that the evidence will not be public by majority vote. We can make evidence public notwithstanding the fact that that undercuts the Special Prosecutor's case.

So, do I understand that notwithstanding that fact, that Mr. Jaworski would nonetheless be agreeable, or might be agreeable, insofar as he no longer has control of the evidence, and it could, under our rules, become public by majority vote, he might still be agreeable to this arrangement?

Mr. DOAR. Well, he has made no commitment about that, but he does understand that there is no way that, I believe he understands, that there is no way that the material might not be made public, if a majority of this committee decided it would be made public. But, we have not discussed that. This is just—we intend to discuss this with him. He has made no commitment. But, there would be no way that this committee, as I understand it, could agree further than this.

The CHAIRMAN. I hope that the——

Mr. KASTENMEIER. I appreciate that.

The CHAIRMAN. I hope that the gentleman recognizes that implicit in his question is possibly the suggestion that we would have to await the approval of any people whom we are asking or making requests of for material, and this is not the case at all. I think we are, we are imposing rules within the rules of the House, which I think provide for an exercise of responsibility and we are not certainly, and I am not certainly, going to await whether or not the stamp of approval is going to be placed on these rules. I think these are reasonable rules, and I expect that this is what they are expecting of us.

Mr. WIGGINS. Would the gentleman from Wisconsin yield on that?

Mr. KASTENMEIER. Yes.

Mr. WIGGINS. Counsel, would you tell me what the word "public" means as used in the context of these rules? It is used in several places.

Mr. SEIBERLING. Would the gentleman yield?

It means a different thing, obviously, and in a different context. I think you have to take each instance.

Mr. WIGGINS. I would like to have it explained in each context, then.

Mr. DOAR. Well, in the second section, the word "public," means that it should not be disclosed to——

Mr. WIGGINS. To any other person?

Mr. DOAR. To any other person. Now, where is the next one?

Mr. WIGGINS. Paragraph 4.

Mr. DOAR. It means the same thing.

Mr. WIGGINS. That too is my understanding, Mr. Chairman. Is that your understanding, Mr. Chairman?

The CHAIRMAN. I'm sorry?

Mr. WIGGINS. Is it your understanding that these rules preclude members of the committee or the staff from making information available to any other person, that that is what is intended when it says that they shall not be made public?

The CHAIRMAN. That depends on whether the information first of all was received in executive session or other information, first of all, which certainly should not be made public, and any other information I think that comes within the rules of confidentiality should not be made public.

Mr. WIGGINS. To any other persons?

The CHAIRMAN. That is correct.

Ms. HOLTZMAN. Would the gentleman yield on that point?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I have a question with respect to item 2 and item 4. Referring to the list of all papers and things in item 2, and all testimony, papers, and things in item 4, I want to be sure I understand this. It is my understanding that the list of papers and things would be the aggregate total of all papers, things in the possession of the staff and the committee, and not limited to those which are supportive of a general topic of inquiry which may be about to be presented?

Mr. DOAR. That is correct.

Mr. DANIELSON. Thank you very much.

Mr. SEIBERLING. Mr. Chairman?

Ms. HOLTZMAN. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Well, it seems to me that we cannot let the statement by Mr. Wiggins stay in the record, that making its public means making it available to any other person. In the first place, there are 38 members of this committee, and I would asume that any document which a member is entitled to see, he is entitled to discuss with another member of this committee and with the staff of this committee; that is, the impeachment investigation staff. So, obviously you cannot mean any other person.

Mr. WIGGINS. I agree with that understanding. It is also my understanding that making the substance of a material available outside of the parameters which you just mentioned would also be prohibited by this rule, and not to be limited to the precise document itself. Is that your understanding?

Mr. SEIBERLING. Well, that would be my understanding, and I would like to get this in the record too. By any other person, we are including members of the staff of the individual members of this committee. Is that understood?

Mr. WIGGINS. Precisely.

Mr. SEIBERLING. Thank you.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I have some questions again with respect to the word public in both places. In the first instance, in rule 2 you use the

word public with respect to the list. Does that mean a member is precluded during a presentation that is in open sssion from saying, for example, why has not document such-and-such been presented to us?

Mr. Doar. Well, I would think, I would think that if there was that kind of a question, you might want to first move to go into executive session to ask that question.

Ms. Holtzman. And is that the same with respect to the use of the word "public" in rule 4?

Mr. Doar. Yes.

Ms. Holtzman. Where it says, for example, that if we wish to question a witness with respect to information that we have obtained from documents you have given to us, that we must go into executive session to ask such a question, because otherwise it would be making it public?

Mr. Doar. Yes; that does mean that.

Ms. Holtzman. Well, I am concerned that this is going to be extremly restrictive, especially with respect——

Mr. McClory. If you will yield on that, I personally am opposed to that part of the rule which permits other members of the committee other than the majority and the minority staff members and the chairman and the ranking minority member from examining in the staff committee rooms these other documents. But, I have withdrawn my objection to that part with the clear understanding and feeling that if individual committee members do want to examine these classified or secret materials, that they would do it on the basis of confidentiality, with no leaks emanating from the members or staff of this committee whatever. And I think we have an opportunity to do a responsible job and to establish a reputation for our committee in that respect. And it seems to me that if we would question in open hearing or in any other way reveal the contents or identity, or subject matter of materials that we are permitted to examine confidentially, it would seem to me it would be a terrible breach of the rules that we are considering today.

Ms. Holtzman. The problem, as I see it, Mr. Doar said some of this material we are receiving from you that is covered by these rules may not be confidential in any sense, yet we will be precluded, members of the committee would be precluded from asking any questions with respect to such materials, and I am puzzled.

Mr. Doar. Not precluded, because you would have the opportunity to present the material to the committee and say that you wish to question the witness or you wish to go into that particular subject.

Ms. Holtzman. But our right to question then would be determined on a majority vote of the committee, even with respect to materials that are not inherently confidential. Is that the intention here, really?

Mr. Doar. Well, it would seem to me that in order to cover all of the material, you have to subject the committee members to a majority rule, so it would be certain that there was presented to the committee, if a committee member wanted to examine them, a question about them, that they would go through the executive session procedure. I do not see that that would be a burden at all, inasmuch as if a matter was public, I suppose that we would work out the list and show that was a public document, and there would be no problem about it. I mean, if the document is already public, you do not have to go to that list to get the document. You do not have to go over to our office to get

it. It is already public. It is not the purpose of this list to cover documents that are already in the public record.

Mr. McCLORY. If the gentlelady would yield?

Ms. HOLTZMAN. I'm sorry.

Mr. BROOKS. Mr. Chairman, we are probably about to wind this up, and I just wanted to make one observation, that these rules will be ordinary procedure. There is no other real alternative for the chairman or the ranking minority member to operate under, and the members are fully protected because the House rules are going to be superseding anything we say and do here, and all accessibility to records and documents will be bound by the House rules, and that is just the way it is.

Mr. HOGAN. Mr. Chairman?

Mr. BROOKS. I move the question.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, if we agreed with Mr. Seiberling's comments being true, then everyone has the right to discuss this with their own staff as well?

The CHAIRMAN. That was not the understanding.

Mr. HOGAN. Just the committee staff and the special impeachment staff, not with our own individual staffs?

Mr. SEIBERLING. It is my understanding that under these procedures, we could not even have our staff file the list that we receive from the committee staff. We would have to do our own filing, and it has to be under lock and key, and nobody else can see it but members of the committee staff and the members of the committee.

Mr. DOAR. Correct.

Mr. SEIBERLING. And if I am wrong in that, I would like to have it clarified.

The CHAIRMAN. No: that is correct.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I think this discussion has been very helpful, Mr. Chairman, but I think there are several of these bridges we can cross when we get to them. And I would like to move that we approve these at this time, and unless there is some substantive change.

Mr. MAYNE. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. MAYNE. Before the question is put, it seems to me that the record is still very uncertain as a result of the exchange in which the gentleman from Ohio, Mr. Seiberling, has just participated. Are we or are we not authorized to release these materials to our own personal staffs?

The CHAIRMAN. You are not.

Mr. MAYNE. Well, that is very satisfactory to me, and I hope that that is cleared up to the satisfaction of all members.

The CHAIRMAN. The question is on the motion by the gentleman from Missouri. All those in favor of the adoption of the rules of procedure for the handling of the impeachment inquiry material, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. Opposed, no.

[No response.]

The CHAIRMAN. The ayes have it, and the rules are adopted.

Mr. SEIBERLING. Mr. Chairman, a parliamentary inquiry.

Mr. OWENS. Mr. Chairman, is it appropriate to move this committee now consider whether it wants to move to introduce a resolution into the House to change the rules of the House?

The CHAIRMAN. This is not a matter before this committee.

Mr. SEIBERLING. Mr. Chairman?

Mr. OWENS. To avoid the spectacle of excluding the electronic media, but not——

The CHAIRMAN. This is a matter that each individual member will have to consider for himself, and if he wants to, he may.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. There are also, as the members know, attached herewith the procedures for the impeachment inquiry staff, which are procedures that restrict the inquiry staff, and I understand that the motion also included the adoption of those rules, without objection.

[The rules for the impeachment inquiry staff follow:]

RULES FOR THE IMPEACHMENT INQUIRY STAFF

1. The staff of the impeachment inquiry shall not discuss with anyone outside the staff either the substance or procedure of their work or that of the committee.

2. Staff offices on the second floor of the Congressional Annex shall operate under strict security precautions. One guard shall be on duty at all times by the elevator to control entry. All persons entering the floor shall identify themselves. An additional guard shall be posted at night for surveillance of the secure area where sensitive documents are kept.

3. Sensitive documents and other things shall be segregated in a secure storage area. They may be examined only at supervised reading facilities within the secure area. Copying or duplicating of such documents and other things is prohibited.

4. Access to classified information supplied to the committee shall be limited by the special counsel and the counsel to the minority to those staff members with appropriate security clearances and a need to know.

5. Testimony taken or papers and things received by the staff shall not be disclosed or made public by the staff unless authorized by a majority of the committee.

6. Executive session transcripts and records shall be available to designated committee staff for inspection in person but may not be released or disclosed to any other person without the consent of a majority of the committee.

Mr. SEIBERLING. Well, Mr. Chairman, reserving the right to object I would like to point out that there is an inconsistency between the rules for the staff and the rules for procedure that we have adopted in that in paragraph 1 and paragraph 6 of the rules for the staff, it says the staff shall not discuss with anyone outside of the staff, or disclose to any other person, without the consent of the committee, and so I assume——

The CHAIRMAN. Well, the staff is not going to initiate any of this.

Mr. SEIBERLING. But I assume that the staff is authorized to discuss with any member of this committee matters that we are working on, as long as it is in accordance with the procedures that we have adopted?

Mr. DOAR. Well——

The CHAIRMAN. I believe that that is a correct ruling.

Mr. DOAR. That is a correct statement, Congressman. The procedure for discussion with the staff is that I would hope that they could be referred through my office, and that arrangements be made so that

we would have a system, and we will be responsive and prompt with respect to that. And if there was a particular staff member that you would like to see about a particular matter, of course we would do that.

Mr. SEIBERLING. Well, then, I think that these rules for the staff ought to be revised to make clear——

The CHAIRMAN. I would hope that the gentleman would not seek at this point to suggest that we revise the rules. I think that what the special counsel has called to our attention is that recognizing that special counsel and other minority counsel are acting for the staff, that all of the inquiries be directed to them, and I am sure that they will be accommodated.

Mr. DENNIS. Mr. Chairman?

Mr. SEIBERLING. Well, is it the chairman's understanding, and I am not ready to yield yet, is it the chairman's understanding that these rules for the staff do not prohibit the staff from discussing with members of this committee, or disclosing to members of this committee information as long as it is in accordance with the procedures that we have adopted?

The CHAIRMAN. That is correct.

Mr. SEIBERLING. I thank the chairman, and I withdraw my reservation.

Mr. DENNIS. Mr. Chairman, reserving the right to object, I would like to concur with what the gentleman from Ohio says there. I believe, and I will just say that so far as I am concerned, I understand that, although I would be happy to follow this procedure which has been talked about here, but if I feel like talking to Mr. Doar, or Mr. Jenner, or Mr. Garrison, or any of our other counsel, I reserve, and so far as I understand it, the right to do so, and I assume they will obey their own rules. But, I am not necessarily going to go to Mr. Doar and say, can I talk to Mr. Jenner, or vice versa.

The CHAIRMAN. Well, I am going to leave that to the discretion of the gentleman.

There has been a motion to adjourn the committee.

All in favor, say aye.

[Chorus of "ayes."]

The CHAIRMAN. The committee stands adjourned.

[Whereupon, at 12:05 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Briefing by Staff

TUESDAY, MARCH 5, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchison, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. I would like to open this briefing session by stating that I recognize that there are some members who have voiced objection to our holding these briefing sessions and closing them to the public. And being aware of this, I intend to hold the meeting, and I will announce the meeting if we can hold it either on Thursday or Friday because I think tomorrow we will be preoccupied, as counsel will explain to the members of the committee. In the light of the objections that have been raised, I think this is a question that will of necessity be put to the committee. I do not want, at this time, to take the time of the members because I think the briefing is important. I do not want to take the time to explain the reasons why we have continued these briefing sessions as briefing sessions and closed them to the public. But it was my judgment, based on consultation with Mr. Hutchinson and counsel, and I thought that this was in the best interest of trying to conduct these proceedings in what I considered to be, up until now, a manner that shows that the committee is acting responsibly. And in the light of some of the events that have been occurring and that will occur, I thought that this briefing session was even more important to be closed.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I would rather, if we are going to talk on this, I would rather defer discussion until we have a meeting on this. I merely want to note this so that if I do schedule a meeting for Thursday sometime we will have a meeting and we will announce the subject of the meeting.

Mr. CONYERS. Well, Mr. Chairman, can I be put on record as being one of the members who specifically objected to this rule of using briefings to exclude the media?

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. The objection will be noted.

Mr. McClory.

Mr. MCCLORY. Mr. Chairman, I just want to ask this question. I think this would be important. The meeting or whatever kind of session we have on Thursday, is that to be open or closed? I would prefer that that be closed so that we would have an opportunity to make that kind of a decision independent of the media.

Mr. BROOKS. What kind of decision?

Mr. MCCLORY. The decision as to whether or not briefing sessions shall be open to the public or whether they shall continue as we have had them in the past.

The CHAIRMAN. Well, those hearings would be open, the meeting would have to be open in order to conduct the business of the committee, and then the committee could decide whether it would want to close it.

Let us proceed. First of all, a couple of announcements. Yesterday Mr. Doar advised me, and this was late in the day, of a letter received by him addressed to him from the White House over the signature of Mr. St. Clair, and it is a letter which we are hearing about and the press asked us late last night, and I did not announce the receipt of the letter. I do not think that there is too much substance to it, but I think it is worthy of note. It is dated March 4.

Dear Mr. DOAR:

I am sorry I was not available to receive your calls on Friday. I do have your letter of March 1. I will try to expedite a response to your request, but I do not believe it can be accomplished before Wednesday of this week. If you have problems regarding security clearances for your staff, I will be glad to assist you in any way that I can.

Sincerely yours,

JAMES D. ST. CLAIR.
Special Counsel to the President.

Also I would like to announce that on yesterday, and counsel will give you further details, a call was received by Mr. Doar and Mr. Jenner from the office of Judge Sirica inviting them to a proceeding or hearing which will take place tomorrow morning, and counsel will speak and address themselves to this. Based on what the committee may do between today and tomorrow, I think that tomorrow's court appearance, if the committee so decides, will probably give us an indication as to what we do beyond that. And I would hope that if we have a meeting on Thursday, first of all a public meeting to consider the question as to whether or not we hold any further briefing sessions, because while it seemed to me that these will become a part of what we have to do, that we may have another meeting on Friday, and I will announce that as soon as we find out what is going to take place between today and tomorrow.

Beyond that, Mr. Doar and Mr. Jenner both have status reports[1] which they will present to you, and without delaying you any more, Mr. Doar, you go ahead.

Mr. DOAR. Good morning, members of the committee.

The first matters that I would like to report on deal with the subject that Chairman Rodino has already mentioned. On February 21, we received from Mr. Jaworski a list of the recordings, documents, and other materials which he had received from the White House. On February 25, that is 1 week ago Monday, we requested late in the day from Mr. St. Clair certain recordings of Presidential conversations. As a matter of fact, all of the recordings of Presidential conversations that the special prosecutor had received, certain transcripts of Presidential conversations, as well as a number of other documents furnished to the special prosecutor, but not all of the documents which were received. We also asked Mr. St. Clair, requested a few additional documents that we had reviewed with Chairman Rodino and Congressman Hutchinson and which Mr. Jenner and I thought were necessary to our investigation. We made it clear to Mr. St. Clair that this was not a complete list, this was an initial request. In addition, we asked him for a list of the materials that Mr. Jaworski had submitted, had requested and had not received. And finally we renewed discussion with Mr. St. Clair about how White House files were indexed, and we asked him if he could outline for us just how the White House files, the Presidential papers, and the Presidential memorandums were filed, so that if we were to make a request for documents in any of those files we would not go on a broad sweeping search, but could identify particular files to which we could direct our inquiry.

The CHAIRMAN. Mr. Doar, will you please emphasize that that was not a request for an index of files but merely just a suggestion that you be advised as to how the files are kept.

Mr. DOAR. That is right. We did not request that there be a complete index of the files, but we did ask Mr. St. Clair generally, in fact, to give us an outline, if the White House files were indexed, and how they were indexed; if there was a logical method of indexing it was anticipated that we would then ask Mr. St. Clair if he would give us the index of certain of the files so we could see if there were particular files within the category that we might ask for. We did not hear from Mr. St. Clair, and so sent to Mr. St. Clair another letter on March 1, asking him, saying to him that we renewed our request for a list of materials that Mr. Jaworski had not received, because we feel that it would be very difficult to frame requests without having that information, if it is available. Mr. St. Clair had promised or agreed to reconsider his decision not to submit to us that list at the time he wrote Mr. Jaworski and told him he had no objection to Mr. Jaworski furnishing us with the list of materials which Mr. Jaworski had received.

As the chairman has related, I also told Mr. St. Clair that the committee was meeting on Tuesday, and that they would expect from us a full briefing on what requests and what response we had gotten from the White House. As the chairman has indicated, at about 1:30 yesterday afternoon, I received the letter that the chairman read from Mr. St. Clair advising me that he had my more recent letter, and that he would not be able to give us an answer to any of our requests until

[1] See "Appendix IV.—Work of the Impeachment Inquiry Staff as of March 1, 1974," in book III, "Impeachment Inquiry."

Wednesday of this week at the earliest. I believe that is what the letter said.

Late in the afternoon I received a call from the clerk of Judge Sirica or the law clerk of Judge Sirica saying that Judge Sirica had set a hearing or a proceeding in open court on Wednesday at 10 o'clock and that Judge Sirica had directed his law clerk to call me and to call Mr. Jenner and to invite us to be present at that hearing or proceeding, and to present whatever views we might have with respect to the appropriate disposition of the material, the sealed material which the grand jury handed to Judge Sirica on Friday when they returned their indictments. I told the law cleark that I would have no authority, had no authority to respond to their invitation, that I would report the telephone conversation immediately to the Chairman, and that I would report to the committee in the morning, and that until the committee had considered the matter that that was as far as I could go.

I then called Chairman Rodino, and Mr. Jenner and I arranged to meet with Mr. Hutchinson and Chairman Rodino last night, and we reported fully on this conversation to them. I know nothing more about the proceeding. All I know is I was advised that Mr. St. Clair initiated this by going to the courthouse, and this is secondhand, hearsay information, but that he initiated this by going to the courthouse yesterday afternoon at about 2 o'clock to Judge Sirica's chambers, and then shortly thereafter Mr. Ben-Veniste of the Special Prosecutor's Office appeared at Judge Sirica's office with several other of his associate counsel. Mr. Jaworski was out of town, and I did know that because I attempted to speak to him earlier in the morning on another subject. And that perhaps some short time later Mr. Wilson and another attorney who represents Mr. Haldeman and Mr. Ehrlichman appeared at Judge Sirica's chambers, and there was a closed conference among those lawyers for about an hour and a half. At the end of that hour and a half there was this brief announcement that you have undoubtedly read about in the paper that the Judge would hold or hear from interested counsel on Wednesday at 10 o'clock, and that invitation had been sent to all of the attorneys involved, which would be Mr. Jaworski, Mr. St. Clair, the attorneys for the defendants, and to Mr. Jenner and myself. And that is the extent of the information I have to report to the committee with respect to Mr. St. Clair's response to our request and, second of all, the conversation that I had with Judge Sirica's law clerk.

The CHAIRMAN. At this point, although we are not in a formal meeting, but in light of the invitation that was addressed to the counsel, and in light of the circumstances that occurred the last time when Mr. Doar proceeded to go before a judge on a matter of a stipulation, I think it would be well for the members to express themselves. And I would hope that in the light of the invitation, and the need to know, that we authorize Mr. Doar to go just so long as we do not submit him to the jurisdiction of the court.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I would like to point out that I am one of those people who wrote such a letter to Judge Waddy. I was very much disturbed

about counsel going to that court, subjecting this committee to any part of their jurisdiction. I feel the same way, even more strongly in this instance.

As I understand the chairman's view, and I have not discussed this with you previously, your proposal is that Doar go, but not subject this committee in any way to their jurisdiction. And I would point out that whatever is done in that courtroom should not in any way jeopardize the full congressional authority to secure those sealed documents that were turned over to Judge Sirica and other documents, tapes, material that they have. And counsel, I would hope, and I would make publicly clear, if necessary, my feelings that the Congress should not jeopardize in any way its complete authority to ask for, if necessary to subpena from Judge Sirica that material, the sealed document and other materials.

Mr. McCLORY. Mr. Chairman?

Mr. BROOKS. And I think it is unthinkable that this Congress would throw away its jurisdiction by going down there and having our lawyers or any lawyers represent the Congress in a proceeding as to what ought to be done with that material when I think the Constitution already makes clear that that material should rightfully be turned over to this committee for consideration.

Mr. McCLORY. Mr. Chairman?

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I want to concur with the views that are expressed, and it seems to me that the Judiciary really has no authority with respect to the jurisdiction which this committee and this House of Representatives is exercising now in this impeachment inquiry. And it is my feeling that the sole function of the court in this instance is to comply with what I understand to be the request of the grand jury itself, that the envelope or whatever it was that was delivered to the court, was delivered to the court for delivery to this committee. And Judge Sirica should be no more than a conduit to carry out the wishes of the grand jury.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. May I just ask counsel, both Mr. Doar and Mr. Jenner, what analysis they have made of the options available to us and, indeed, to the court with reference to these materials, and with due respect to the comments made by both my colleagues, with respect to what we might do, nonetheless, and do we have the option ultimately in some fashion to derive these materials from Judge Sirica notwithstanding his own feelings about the matter?

Mr. DOAR. Well, it is my judgment that we do have the right and the authority to obtain these materials from Judge Sirica.

However, I fully agree with what Congressman Brooks has said about not submitting to the jurisdiction of the court. However, it seems to me that it would be appropriate for counsel to go to the courtroom tomorrow morning, to make it exactly clear that we are not entering an appearance, we are not submitting to the jurisdiction of the court, but to recite the authority of the House under the resolution to make this inquiry, to express our professional opinion that those

documents are necessary for the inquiry, and to advise the court that the committee is prepared to receive them.

Mr. Brooks. Pardon me, including the sealed document that was turned over by the grand jury?

Mr. Doar. Yes. Certainly.

Mr. Brooks. We will be prepared to receive them now for the committee?

Mr. Doar. That is correct.

Mr. McClory. Mr. Chairman?

The Chairman. Mr. Jenner, do you concur with that?

Mr. Jenner. I share that view fully and especially, as I have already expressed, as I have said, Mr. Chairman, and ladies and gentlemen, heretofore it has long been my view that the House of Representatives and this committee as its arm in conducting an impeachment investigation has a very superior, overriding constitutional not only duty and responsibility, but it has by implication, strong implication all of the powers afforded under the Constitution to conduct a fully, firm, responsible investigation and to obtain these materials.

However, as this House has always been respectful to the judicial branch, as well as the executive branch, having been invited by Judge Sirica, whose communication was to Mr. Doar and to me, and recognizing that he was not asking the committee to appear, but he was asking us as counsel to appear, that in due respect to the judicial branch and to Judge Sirica, he having asked us to appear, and express our views with respect to the function of this committee in conducting the investigation, that we be permitted to do so, making clear, as has always been both Mr. Doar's and my position, and I understand that to be the position of all of the distinguished members of this committee, that the House is a coordinate but independent branch, and to make appropriate remarks of reservation without offending Judge Sirica, without exacerbating the efforts of this committee to receive these materials, and that we will confiine ourselves to remarks of that character and express to the Judge our opinions on presentments and the powers and discretion the court has to do this voluntarily.

Mr. McClory. Mr. Chairman?

Ms. Holtzman. Mr. Chairman?

Mr. McClory. Mr. Chairman, I omitted one thing that I intended to say. May I just complete one thing?

The Chairman. Well, Mr. Kastenmeier was addressing questions.

Mr. Kastenmeier. I only wanted to follow up by saying then, from what you stated there is no other practical option available to us other than that which you have recommended?

Mr. Jenner. I think we would offend the judge if we did not appear. And may I suggest that I personally would wish that you would consider that the House of Representatives, this committee, its counsel having been invited, that it would look—I do not know what the interpretation would be if we did not appear, at least in response.

Mr. Kastenmeier. Thank you very much.

Mr. Doar. Could I add to that, Congressman?

Mr. Kastenmeier. Yes.

Mr. Doar. I think it is also, from the standpoint of the public, that it is, it would be necessary under these circumstances and the way the

invitation was given that a statement be made with respect to the authority and power of a co-equal branch in terms of the way Congressman Brooks and Congressman McClory have stated it. And if we said nothing, did not go at all, that the position of the House would likely be misunderstood by the American public.

Mr. McClory. Mr. Chairman?

Mr. Hungate. Mr. Chairman?

The Chairman. Mr. McClory.

Mr. McClory. Mr. Chairman, I just wanted to conclude with one other thought that I inadvertently left out, and that is that it seems to me extremely important that in the receipt of this envelope that we adhere to the rule of confidentiality already adopted by this committee until such time as such materials be appropriately made public and that that rule of confidentiality should apply very rigidly.

Mr. Jenner. Could I say something, Mr. Chairman, on that remark and for the whole committee. As you will recall, you distinguished ladies and gentleman did adopt a confidential rule last week, and pursuant to your having adopted it we sent requests, as will be reported to you in the status report in a few moments, to various agencies for the receipt of what will be we anticipate sensitive documents. So that if this material is received through Judge Sirica tomorrow, it is Mr. Doar's intention and mine, if you grant us authority to appear, to say that the House committee has responsibility drafted and adopted these confidentiality rules, and if the materials are delivered to Mr. Doar and me they will be held strictly in accordance with those confidentiality rules.

Mr. Doar. I would add that I would not think there would be any question about that, that the material is under the rules, as all material that is received by subpena or otherwise, and this material would qualify just like any other material.

The Chairman. Mr. Hungate.

Mr. Hungate. Mr. Chairman, this is just a horseback instinct, and I would be guided, of course, by the views of counsel. This is a very serious matter, and I am sure they have given it considerable thought. Initially I would say amen to what Mr. Brooks has said and hallelujah to what Mr. McClory has said, and on the issue of jurisdiction I would ask counsel are there not jurisdictions in which it is possible to appear, make a special appearance to contest the jurisdiction, and in some jurisdictions the mere special appearance to contest the jurisdiction gives jurisdiction?

Mr. Doar. Well, I think there are places where you can make special appearances, and it may be though I am not familiar with whether or not that by doing that that confers jurisdiction. But it would seem to me that we would not even get that far with respect to designating ourselves as making an appearance. There is nothing untraditional about the House of Representatives writing to the Judiciary and requesting material.

Mr. Hungate. If counsel will pardon me, that is exactly the sort of suggestion I was going to have, that a letter perhaps from the committee or the chairman indicating appropriate concern and regard I think might be well in order and courteous. I am concerned that they do not get the idea that the jurisdiction is down there and not here.

I am concerned, and I am not an unmitigated fan of Judge Sirica. Early on in this investigation Joe Rauh, of whom I am not an unmitigated fan either, had some comments about some of the ways that these proceedings were conducted by Judge Sirica that may not have been totally fair to some of the defendants. When he retires and is asked to select a trial judge for this matter and selects himself, that is almost an unbecoming lack of modesty as far as I am concerned. So, I am very much concerned that no one get the impression that the jurisdiction is not here. And I suppose if necessary we could have Judge Sirica come here, and understand that the responsibility is in this committee, again having expressed my instincts I feel better now, but I would, of course, wish to do what counsel recommends, but I wanted them to know my feelings on it.

Thank you.

Mr. DOAR. Well, I would agree with Congressman Hungate that we should make that as clear as possible, and spell it out in a prepared statement that we were not appearing, that we were responding to an invitation by Judge Sirica to come to the courtroom, and we were there because of that reason.

Mr. HUNGATE. Is counsel then suggesting that be done by letter or in person or both or what?

Mr. DOAR. Well, I think because of the circumstances that it is probably necessary that it be done in person because——

Mr. HUNGATE. Could that be preceded by a letter that is made public?

The CHAIRMAN. I would advise against a letter since the committee should not become involved at all at this point.

Mr. JENNER. I would share that view, Mr. Chairman.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I would like to concur with what has been said about saving the jurisdictional question, and making sure we do not waive anything there. Under the practice with which I have been familiar, I think this would be a special appearance, but whether you call it a special appearance or any kind of appearance here I do not know, and I am completely willing to leave that to counsel. I do think that we would not be merely discourteous, but very foolish not to go down. I do not think we should give the court the idea that we have to ask him for these papers. On the other hand, if he was to give them to us. I think we should take them with out-stretched hands because obviously, this is material to our inquiry, and if the judge is in the frame of mind, without being formally asked to recognize our jurisdiction, I think we should cooperate with him.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Thank you. I would like to stress this portion of the discussion, that since these documents, sealed in an envelope, apparently intended for this committee by the grand jury are clearly relevant to our inquiry, then I do not see the purpose of this visit without making this request. And I urge the counsel, and I urge this committee to make a direct request and to have that matter resolved, hopefully leaving with the sealed envelope upon your meeting tomorrow.

Mr. DOAR. Well, Congressman——

Mr. CONYERS. Yes; I will yield to you.

Mr. DOAR [continuing]. Congressman, it would be my view, and I think Mr. Jenner's view that we would state that this committee is authorized by the House to conduct this inquiry, and that we are authorized to secure all information necessary to make a full and complete inquiry, and that from the basis of the information that we have that those materials are necessary for the inquiry, and we would request that they be delivered to us.

Mr. CONYERS. Surely.

Mr. DOAR. In a courteous way, and as counsel for the committee, just like when we request documents from other sources.

Mr. CONYERS. At another point at this briefing or during this briefing, or meeting, or whatever it is, Mr. Chairman, I would like to raise the question of any problems that might be posed with the issuance of a subpena running directly to the President for the materials that have been previously requested in two letters from Mr. St. Clair.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman. Mr. Jenner referred to the discretion which is available to Judge Sirica in this matter, and I wish that here Mr. Doar would explore what they think his discretion is in the circumstances. Judge Sirica has, after all, been extremely vigorous in his conduct of this matter, related matters up until now. These grand jury proceedings and the report are, without question, secret, and in his custody. And I would like to know what your view is as to just how much discretion he does have.

Mr. DOAR. Well, we have not had an opportunity to completely study this question. But it is my opinion, tentative opinion that Judge Sirica does not have discretion not to turn these materials over to us. First there is a presentment, and a presentment apparently which was intended to come to this committee. And the evidence in the suitcases relate to the presentment. And I do not believe that rules of the court bar the judge from doing this. It seems to me that the one possible consideration that might come to the judge's mind, and only because in ordinary circumstances this is the way this sort of thing comes up, is that there is a possibility that the rights of the defendants at that trial will be prejudiced unless the material was kept secret. And therefore the judge would have some discretion not to turn it over to the committee.

It is my opinion that sort of reasoning in this instance is misplaced because of the fact that there is a higher duty, a counterbalancing, a higher counterbalancing force, if you will, in the importance of this constitutional inquiry, and that under those circumstances the court should turn the materials over to the committee. And that if at a later time, depending upon the circumstances that cannot be foreseen, some materials become public, as probably inevitably they will, then the courts can deal with those particular questions when they are raised by particular defendants. And it is conceivable down the road sometime that a defendant might be able to argue that his right to a fair trial was prejudiced because of the turning over of these documents. But if that were to be the case, still, because of the extreme constitutional authority under which this committee is operating, and

the importance that there be public disclosure of these materials within the rules of responsibility of this committee, I would say that the material would have to be turned over.

Mr. MAYNE. Do you think he has any discretion to make any evaluation of the evidence to turn over what he considers hard evidence, but not do anything that was based on mere conjecture or rumor?

Mr. DOAR. No; I would not. In the first place, I do not think it would be appropriate for counsel to get into that kind of a discussion with the judge in this kind of a proceeding tomorrow, because it gets into the merits of the thing. I think that that issue, if it came up at all, would come up after this committee decided to request by subpena the material from Judge Sirica. But I do not believe he would have a right to sift the material and decide well, the committee should get this and not get that.

The CHAIRMAN. Mr. Waldie?

Mr. WALDIE. Mr. Chairman, I have two questions. I understood you to talk about evidence in suitcases. I thought we were talking about a white envelope.

Mr. DOAR. Well, there were two suitcases handed up to the judge in addition to the envelope. And as I understand the report, one of the attorneys for the Special Prosecutor said that the material in the suitcases related to the document in the envelope, and the keys to the suitcases were in the envelope, so that there are the three things that go together. They are part and parcel of the same package.

Mr. WALDIE. Then the final question. Partly your response to the last question answered it on the authority of Judge Sirica, but in that conference that took place yesterday afternoon, the results of which an invitation was extended apparently to interested attorneys, you or Mr. Jenner were not invited to that conference, I presume, and have you been briefed on what occurred at that conference? Do you have any idea what took place?

Mr. DOAR. No. We have not been briefed. We have not asked. No one has told us.

Mr. WALDIE. Do you have any idea what tomorrow will be about?

Mr. DOAR. No. I think Judge Sirica is going, if I understand what the clerk said, he is going to ask for views from the counsel as to what they believe should be done with the envelope and the suitcases.

Mr. WALDIE. Under the belief that he is not certain as to what discretion or authority he possesses?

Mr. DOAR. I have no indication that that is why he is doing that.

Mr. WALDIE. And just a final question. You and Mr. Jenner are certain as to what discretion and authority he possesses in that regard, are you not?

Mr. DOAR. I believe we are. I have not completely researched it, but I believe that under these circumstances——

Mr. WALDIE. You should have the keys and the suitcases?

Mr. DOAR. It should come to this committee.

Mr. JENNER. Mr. Doar and I spent several hours reviewing this last night, and also with Chairman Rodino and Mr. Hutchinson. And Mr. Doar is expressing our joint views on the matter.

Now, when I said discretion, Congressman Mayne, what I had in mind was first that Judge Sirica, in performing his judicial duty, must give consideration to the facts, to the rules adopted by this committee

last week, that the committee is acting responsibly, and it has in mind, as well as Judge Sirica, the possible prejudice of persons who are indicted. But he also will consider the overriding authority and obligation and responsibility of this committee in conducting an impeachment.

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Doar, I am somewhat confused as to what we are doing in this action. As I understand what they are doing here, the grand jury has made up a presentment which involves the President. Is this true?

Mr. DOAR. We do not know.

Mr. JENNER. We do not know.

Mr. SANDMAN. Well, the New York Times and the Washington Post have already printed great big articles about this, so somebody knows.

Now, if they have any evidence, and I am sure we should have it, is this what we are talking about? Are we talking about getting evidence that this committee should work with, or are we acquiescing to the form of what I consider a presentment without jurisdiction at all? The grand jury has no right to indict the President. Do they have any right to make a presentment against him?

Mr. DOAR. They have a right to make a presentment; yes.

Mr. SANDMAN. They have?

Mr. DOAR. They do.

Mr. JENNER. This is an old common law going way, way back for hundreds of years.

Mr. SANDMAN. Well, what I am afraid of doing here, I cannot see this committee subrogating its authority and being guided by presentment from these people when all they have heard is a case against the individual. I mean, we are not doing that, are we?

Mr. JENNER. No, we are not. We would receive the proof and examine it under the rules of confidentiality that you adopted last week, and ultimately we and you would reach our own judgments as to the thrust of and the inferences to be drawn from the documents.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Thank you. It is my understanding that the counsel for the various parties have been given an order to show cause or some sort of formal order by the judge to appear, but that you merely have an invitation or request; is that correct?

Mr. DOAR. I do not know if the other parties have been given any kind of a formal order to show cause. But we have just been, we are invited, and that is all.

Mr. SEIBERLING. But you are in a different position from the other counsel that will be there? You are not——

Mr. DOAR. We are in a different position.

Mr. SEIBERLING. You are not invited to argue an issue?

Mr. JENNER. The court has no jurisdiction over us or this committee, but he does have a jurisdiction over the defendants and their counsel.

Mr. SEIBERLING. But they have been directed to appear and argue what should be done with these documents. But you have merely been requested to attend and present whatever points you wish, is that the basic situation?

Mr. DOAR. Invited to attend.

Mr. SEIBERLING. Now, is this going to be a hearing on camera or in public session?

Mr. DOAR. My understanding is it is going to be open court.

Mr. SEIBERLING. I see. Well, that certainly makes it a little bit more formal.

Now, as I understand it, you are in essence going to confine yourselves to making clear to the judge what our rules of confidentiality are so that there will be no question about improper disclosure of grand jury evidence; and, second, that you believe that this committee has the authority in any event to obtain this material, or whatever the judge may decide to do, is that in essence it?

Mr. JENNER. That is correct.

Mr. DOAR. Well, I think I would add only that we would say that the committee was investigating and this material appeared to be necessary for the investigation and request it. So that the court would know that this committee wanted the material.

Mr. SEIBERLING. So in addition to stating the position of the committee you plan to say that the committee—are you going to make a request on the record that they be turned over then?

Mr. DOAR. Well, I did not anticipate making a request on behalf of the committee, but I was going to, as counsel, I was going to suggest that the request be made.

Mr. SEIBERLING. But in terms of what you tell Judge Sirica you are not going to make a request tomorrow on behalf of the committee that they be turned over?

Mr. DOAR. Well, the request would be in the same form as we make with respect to material from anybody.

Mr. SEIBERLING. In other words, an informal request?

Mr. DOAR. An informal request. It is not a demand, it is not an assertion of authority or power, and it is not——

Mr. SEIBERLING. It is the same as the request you made to other agencies of the Government?

Mr. JENNER. And we want to be very careful not to submit to the jurisdiction of the court.

Mr. SEIBERLING. That is the thing I think is a little ticklish here. If you make a request are you, in effect, are you going to make it clear that this is done without, in effect, making yourself a party to that proceeding?

Mr. JENNER. I think if we made a demand we would be in difficulty with respect to submission, but if we make, as counsel, a request, that we do preserve the position of this committee and the House of Representatives.

Mr. SEIBERLING. I yield.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Doar, it is not entirely clear to me. On the one hand you suggest that the judge has very little, if any, discretion in this matter from our point of view. But from the point of view of protecting the defendants' rights, he might have some discretion to impound, for example, that presentment until such time as the trials were had?

Mr. DOAR. What I meant was that if it were not for this committee, and were the judge to consider this, a presentment and grand jury ma-

terial under normal circumstances, under ordinary circumstances, there are some instances where the judge seals it for a time.

Mr. COHEN. Right. In effect impounds the report until such time as he releases it.

Mr. DOAR. Yes.

Mr. COHEN. Since he does have some discretion in this matter, is it your professional judgment that if there is an appeal, this order could be appealed by either the defendants or counsel for the President? Is that an appealable order on his part if he ordered it turned over to this committee, for example? And the reason I ask the question is if it is appealable, and we do get bogged down in some appeal situation, obviously you are going to have to come back for a recommendation to the committee about subpenaing the material, which raises the other query raised last week of have you got some guidelines for us as to how we go about enforcing our subpenas?

Mr. DOAR. Well, the appeal would not be by this committee, but the question about whether or not one of the defendants' attorneys, or whether Mr. St. Clair would have any right to appeal, or right to seek extraordinary relief in the court of appeals, I suppose that they would have an opportunity to apply for that. And I am just not certain of that. But in ordinary circumstances——

Mr. COHEN. But in that event, you would presumably recommend that we subpena the material?

Mr. DOAR. Well, I would not want to—I would want to think about what the circumstances were before making a recommendation.

Mr. COHEN. I still would like to have the recommendations as to how we enforce our subpenas sometime soon.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Doar, I am becoming somewhat uneasy about the committee getting involved in all of this for this reason, that obviously Mr. St. Clair is going to say that this testimony was developed in an adversary procedure, in the Judical Branch of Government, and I would assume that he would say we were not entitled to it because we have no right to intermingle with what a grand jury has done. Consequently, if we do, in fact, take it, and I assume that you are going to make, you are going to request that we receive it, I am looking down at the months and years ahead where we might be open to severe criticism, especially if some of these indictments, or most of them fail, and they do not result in convictions, that people could say, and I think properly, that we were overinfluenced by the attitude and by the recommendations of the grand jury. And I am wondering if you and cocounsel have thought of the possibility of actually relinquishing any claim to these and saying that we will develop our own testimony, in our own way, with the vast subpena power that we have?

Mr. DOAR. Well, I have considered that. But it seems to me that in view of the fact of the great public interest in this material, and the importance of an expeditious development of it, of all avenues of proof in this case, Father Drinan, that I do not believe that this committee would be subject to criticism for receiving this material from the grand jury under the rules that it has provided for itself in conducting this inquiry.

Mr. DRINAN. Well, on the assumption that the judge rules in favor of the impeachment inquiry here tomorrow, I feel pretty certain that Mr. St. Clair will appeal, and we will be involved in court litigation. And then the question will be, well, shall we go ahead with our own inquiries, and where are we? And I really think that it is a very difficult thing, but my own intuition is that our posture would be better if we would say, if the judge directs it to us without our request even, then I suppose that we could accept it under certain circumstances, but it seems to me we should be very careful of not opening ourselves to the suggestion that we have been influenced by what that grand jury concluded from a situation in which this was an adversary procedure, they were up to indict other individuals and they came to these conclusions.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. SEIBERLING. Is it practical to make a distinction between the evidence in the two suitcases and the presentment itself, and that we would confine our request to the evidence?

Mr. DOAR. No. I think that the evidence is part of the presentment and relates to the presentment. I could speculate on that, but I think the whole package would go together.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I would like to raise this question. Suppose that the issue before the judge tomorrow does not turn at all upon whether a matter should be turned over to this committee, but suppose rather that the issue should turn upon whether the presentment is at all valid. Perhaps it might be the contention of other counsel that the grand jury had no power to make a presentment, and maybe that is going to be the issue before that judge tomorrow, as to whether this thing is anything but a nullity. If he decides it is a nullity, why it is of no value at all. But do you not suppose they might argue that rather than argue about where it should go?

Mr. JENNER. Well, Mr. Hutchinson, if I may respond, sir, that is a possibility, but that would not be—I would not anticipate that we as counsel for this committee will undertake to voice any views as to that respect.

Mr. HUTCHINSON. I would not think we would, no.

Mr. JENNER. But we might voice views, if you please, with respect to the documents.

Mr. BROOKS. Would the gentleman yield?

Mr. HUTCHINSON. You mean the material in the suitcases?

Mr. JENNER. That is right, sir.

Mr. BROOKS. Would the gentleman yield?

Mr. HUTCHINSON. Yes, I yield.

Mr. BROOKS. Would it not be possible, on the other end of the spectrum, Mr. Jenner, for Mr. Jaworski to be arguing before the court with Judge Sirica that he ought to turn the presentment over to him, and that he himself, with the Special Prosecutor's authority, could possibly indict the President on the basis of that, and have that material turned over to him to take before that grand jury, or the reconvened grand jury, the continuation of it, and argue that as the other end of that same spectrum?

Mr. JENNER. Congressman Brooks, sir, if you do not mind my responding this way, I can imagine I suppose many difficulties and many arguments in this connection. It is my view, however, and I think Mr. Doar's, that it is going to come down to Judge Sirica determining the general law with respect to the presentments and the right of a judge to whom a presentment is made to make public disclosure, and that that will be the issue that is uppermost, and the sole issue uppermost in Judge Sirica's mind. And a returning of the presentment to the Special Prosecutor, who assisted the grand jury in preparing that presentment, would be sort of footless.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. I would like to get the opinion of counsel. Is it your opinion that this committee has a right to this envelope, and to the contents of this suitcase by way of a subpena?

Mr. DOAR. Yes, I believe it does.

Mr. JENNER. And I share that.

Mr. DONOHUE. And if that is so, what do you expect to accomplish by appearing down there tomorrow?

Mr. DOAR. Well, it seems to me that if the policy of this committee has been that if materials can be obtained without subpena, that they should be obtained that way, and if by going down there and making it known that the committee is interested in these materials that are turned over to us, then you obtain the materials without the subpena. That is all.

Mr. JENNER. And without a confrontation.

Mr. DONOHUE. Is it your intent to represent to the court that you are down there by way of an acceptance of the invitation of Judge Sirica?

Mr. DOAR. That is right.

Mr. DONOHUE. And that you are not down there to make any statements in behalf of this committee or that would be binding upon this committee?

Mr. DOAR. That is exactly right. That is exactly right.

The CHAIRMAN. Ms. Holtzman.

Mr. DONOHUE. And you are going to state it has been your personal opinion that this, that this should be done, and it is not the opinion or you are not reflecting the thinking of the members of the Judiciary Committee?

Mr. DOAR. That is correct.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I guess my question has to do with some confusion I have along the lines of Mr. Donohue's question with respect to the purpose of appearing there tomorrow to make our request for or to indicate our interest in the documents. I understand the point about being respectful to the court, but my question to you is if the committee intends in any event to request the documents, then why are we doing it in this form which has been determined by various other parties, with which we have no jurisdictional involvement at this point? Why have we not picked our forum and our time to make the request? I mean, would it not be proper, for example, to advise the judge today that the committee

intends to request these materials, and to make our formal request, not in the context of that judicial proceeding, but in terms of our own time and place?

Mr. DENNIS. Would the gentlewoman yield?

Ms. HOLTZMAN. Well, I would like, if I could, to get him to answer that.

Mr. DENNIS. Well, sure.

Ms. HOLTZMAN. I have waited a long time.

Mr. DOAR. Well, that is an alternative way of doing it. My only thought was that in view of the fact that the judge has set this hearing for tomorrow, and has invited counsel to come, that it would be appropriate for counsel to go down there and make our very limited presence known, and without in any way foreclosing this committee from acting in any way it wanted with respect to formally requesting the documents.

Ms. HOLTZMAN. But that was not really what I was driving at. I have no objection to our being respectful and appearing tomorrow if we simply say we are here to listen and to hear and represent the committee in a special manner. But I do not understand why we are making our request for documents in that judicial proceeding as opposed to making that request as we do in normal circumstances, by means of a letter or otherwise. And I think that we are in essence—while we may not be technically submitting to the jurisdiction of the court—we are in essence allowing the court itself to determine when we make our requests and how we make them.

Mr. CONYERS. Would the gentlewoman yield briefly?

Ms. HOLTZMAN. Well, Mr. Dennis asked.

Mr. DENNIS. I thank the gentlewoman for yielding. I just want to comment that when and if we get into subpena, in my opinion, we are going to get into litigation; and if the court is disposed to hand these over without any request from us, or any consent to jurisdiction or anything else, and we want to move this thing along, I think we would be kind of foolish to invite litigation.

Mr. CONYERS. Would the gentlewoman yield?

Ms. HOLTZMAN. I yield.

Mr. CONYERS. This colloquy has now confirmed my view that this committee ought to vote a simple authorization or request for the documents instead of waiting to find out what is going to happen at this invitation, and that at the appropriate time, Mr. Chairman, I am going to submit such a simple motion.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman, for yielding.

As I understand this meeting, it may not be the proper forum for motions. But if it is I might have one. But let me then make a suggestion, that rather than a motion, so that we have some precise instructions to counsel as to how they should deal with this matter, I am going to read something I just scratched out which I think serves the purpose of the committee and protects it adequately. And I beg your indulgence just for a second.

Without submitting to the jurisdiction of the court for any purpose, special counsel is authorized and directed to attend the meeting on March 6, 1974, in the

chambers of Judge Sirica in the city of Washington for the sole purpose of receiving, without conditions, from Judge Sirica, any material in his possession, custody, or control relevant to the impeachment inquiry of the President.

I want to underline the operative words, "receiving only," and "not agreeing to conditions." You are there to accept that which is tendered, but subject to no conditions. That would preclude the judge from giving the material to you upon your assurance in any way of what we would do with that material. But it cannot be argued, I think, successfully that we should not expedite the proceedings to the extent of walking downtown and receiving evidence which may bear upon our inquiry, and that we ought to instruct counsel accordingly.

Mr. BROOKS. Would the gentleman yield for a one-word amendment? Instead of "relevant," you should use the word "necessary" because otherwise the judge might find that he has to determine the relevance of each bit of information submitted to the committee.

Mr. WIGGINS. Well, the whole thing is predicated on an assumption. The assumption is this whole matter bears upon the President. I have no notion what he may have down there, and I take it that we only wish to take that information which deals with our inquiry, and not some extraneous data, if it is clearly revealed to be extraneous. And that is my only purpose.

The CHAIRMAN. Gentlemen, I would like to state, and I would hope that we would defer any effort to make motion because this is not a meeting. But I thought we would get a consensus, and I think that one thing we have got to be aware of is that none of us know what is in those briefcases and what is in that envelope. We have read in the newspapers, we have heard lots of conjecturing, and we can assume a great deal. Nor can any of us anticipate, except to try to conjecture again and speculate as to what arguments are going to be made.

We have two very able counsel who are going to have to anticipate what is going to take place. And I would think that based on the fact we have two professionals who have been thinking this out, and with no reflection on anyone else here, but knowing that they are going to be the ones if, indeed, they go to the court in compliance, not in compliance, but accepting an invitation extended by the court only to expedite this proceeding, it would seem to me that attempting to tie the hands of counsel at this time with any kind of language, or any kind of an effort to just make it impossible for them to do what is best in the interest of this committee, would be a most unwise act. And I would think if we waited until now, and we have the power of subpena, and I agree with the gentleman from Indiana, as soon as we start issuing subpenas we are going to find ourselves in court and in litigation, and so if we can receive this material without being bound, without submitting to the jurisdiction, and no one questions the authority of this committee to search and inquire into the subpenaed documents, it would appear to me that the best way to serve this committee is to rely on the counsel who have heard what we have had to say at this time, knowing that they are not to be bound, knowing that the committee is not to be bound, knowing that we are not to submit to their jurisdiction, and merely accepting this invitation which under all circumstances we could not possibly ignore if we wanted to, and indeed, do a serious job for this committee.

Mr. CONYERS. Mr. Chairman, I share the chairman's view, and I think that upon reflection motions would not be appropriate at this time. I would urge though the consideration of a stronger position after he returns, if he does not return with the documents, that would simply put this committee on record as officially requesting those materials if they do, indeed, relate to the work of this committee.

The CHAIRMAN. Well, I certainly support that and endorse that view wholeheartedly.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. May I ask counsel just one question? We are concerned about subjecting or submitting ourselves to jurisdiction of Sirica. How does St. Clair avoid that problem?

Mr. DOAR. How does he avoid submitting to the jurisdiction?

Mr. WALDIE. Yes, his client?

Mr. DOAR. Well, he may be submitting to the jurisdiction. He may be making some kind of a special appearance to avoid that. I cannot answer that question.

Mr. WALDIE. Well, it would seem to me that would be a quick one to find the answer to. He certainly is not going to submit the President to Sirica or to a grand jury, and if he can do it and be in chambers, and flit from hearing to hearing, I do not see why we cannot with less risk.

Mr. DOAR. Well, in the *Sirica* v. *Cox* case, or *Nixon* v. *Sirica*, the President made a special limited appearance just exactly for limited purposes, and the court permitted that.

Mr. WALDIE. Well, then, I would think we are giving undue concern about submitting ourselves to jurisdiction if Mr. St. Clair can avoid it, and then we certainly should be able to avoid it.

Mr. JENNER. And the court of appeals recognized that special, limited appearance in that case.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I would like to turn to a different subject. On page 20, the last sentence says, "Within the next 2 weeks, senior members of the staff will determine which matters should be pursued further." It seems to me that the decision as to which matters should be pursued further is the responsibility of the committee rather than the staff. And in that context, I note that a new item that I cannot recall ever having appeared in any of the outlines has appeared in what is before us today. And that relates to the dismantling of the Office of Economic Opportunity.

And then I note too that back in the résumé, employees who have been hired since February 5, there is one Theodore Robert Tetzlaff, John Brademas, former legislative assistant, whom I assume is working for our minority counsel because he is on leave from his law firm, who has also served as associate director of OEO and was fired from that position. Now, my question is, is there any connection, recognizing that impeachment inquiries make strange bedfellows, is there any connection between the fired associate director of OEO and the appearance in our material today that this is now a potential impeachable offense?

Mr. JENNER. Mr. Chairman, may I respond to that because Mr. Tetzlaff is an associate of mine in the practice of law in Chicago.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. In the interview with Mr. Hutchinson and you back I think January 7 or 4, somewhere along those lines, I requested the opportunity to have an associate of mine from my own law office here to help me in my contacts back and forth, trying to keep what little I am able to do back in Chicago rolling. And also a gentleman from my staff in Chicago who is familiar, if I may use the expression, with the Hill and the operations on the Hill. And I selected Mr. Tetzlaff. His coming aboard had nothing to do with his previous history in Washington, D.C., and he was retained or brought aboard our staff in Chicago because he is an exceptionally able young lawyer.

Mr. HOGAN. But my question was did his involvement in the staff have anything to do with the appearance of this new potential impeachable offense?

Mr. JENNER. Oh, no, nothing at all. He had played no part in it and, as a matter of fact, is not even knowledgeable or knew that it was appearing on this list.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Doar, how do you know it was Judge Sirica's clerk who called you?

Mr. DOAR. He identified himself as such. That is all.

Mr. EDWARDS. Well, that happened to Senator Ervin, and it is very embarrassing because it turned out to be somebody else, a hoax. Do you have machinery to protect yourself from a hoax?

Mr. DOAR. We had not thought of that. We should have that.

The CHAIRMAN. Mr. Thornton.

Mr. JENNER. It was subsequently confirmed, sir. May I?

The CHAIRMAN. Go ahead, Mr. Jenner. I'm sorry.

Mr. JENNER. By other sources that Mr. Christofferson—it was Mr. Christofferson who called Mr. Doar and he called me.

Mr. EDWARDS. Thank you.

Mr. THORNTON. Thank you, Mr. Chairman. Mr. Wiggins raised in his point the matter which I was concerned about which was the possibility that the Judge might in some charge contemporaneous with handing or attempting to hand over the documents express reservations about their use or confidentiality. And I am sure counsel will be prepared to take whatever steps any such remarks might require.

Mr. DOAR. Yes, sir.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Might I ask how many days has the letter request to Mr. St. Clair for what I understood to be a reasonably few amount of materials been outstanding?

Mr. DOAR. Today is the 8th day.

Mr. CONYERS. This is the 8th day?

Mr. DOAR. Today is the 8th day.

Mr. CONYERS. Is it in order, Mr. Chairman, to consider whether or not this committee should or should not issue a subpena in pursuant to the recovery of these documents? This is, I believe, our very first initial request of anything. We have waited 8 days, which apparently has been more than long enough, and without being impatient I would like to undertake a discussion of this subject.

The CHAIRMAN. I think the gentleman is perfectly right in pursuing that. However, we have the letter stating that he does not believe it can be accomplished before Wednesday of this week which is tomorrow. I think, however, that should be a first order of business, and it was for this reason that I announced that we would contemplate a meeting even Friday of this week, based on what developments there are, and consider the question of subpena.

Mr. CONYERS. I thank the chairman for that expression. I think it is entirely presumptuous on the part of Mr. St. Clair to wait this long to have given a request and force this committee to send two letters under such really rather simple circumstances.

Mr. SEIBERLING. Mr. Chairman?

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman.

A couple of points were raised by the gentleman from New Jersey, Mr. Sandman, and the gentleman from Massachusetts, Mr. Drinan. And I do not think that we ought to pass over them lightly. And I do not believe that we ought to be concerned with what is in that sealed envelope. We ought to be concerned with what is in those suitcases. And I do not believe that it will do justice to the objectivity of this investigation if we just take that envelope, because the papers are going to write it up that we have gotten what 23 individuals on that grand jury thought we should have, rather than the evidence. And I do not think we ought to get out on that foot. So I think that we ought to seriously consider, Mr. Chairman, the points that have been raised by these gentleman before they go down there.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. In line with the observation made by Mr. Latta, we have two things here. We have a presentment of a grand jury. What is in it none of us know. And we have apparently some alleged information. Some of it may be evidential, some of it may not be. Grand jury proceedings are ex parte. Even an indictment is not procured on hard evidence, because we all know that there is not the right of cross-examination. Now, we have a presentment which is a conclusion, and it may be a proper conclusion. It is a conclusion of another body. This body, this committee is not interested in conclusions. We will form our own conclusions on evidence, and certainly I think it is proper for this committee, through counsel, to procure all of the evidence we can get, and procure those suitcases. So, should not the thrust, and my question is this, should not the thrust of the appearance tomorrow be we want what is alleged to be, and I say alleged to be evidential? We want what is in those suitcases. Should that not be the thrust, because we do not have to have the presentment, and by getting the presentment, if it becomes public, as you have mentioned, Mr. Doar, the rights of defendants may be prejudiced, and those who perhaps should be convicted will never be convicted.

Mr. DOAR. Well, I agree with that. Essential material is the materials in the suitcases, the evidence.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I just wanted to follow up with that question I had asked you before, Mr. Doar. Do you intend, therefore, tomorrow to make a request for the materials, or are you simply going to stand and wait to receive them?

Mr. DOAR. Well, I would say that we would be prepared to receive them, and if the judge would say are you requesting them, I would say, as counsel for the committee, yes, we are requesting them.

Ms. HOLTZMAN. OK.

Mr. DOAR. Respectfully.

Ms. HOLTZMAN. Mr. Chairman, would it be in order to go to another matter in this presentation that was made to us?

The CHAIRMAN. If there is no further discussion on that.

Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I just wanted to make a couple of observations. One is that Jefferson's Manual specifically provides in it in the annotations to it that receiving charges from a grand jury is one way that an impeachment can be set in motion in the House of Representatives. It is specifically listed as one course that can provide to the House materials pertinent to carrying forth with an impeachment investigation, which I think is an effort to respond to the motion that somehow we should shut out or not receive from the grand jury material that may, in fact, be available to us from them. And as I understand it, your position tomorrow with respect to jurisdiction is simply to assert that the powers of this committee are, proceeding under the resolution that the House has adopted. And that it seems clear to you, as it does to me, what conclusion should follow from that once the status of what our authority is is made clear. I do not know that it is required that we go beyond that. If the natural conclusion does not follow from that, then I guess this committee will subsequently have to consider other means for obtaining the material.

Mr. JENNER. That is right.

Mr. DOAR. I agree.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. The report that you have submitted deals with an important issue for the chairman and every member of this committee over the past couple of months, and that is when we will complete our work. And you state, and I think some of us had assumed that on or about March 1 we would be able to predict whether we could adhere to the April 30, suggested date, but you state in your report, and I quote, "It is not yet possible to predict a date when this inquiry will be completed." In connection with that, and while I think many people have been patient with us, patience will, after a while I suppose flag, and we will be again confronted with the time element. What factors need to be ascertained before we can determine on or about what date we may complete this inquiry? Is it the accumulation of all relevant evidence that is outstanding, or what factors, or when may we be able to determine?

Mr. DOAR. It is the accumulation of the necessary and relevant evidence and the analysis of that evidence. And with the requests outstanding to the White House, with this situation with respect to the grand jury's report, and the documents, and we not knowing what that information is, and we not having yet had any replies, or only a few

replies from the executive departments, I just thought that it was proper for me to say to the committee forthrightly and directly that although I thought by the first of March I could say when the investigation could be completed, I just cannot do it.

Mr. KASTENMEIER. Well, let us say if we have the material that Judge Sirica has in his control, and if the requests that we made of the White House are, in fact, fulfilled in terms of evidence, and that which Mr. Jaworski might still have, will we then be able to make a determination when we can complete this inquiry in advance of such completion?

Mr. DOAR. Yes. I think we can do that. I think we can do that.

The CHAIRMAN. Now, the status report is not subject to the confidentiality rule. It is something that is in the hands of each of you, and it is intended to be distributed to the press as well.

May I say before recognizing Mr. Mezvinsky that I think there are two things before we go further, before Mr. Doar proceeds further. One, the question as to what developments may ensue tomorrow will necessitate undoubtedly, if we receive material, and the material is examined, necessitate a meeting immediately following that, possibly on Thursday, no later than Friday, at least. I would like to know from the committee, in the light of the fact that we have the 24-hour rule regarding meetings, that I think we would be in a pretty difficult position unless we were to waive the 24-hour rule and have such a meeting, conduct such a meeting, and knowing that we are confronted with a problem of whether or not we continue this kind of a discussion following it, whether it is——

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. HUNGATE. Might I suggest that if there is some uncertainty as to the need to meet either Thursday or Friday or Thursday and Friday, that the Chair might at this time give notice of meeting on both days with the understanding that if the business were concluded on Thursday, Friday's meeting would be canceled?

The CHAIRMAN. Well, the question is beyond that. If we are going to have a meeting, then you know a meeting is an open meeting, and it is a public meeting, and the question is whether or not at that time you would want to consider, based on the information we get, whether you would want to go into closed session. So, nonetheless I just want to advise you that that would be a public meeting, if it is the consensus of these members not to have this kind of a briefing session. Now, I have noted objection before, and I wonder whether or not the members might not want to at least let this be known, let the views be known. Do you want to have a session of this sort or do you want to have a meeting?

Mr. CONYERS. Well, Mr. Chairman, may I be heard?

The CHAIRMAN. Yes.

Mr. CONYERS. I have gone on record more than once about this. Now, maybe something happened in this meeting that your constituents should not have known about. There was not one thing that occurred in this meeting that to me justifies denominating this briefing session, and I am very much in disagreement with this attempt where there is no clear method, material, Mr. Chairman, which is defaming or has some reason to raise these meetings to an executive level. So I am not

arguing for complete open meetings. I am just saying that there should be some justification that has not been presented at this briefing. Now, I do not know what is in the sealed envelope or in the briefcase. But unless there is some clear, overriding reason, I think the American people are going to begin to draw some very unfair conclusions about the method in which this committee operates.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman. I want to raise a question that I hope can be answered so we can clear the air. There have been several press accounts concerning Mr. Garrison's distributing a separate brief. Could I have an answer to that question, and could we find out whether or not——

The CHAIRMAN. Excuse me; I did not hear.

Mr. MEZVINSKY. The question is that there have been several press accounts, one appearing yesterday concerning a separate memorandum that was submitted, and it was alleged to have been submitted by Mr. Garrison to certain members of this committee, as well as an accompaniment of a New York Times article. And I would just like to get from counsel whether or not that was distributed and, if so, so do they care to comment?

Mr. HUTCHINSON. Mr. Chairman, will the gentleman yield?

Mr. MEZVINSKY. Yes.

Mr. HUTCHINSON. Mr. Chairman, there was a supplemental memorandum which was prepared at the request of several minority members, and it was distributed to the minority members, and it is available for distribution to any member of the committee who desires to have it. This memorandum was prepared because several members of the minority, upon being apprised of the thrust of the staff memorandum on impeachable powers, knew that there was other law justifying other viewpoints, and we wanted to know what that law was. Now, the minority instructed Mr. Jenner and Mr. Garrison in a meeting that the minority held—these gentlemen were instructed to prepare that memorandum, and such a memorandum was prepared and distributed.

The minority asserts the right to such services. It believes the majority should have that right, too, if it wants it. But in all of our committee work, the regular committee staff has always been available to the minority to provide the minority viewpoints, and we expect that same kind of service in this impeachment inquiry. And I do not think that this is going to happen very often, but I had indicated to the Chairman last night that I could foresee another instance, not very far in the future, where the minority might again ask for some additional viewpoints.

Mr. RANGEL. Would the gentleman yield, please?

Mr. HUTCHINSON. Well, the floor is held by Mr. Mezvinsky.

Mr. MEZVINSKY. Yes, Mr. Rangel, I will be glad to yield to you.

Mr. RANGEL. I just want a clarification, because I do not know whether it was consistent. You said that the additional views requested by the minority could be shared with the other members of the committee?

Mr. HUTCHINSON. Certainly. Upon request.

Mr. RANGEL. Would there be additional information besides prepared legal postures that have been requested by minority?

Mr. HUTCHINSON. That is all that was requested, was legal postures.

Mr. RANGEL. Were newspaper articles circulated with the legal brief?

Mr. MEZVINSKY. Right. Were there?

Mr. HUTCHINSON. I do not know anything about any newspaper articles circulated with the brief. I did not see any.

Mr. RANGEL. Well, then, perhaps you can direct your question to counsel.

Mr. MEZVINSKY. Well, I do not know. Can counsel answer that, whether or not, in fact, at least alleged articles said that not only was there a memo but there was an article submitted with that. Could they answer that question so that we can at least clear the air concerning any press accounts that have been made regarding that minority memo?

Mr. MCCLORY. Will the gentleman yield on that?

Mr. MEZVINSKY. Well, yes. I wanted to get——

Mr. MCCLORY. If you will yield to me on that, I would say that in my own behalf I get all of the newspaper articles that the staff gets, and I suppose they give them to anybody that requests them relevant to the inquiry, the articles that they collect for their files which are also available to members of the committee.

Mr. DENNIS. Would the gentleman yield?

Mr. MEZVINSKY. Yes.

Mr. DENNIS. I would like to add that in this article there seems to be a suggestion there was something secretive about this brief. As Mr. Hutchinson says, that obviously and absolutely was not so. There are two sides to the very important question which has been discussed here a lot about whether you need a criminal offense or not, and if so to what extent. And a number of the members of the minority wanted the law on both sides of it. Now, I think everybody should have that brief if they want it, and I do not see any reason way it should not be made public, just like the other brief was. I would be in favor of that, personally. But certainly it was discussed with Mr. Jenner, and Mr. Garrison and all of those concerned on the minority side.

So as far as any newspaper articles are concerned, they seem to have no importance to me. Frankly, I have had so many briefs to read that I have not gotten around to reading them yet, but they were in the press in any case.

Mr. MEZVINSKY. Well, Mr. Garrison?

Mr. MAYNE. Would the gentleman yield to me?

Mr. MEZVINSKY. I would like to raise the question first, if I may, so we can get it answered. Mr. Garrison, it is alleged that the memo was given with an article from the New York Times, and your name was mentioned. I would like to at least get the record straight as to whether it was submitted and, if so, would you care to comment?

Mr. MAYNE. Will my colleague from Iowa yield at this point?

Mr. MEZVINSKY. Yes.

Mr. MAYNE. I would just like to suggest to my colleague that if this committee gets involved in a discussion of newspaper columns involving any aspect of this, we are going to be interminably bogged down in conducting this hearing according to the timetable and format that the columnists select. And I have not been here much longer than my colleague from Iowa, but I have been here long enough to find that there

are people in and out of the press who dearly love to stir up trouble in this committee, and to keep us constantly bogged down in that kind of back-fighting. And I would hope that we would tend to business rather than be distracted by speculations of newspaper columnists.

Mr. DENNIS. Would the gentleman yield again?

Mr. FLOWERS. Will the gentleman yield?

Mr. MEZVINSKY. Mr. Flowers. I am trying to get an answer from counsel.

Mr. FLOWERS. I just want to join with you. When I came in here I did not even know what you were talking about, but my curiosity has arisen now and I have got to know.

Mr. DENNIS. Would the gentleman yield?

Mr. BROOKS. Order.

Mr. MEZVINSKY. Can we get the counsel to answer the question, Mr. Chairman? I have asked the question now for three times, and I would like, respecting my colleague, I would like to get the answer from Mr. Garrison or counsel.

Mr. GARRISON. Congressman, I will be happy to answer the question. At the time that the memorandum that has been referred to was distributed to the minority members, attached to the memo were three additional documents. One was a reprint of an article in the New York Times Magazine concerning Mr. Jenner which had been circulated among the staff of the impeachment inquiry on the previous day, as a part of the central clipping service which is provided, and which I understand members of the committee are entitled to subscribe to. I know at least one member, Mr. McClory, was put on the mailing list at his request.

Mr. HUNGATE. I am, too.

Mr. GARRISON. And the article in question was the first and only article relating to a member of the minority staff which had appeared in a periodical not widely read in this area such as the Post, or the Times, or the Journal.

There also was a copy of a memorandum which Mr. Doar and Mr. Jenner had permitted me to distribute to the impeachment inquiry staff, internally, responding to the Jack Anderson column of a week ago.

And third there was a memorandum requesting any of the minority members who had available parking spaces to provide the impeachment inquiry staff members to so advise me. All of those were put in the same envelope.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. May I state something? We have to get on with this. I would just like to make a comment regarding this question, and then hopefully we can pass on.

I discussed this with Mr. Hutchinson last night, because it has been my view all along that the staff, which is an integrated staff, regardless of the fact that it has been selected by both majority and minority, is working toward a common objective, and that is to supply this committee with its legal expertise and with information that it collects, evidentiary material, and that it becomes the property of this committee. I did not anticipate, and I talked to Mr. Hutchinson who, of course, does not entirely agree with my position, that any request that

is made of the committee staff is made for the purpose of furnishing the committee as such, and not the minority members or the majority members with views that are advocate views. I stated initially, and I am going to adhere to this, I have the power to hire and to fire. I stated that not one of the staff was to ever advocate a position one way or the other.

There was never any instructions to the staff to do anything other than to compile a memorandum or a brief with background material. Unfortunately, some of us have drawn the inference that there have been conclusions as to what is an impeachable offense, and this is valid. But, nonetheless, it was a committee staff operation, and there was at no time a request that it be for a certain restricted view, or that it be for a broad view. And I think that frankly, in my judgment, this does somehow or other stigmatize the operation of the staff. I believe that any member is entitled to request at any time when there is a question of judgement that is finally going to be made whether or not he is going to be assisted in writing with maybe several views. But I think to suggest that the staff proceed with the writing of a strict position is something that I think frankly does not do credit to the committee.

Mr. HOGAN. Would the gentleman yield?

Mr. DENNIS. Mr. Chairman?

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. I yield to the gentleman.

Mr. HUTCHINSON. Mr. Chairman, I simply want to reiterate at this time, as I told you last night, that I anticipate that from time to time the minority members of this committee will request of the staff, and understandably it will be from the minority members of the staff, some additional material. And we assert that that is our right to have. We have always enjoyed that right on this committee, and in its regular performance, and we insist that we have the same thing with regard to this project. I made that clear to you last night, Mr. Chairman, and you and I do not see eye to eye on it. But I simply want the members to know that the members of the minority may from time to time make such requests. We will make them respectfully, and we expect them to be carried out.

Mr. HOGAN. Will the gentleman yield?

Mr. HUTCHINSON. Yes, I yield.

Mr. HOGAN. With all due respect to the chairman's comments, it was my feeling, after having done significant reading on the whole matter of impeachment, that the staff memorandum on impeachable offenses was not only slanted, it was very sketchy and did, in fact, draw conclusions. For example, at one place it says "The point is sometimes made that a distinction should be made between impeachment of a President and impeachment of a judge. Such is not the case." This is ignoring totally and completely that the Constitution itself distinguishes between these two things, because it has the Chief Justice of the United States presiding in the case of a President, but not in the case of a judge. And if we are going to be relying on a biased selection of what precedents are in impeachment, then we are not going to have the element of fairness which this very serious constitutional responsibility we have warrants.

Mr. Dennis. Mr. Chairman?

Mr. McClory. Mr. Chairman?

The Chairman. Mr. McClory.

Mr. McClory. Thank you. I want to agree that we do not, we certainly do not want to convert our staff or I hope our committee will not choose up sides and that we will have an advocacy or an adversary proceeding, and that we can continue with the integrated staff, and that we can continue to work in a bipartisan manner.

But let me state this quite frankly, that I think it is important that the minority, as Mr. Hutchinson has indicated, that we receive information, reports, or memorandums, whatever may be essential to us in order to maintain a party position, or an independent or an individual position.

Mr. Hungate. Mr. Chairman?

Mr. McClory. With respect to any aspect of the impeachment inquiry, and I have in mind an inquiry that I want to direct right now with respect to the authority to make a presentment which involves the President of the United States, and Mr. Jenner has commented about that. But I think I would like to know what the legal authority is for that for my own information. And I would think that would be an appropriate request to direct to the staff.

The Chairman. I have no quarrel with that.

Mr. Hungate. Mr. Chairman?

The Chairman. Mr. Hungate.

Mr. Hungate. The point is made that in other work of the committee there are minority reports. I would say though that in those cases I believe they are not distributed only to one side, they would be distributed to both sides. I think that would be, I would hope those occasions would not arise very often, but if they did I would hope that they would be committeewide.

Mr. Hutchinson. May I just, if the gentleman will just yield for a comment there?

Mr. Hungate. Yes.

Mr. Hutchinson. There never was any intention, no intention at all to make any material available only to the minority. Any member of the majority is entitled to anything that is prepared at our request. I want to make that clear.

Mr. Hungate. I thank the gentleman.

Mr. Chairman, I think I have the floor. Mr. Chairman, I want the floor.

The Chairman. You have the floor.

Mr. Hungate. For my next number, I want to thank the gentleman from Michigan for clarifying this situation, and I would hope that the staff, when they make either—I want to see reports that are unified. That is the best thing that has been done here. But if we should have either majority or minority separate research, I would hope at the same time it would be made available to all of the committee. That means if I request that they look up something, when they gave that report to the majority people it would at the same time go to the minority and vice versa. And I think Mr. Hutchinson, if I understood him correctly, he says that that is the intent that it be made available.

Now, I have a couple of points. The newspapers, I get the newspaper clippings and I find them very useful, and it is worse than the Congressional Record. They are a big volume, but I would recommend anybody that wants to follow this further to get them.

I yield for a unanimous-consent request.

Mr. CONYERS. I would just like to make a unanimous-consent request that all members of this committee be put on the mailing list for the newspaper reports, Mr. Chairman.

The CHAIRMAN. Without objection. Is that feasible?

Mr. DOAR. Yes.

The CHAIRMAN. Without objection.

Mr. HUNGATE. Let me complete here. I have made that staff tour, and I think others have over at the hotel. I recommend that to you very strongly, that you go over there and see these people and see what they are doing. And I was a little shocked, and the way, of course, the papers write things up is not necessarily how they happen. But I just went over there, and I could not tell the Democrats from the Republicans, and I did not see a great deal of hassling going on over there. They work like a law office, it looked to me like, and I would urge that you go over there and see what they are doing.

Now, on the issue of impeachment, I do hope we will operate in as unified a way as possible. This is created to protect the Congress and the people as vis-a-vis the Presidency, and political parties were not foreseen at that time. And I hope we will act in a unified way whatever we do.

The CHAIRMAN. May I announce that there will be a meeting on Thursday at 10 o'clock and at Friday at 10 o'clock. In the event that there is no need, the members will be notified.

Mr. OWENS. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I just want to say that I think whenever the staff prepares a report which draws conclusions, I think that in that case, and that is really what happened as far as our legal memo, I think others members ought to have a right to request additional views, and those views should be made available to everybody. But, I think, I disagree with some of the real conclusions that were contained in the staff legal memo.

The CHAIRMAN. I have no quarrel except to state that the chairman was completely unaware that there was such a request that was made. The chairman was completely unaware that the staff was working on anything that had to do with the position that was being advocated other than the position that I know the committee had instructed the staff to come up with, and that would have been a memorandum for the committee.

Mr. SEIBERLING. Mr. Chairman?

Mr. HUTCHINSON. The staff was aware of that, Mr. Chairman.

Mr. OWENS. Mr. Chairman? May I have 30 seconds before we adjourn? As the chairman knows, I have submitted a resolution, introduced a resolution to amend the House rules to permit the electronic coverage of the meetings as well as hearings. I just wanted to ask if the chairman had reconsidered his ruling on that, or if tomorrow we are

going to go through that process again and if we are, I just wanted to put the members on notice of that.

The CHAIRMAN. I would like to advise the member that the Chair is going to be compelled to adhere to the rules of the House.

Mr. SEIBERLING. Was Mr. Doar aware of the request for the minority memorandum?

Mr. DOAR. Yes; I was.

The CHAIRMAN. And the committee is now adjourned.

[Whereupon, at 12:27 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Briefing by Staff

THURSDAY, MARCH 7, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:20 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman), presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

In accordance with the agenda which was distributed yesterday and the announcement that certain matters pertaining to the impeachment inquiry will be discussed today, I think the first order of business in accordance with that agenda would be a report from Mr. Doar and Mr. Jenner, concerning the events of yesterday and their appearance at the court before Judge Sirica, in accordance with the instructions that we handed to counsel.

Mr. DOAR. Good morning, members of the committee:

In accordance with the committee's instructions, Mr. Jenner and I went to the courthouse, Federal district courthouse yesterday to be present at a proceeding before Judge Sirica involving the six indictments that have been handed down by the grand jury last Friday. The issue before the court was what should be done with certain material that had been handed to Judge Sirica by the grand jury at the time that the indictments were returned. Because of objections by defense counsel, no one was permitted to examine any of these documents except Mr. St. Clair who was permitted to read a two-page report that the grand jury had delivered to the court.

It is our best information from what we heard in court that this material consisted of a 2-page report, a 50-page report and a suitcase containing materials that were formerly in the possession of the grand jury and are now in the possession of Judge Sirica. It was also our clear conclusion, in fact obvious conclusion, that the grand jury intended this material to be sent to the House Judiciary Committee.

I remind the members that Judge Sirica called and asked us to be present at this hearing. I think that we would have been clear on that had the two-page document which had been handed to the court then been made available, but because of objection by counsel for the defendants, Judge Sirica had placed that material under seal. At the meeting, at the hearing, after formally advising the court that we had come there at his invitation, that we were not authorized to make an appearance or submit to the jurisdiction of the court, but we were authorized to tell the court of this proceeding in the House of Representatives, this impeachment proceeding, to give him the background of that proceeding and to formally, as counsel for the committee, request that this information be turned over to this committee for its inquiry.

In our presentation to Judge Sirica, we made the very simple point that this impeachment proceeding was of the highest constitutional importance. Second, that this material was material which the grand jury believed was important to this committee, the grand jury being a duly constituted body, having studied this matter for over 20 months, that it was important and necessary for this committee in meeting its responsibilities, its constitutional responsibilities that this best available material be made available to this committee for its study in this inquiry. And it is my opinion, an opinion which Mr. Jenner shares, that it would really be unthinkable if this committee in an impeachment inquiry was called upon to proceed to its deliberations in this matter, without having that material to take into account, along with any other material that we have in this matter.

And I think to make that explicitly clear, and to leave no doubt in anyone's mind, I would respectfully recommend, and I believe that I can state that Mr. Jenner shares in this, that the committee today promptly, formally, authorize Chairman Rodino to write a letter to Judge Sirica in accordance with the standard practice of this committee, when they request documents or information from the Judiciary, requesting this information be forthwith delivered, this important information that the grand jury felt should, or we believe the grand jury felt should be delivered to this committee for its consideration in its impeachment inquiry.

The CHAIRMAN. Mr. Jenner, do you share in that?

Mr. JENNER. Thank you, Mr. Chairman.

I do share that and urge, with Mr. Doar, the favorable consideration of the committee of that proposal.

When we finished our arguments yesterday, Judge Sirica said he would take the matter under advisement. Both Mr. Doar and I emphasized the need for prompt action, and that the whole country was looking to this committee in the performance of its grand constitutional duty and was acting responsibly, and he had suggested, well, he asked Mr. Doar a question during the course of the argument.

Has your committee considered the possibility of adjourning the impeachment inquiry you are conducting until September 9, when the trial of the case before him was set for trial? And as soon as a jury was picked, then this committee reconvened.

We responded somewhat in horror at that suggestion, and it seems to me that had this committee, as a representative and independent coordinate branch, should through its chairman, formally, pursuant to your own procedure, request Judge Sirica to release the documents to this committee forthwith and not wait, I would suggest, for his preparing a long and complicated and learned opinion on the subject.

Mr. WIGGINS. Mr. Chairman, may I ask the gentleman a question?

The CHAIRMAN. Before I recognize the gentleman from California, might I inquire of counsel whether or not they have considered whether such a letter would in any way submit us to the jurisdiction of the court?

Mr. DOAR. In my opinion, it would not.

Mr. JENNER. I share that, Mr. Chairman.

The CHAIRMAN. The gentleman from California.

Mr. WIGGINS. Thank you.

Counsel, do you have reason to believe that the Judge has in his custody evidence other than that which was produced originally by the White House?

Mr. DOAR. I could speculate that there may be additional things in the briefcase, but that would only be a speculation.

Mr. WIGGINS. Have you asked Mr. Jaworski that question directly?

Mr. DOAR. No, we have not. But, I will say that at the hearing yesterday, Mr. St. Clair, on behalf of the President, took no position one way or the other with respect to whether or not this material should be turned over to this committee.

Mr. WIGGINS. I just would observe, Mr. Chairman, that we ought not to get all exercised about an idle act if, in fact, the only information in Judge Sirica's custody is that which the White House is going to turn over to us anyway. It may be that this is, in fact, an idle act, and if it is possible for counsel to determine with precision whether there is supplemental information there, it perhaps would guide this committee accordingly.

Mr. DOAR. Congressman Wiggins, I have been reminded by my associates that in Mr. Lacovara's argument—Mr. Lacovara is one of Mr. Jaworski's counsel—and he made an argument on behalf of the Government, and in the Government's argument it urged Judge Sirica to turn this material over to the grand jury, he stated that there was additional material in the suitcase.

Mr. WIGGINS. Well, that answers the question then.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to say that I believe that it really is unthinkable that this committee would attempt to evaluate the President's involvement or impeachment without all of the available data. And I think that the judge, without any further delay, ought to be turning this material over to the proper constitutional authority for the solution and resolution of this impeachment process. And I would say that I would hope to move that the committee instruct the chairman and authorize the chairman to forthwith direct a letter to Judge Sirica to request the 2-page document, the 50-page document, the

briefcase of documents, and any other material or documents which the Watergate grand jury proposed be sent and directed to the Judiciary Committee.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I want to concur with the expression of my colleague, Mr. Brooks. However, I would like to know this, first of all. Did not the judge—the judge has not stated that he was not turning this over? I gather from my sort of informal report that the judge indicated by taking it under advisement that he intended to submit, he intended to comply with your request and your argument.

Did the judge not indicate a time when he was going to report? I mean, he took it under advisement but when is he going to advise?

Mr. DOAR. The judge did not, the judge made no indication as to how he would rule on the matter from the bench. He just said, "I will take the matter under advisement."

Mr. McCLORY. And no time for returning, or no time for rendering his decision on that?

Mr. DOAR. No. But, the point of our recommendation is that this committee is the proper authorized representative of the House of Representatives in this matter, and should be the body that makes the formal request to Judge Sirica.

Mr. McCLORY. I agree with that.

Mr. DOAR. And this is the first opportunity that the committee would have to take a vote on that.

Mr. McCLORY. I see.

Mr. DOAR. After Judge Sirica called to our attention the fact that we were invited to come to the courthouse. You could not have taken a vote on Tuesday, and I think it is important that you respond at the first available opportunity for the committee.

Mr. McCLORY. I want to reiterate that I consider the judge's position no more than that of a conduit by which the grand jury communicates and delivers to this committee the material that they said they wanted delivered to this committee.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Did Mr. Brooks make a motion, in fact?

Mr. BROOKS. Yes, I made a motion.

Mr. CONYERS. All right then, I second the motion.

The CHAIRMAN. The motion has been made and seconded. Will the gentleman read the resolution, the motion again, please?

Mr. BROOKS. Well, I would ask the clerk to, but I could probably go from my own notes just about as well:

To resolve that the Committee on the Judiciary authorize and empower the chairman to forthwith direct a letter to Judge Sirica to request the 2-page document, the 50-page document, the locked briefcase with documents, and any other documents and materials which the Watergate grand jury proposed be sent to the House Judiciary Committee.

The CHAIRMAN. All those——

Mr. WALDIE. Mr. Chairman?

Mr. Chairman, on that motion——

The CHAIRMAN. The gentleman is recognized.

Mr. WALDIE. I support the motion but I wanted to ask Mr. Doar a question.

You mentioned that the 2-page document had been sealed by the court at the request of one of the defendant's attorneys, and you were denied access to it. It was my recollection from the accounts last night that Mr. St. Clair said that the judge had shown him the 2-page document, and that he made certain assertions as to its content. Can you explain how St. Clair had access to that 2-page document and you did not?

Mr. DOAR. I cannot explain that, Mr. Waldie, because I have no information about that, except the fact that I assume that Mr. St. Clair went there on behalf of his client, the President of the United States, and asserted an interest in seeing the document because he believed that the document had some application to him.

Mr. JENNER. Mr. Waldie, may I supplement that, if you please?

Mr. WALDIE. Yes.

Mr. JENNER. Judge Sirica did state in the courtroom yesterday afternoon, that he had permitted Mr. St. Clair to examine the 2-page or the 1½-page, apparently, letter of transmittal, or memorandum of transmittal. And then he called counsel to the bar and consulted with them. Mr. Doar and I stood aside at the bar when we realized that Judge Sirica was talking with defense counsel for the purpose of securing apparently their consent to the release generally of that document to counsel. And then when all counsel returned at 2:15 in the afternoon, each attorney representing a defendant in the case rose and stated to the court whether he wished and would examine the 1½-page document. All counsel for all defendants stated that they did not wish to do so, save one counsel who stated that he did wish. And Judge Sirica said you may examine it. But, you may examine it only under the conditions stated yesterday in the meeting in chambers which Mr. Doar and I attended at the invitation of the judge: that any examination you make of the 1½-page document, the contents must be not made public by you. You may disclose them to your client under the condition that your client not disclose, and this is the same limitation placed on Mr. St. Clair. That is all we know, sir.

Mr. WALDIE. Let me just ask two more questions.

Mr. HOGAN. Parliamentary inquiry.

Is this addressed to the motion?

Mr. WALDIE. Were the statements Mr. St. Clair made——

Mr. HOGAN. Is this on the motion?

The CHAIRMAN. The Chair does not want to foreclose the members who have questions that are pertinent, although there is a motion, and the Chair intends to put the question.

Mr. WALDIE. I am speaking to the motion, Mr. Chairman.

Mr. HOGAN. But debate is not in order.

Mr. WALDIE. Mr. Jenner, were the comments Mr. St. Clair made about the contents of the two-page document, in your understanding, contrary to the instructions of the judge not to comment on its contents?

Mr. JENNER. I heard nothing in the courtroom that would lead me to the conclusion that Mr. St. Clair had violated in any degree the closure agreement of the previous day.

Mr. WALDIE. Will you explain to me, if the President is a party to the grand jury proceeding, is the President a defendant in that

case, is Mr. St. Clair representing a party to the grand jury proceeding?

Mr. JENNER. He is not, sir.

Mr. WALDIE. Under what auspices did he seek and receive permission to examine those documents that were sealed by the judge?

Mr. JENNER. Congressman Waldie, I am afraid I cannot answer that question because I do not know.

Mr. MCCLORY. Mr. Chairman?

Mr. WALDIE. Well, wait. I am not yielding yet.

Mr. Chairman, the reason I am asking these questions is because I think it is pointing out that the President is being treated uniquely and extraordinarily by the court. I would hope that this committee does not treat the President similarly and the President ought to be treated as any other witness in that court, any other third party in the court, as our counsel was in the court, and he ought not to receive that sort of preferential treatment, and I hope this committee does not respond to requests of Mr. St. Clair with the alacrity that presently apparently Judge Sirica did.

The CHAIRMAN. I would hope—I would advise the gentleman that this committee has no authority to instruct the court as to what direction it may take or how it may exercise its discretion. And I am sure every member of this committee, however, recognizes his responsibility as such, that the committee recognizes its responsibility and I think that we will proceed accordingly. And this is the reason why the counsel has been instructed not to submit themselves to the jurisdiction of the court and act in accordance with the authority that was delegated to us by the resolution, which the House overwhelmingly adopted by a vote of 410.

Mr. WALDIE. I understand that, Mr. Chairman, and I only make that comment because it relates, I think, to the response that Mr. St. Clair has made to the committee's request for information.

Mr. MCCLORY. Mr. Chairman, I feel confident that this committee will treat all of the witnesses, including the President, if he is a witness, with complete fairness. I wanted to reiterate my admonition whatever material is received in response to the letter should be received under the rule of confidentiality that the committee adopted at some earlier time.

Mr. BROOKS. I move the adoption.

Mr. DOAR. We assured Judge Sirica.

Mr. MCCLORY. I wanted to ask just one question, if I may.

During the course of the proceeding, the judge apparently asked the question as to whether or not there was a feeling that the rights of the defendants who have been indicted would be impaired or prejudiced as a result of the delivery of this material to our committee. Now, if I understood it, if we receive it in confidence, there is no possibility of that. But, I would like to have your opinion as to whether or not we would be running the risk of prejudicing their rights so that all of those indictments would be thrown out?

Mr. DOAR. Well, although the material would be received in confidence, if the material which the grand jury felt was so important to be delivered to this committee, after our examination at the time of a presentment or a presentation to this committee becomes public,

there is the possibility that one of the defendants could claim that the adverse effect of something in that material prejudiced his case. Now, he has got a hard burden for a number of reasons, which Mr. Jenner can spell out, but before you can get to the burden, the hard burden of the balancing, it is our opinion that in a case such as this, there really is not any comparison at all, that the judge has to accept the fact that this body and the House, in meeting its constitutional responsibility, may well be called upon to make this material public, and that the constitutional interest in public disclosure far outweighs any right of the Government to prosecute an individual case and there is not really any balancing of the constitutional obligation against the interest in a successful particular prosecution. And we made that point to Judge Sirica.

However, as Mr. Jenner very well advised the court, and the number of other lawyers, the likelihood of that is quite remote, including the fact that we can assume that some of the same material in the briefcase is going to come from the White House directly.

Mr. CONYERS. Mr. Chairman, I respectfully move the previous motion.

The CHAIRMAN. If the gentleman will hold, I stated that I would recognize Mr. Latta before the previous question was raised.

Mr. LATTA. Yes, Mr. Chairman.

Before the question is put on this pending motion, I think the record ought to be made clear as to what Mr. St. Clair's position was on turning over the suitcases and these two documents, the 2-page document and the 50-page document. I think I read or heard on television, or one of the news media, that he had no objection to this. Is that correct?

Mr. DOAR. I think that he said he took no position.

Mr. LATTA. Well, that is no objection as far as I am concerned and I think the record ought to show it.

Mr. WIGGINS. Parliamentary inquiry, Mr. Chairman?

The CHAIRMAN. The gentleman will state it.

Mr. WIGGINS. My parliamentary inquiry goes to the question of whether or not the chairman agrees with the statement made by Mr. McClory, that any papers, documents, or things, received in response to this request will be treated as confidential evidence pursuant to our rules.

The CHAIRMAN. That is correct and, as a matter of fact, counsel were instructed to make that statement to the court in their presentation, and in conjunction with the request for the material.

Mr. DOAR. And we did make that statement.

Mr. DANIELSON. Mr. Chairman, I want to be sure that I understood the last statement.

The CHAIRMAN. Are you stating a parliamentary inquiry?

Mr. DANIELSON. Parliamentary inquiry. It is my understanding from the chairman's last statement that we receive these documents and things under our own rules of confidentiality, and not any other rules that might be appended thereto by the court?

The CHAIRMAN. That is correct.

Mr. DANIELSON. Very well.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. Mayne. I think in addition to what the gentleman from Illinois, Mr. McClory, has said, Judge Sirica not only emphasized that the rights of the defendants in those cases might be prejudiced but the rights of the Government or the prosecution might be prejudiced, and I think we should be equally vigilant not to abuse the use of this information if it is obtained to destroy the Government's cases.

Now, under the rules of confidentiality, if I may make a parliamentary inquiry, Mr. Chairman, before counsel would take any step with reference to the use of this evidence, which might prejudice these cases pending in court, would it be the obligation of counsel to refer that to the committee before taking any such action prejudicial to the court actions?

The Chairman. Counsel will state the position on that.

Mr. Doar. Well, at this time the material would only be reviewed by the chairman and the ranking minority member and at the time that an evidentiary presentation started, there would be furnished to each member a list of all of the documents and materials gathered and a list of those documents and materials which counsel expected to present to the committee. At that time, we certainly would advise the committee as to the consequences of a consideration of these documents and if there was a question of prejudice to one of those cases, it would be my opinion that the committee should have an opportunity in advance to consider whether or not that material should be considered in closed hearing.

Mr. Mayne. Well, Mr. Chairman, I certainly subscribe to the view that the committee can properly seek relevant evidence where it can find it. But, I do think also we should exercise restraint and reason in not using evidence that will destroy the court action, if it can be avoided and that we should not just gratuitously obstruct the chances of the successful prosecution or successful defense, consistent with our own powers under the Constitution. We ought to try to cooperate with the court actions insofar as possible.

Mr. Cohen. Mr. Chairman?

The Chairman. The Chair wants to assure the gentleman that the rules of procedure that we have adopted will be strictly complied with and that every effort will be made to insure that no cases are prejudiced and no rights in any way are violated. And that is going to be the continuing policy of the Chairman. And the ranking member, I am sure, has continued with this attitude and we see no reason why there should not be a continuation of this policy.

Mr. Cohen.

Mr. Cohen. Mr. Chairman, thank you.

I have a question of Mr. Doar. Perhaps Mr. Jenner can help out on this. It has been suggested from time to time there may be mysterious, if not mystical, forces at work on this entire Watergate affair, and the question of security was raised again yesterday, and also in today's paper, that there are leaks big enough or wide enough to drive a truck through. I want to commend you and the staff, No. 1, for the tight security that has been maintained, and ask whether or not you would consider having any materials you do receive imposing or imprinting on those materials a special stamp, hopefully nonreproducible type, of indication that this material has been received by the committee so that if leaks do occur it can be ascertained at some later time as to whether

or not they occurred through the House Judiciary Committee or through other sources other than the committee. I think that would be very helpful in terms of who is prejudicing whose rights in the future.

Mr. BROOKS. Question, Mr. Chairman?

The CHAIRMAN. The question is on the motion of the gentleman from Texas.

All those in favor of the motion, please say aye?

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it and the motion is agreed to, and counsel is instructed accordingly to proceed with the preparation of that letter in conjunction with me and the ranking minority member.

Ms. HOLTZMAN. Mr. Chairman, just for the purposes of history, could the record reflect that there is no dissenting vote on the motion?

The CHAIRMAN. The record will show that there was no dissenting vote, and that the Chair heard no dissenting vote and that is the indication that it was a unanimous vote of the committee.

Before we proceed with further report from the counsel, the Chair would like to, first of all, call attention to the fact that the Chair had, on February 26, as has already been reported, and as the committee knows, addressed a letter to the President of the United States. I did at no time disclose the contents. But, I think it is appropriate now since I have received a letter from the President of the United States addressed to me, and I would like to read that letter and make it available to the members of the committee as well.

On February 26, by hand, a letter was addressed to the President, the White House, Washington, D.C.

Dear Mr. President:

In accordance with your instructions Mr. St. Clair has consulted with John Doar and members of his staff with reference to the current investigation being conducted by the House Judiciary Committee under H. Res. 803. Mr. St. Clair was concerned about the rules of procedure which the committee would adopt with respect to the control and use of the material submitted to the committee. Last Friday, the Judiciary Committee adopted specific rules covering the committee's responsibility during the course of the inquiry. These rules were sent to Mr. St. Clair.

I have been advised by Mr. Doar that the inquiry staff has begun to make specific requests of Mr. St. Clair for documents, materials, and things necessary to the inquiry which are in the possession of the President or under his control.

Mr. Hutchinson and I very much hope that the materials necessary to be examined will be available to the inquiry staff without difficulty or delay. I believe the President and the House realize equally the importance of having the inquiry go forward to a disposition founded on all of the evidence.

Therefore, I appreciate your remarks at the conclusion of your State of the Union message on January 30, when you said that you recognized the special responsibility of the House Judiciary Committee and indicated that you would cooperate with the Judiciary Committee in its investigation.

Finally, I feel confident that the House of Representatives will faithfully discharge its constitutional responsibility.

Respectfully the chairman.

On March 5 there was delivered to me by hand from the White House a letter addressed to me as:

Dear Mr. Chairman:

Thank you for your letter of February 26, 1974.

My special counsel, Mr. St. Clair, has received requests from Mr. Doar and is responding in my behalf.

I want to take the opportunity to reiterate that I intend to cooperate with the Committee on the Judiciary in its investigation in a manner consistent with my constitutional responsibilities as President.

The interests of our country and the American people require that this matter proceed as expeditiously as possible and I am sure that you and Mr. Hutchinson will see that these proceedings are not unduly delayed.

Sincerely, Richard Nixon.

I have requested that copies of these letters, if the members would like, would be reproduced and turned over to the members of the committee.

Mr. CONYERS. Mr. Chairman, might I indulge in some brief discussion in view of this letter of expressed cooperation and the reported television statements of the President of the United States last evening, in which he suggested very clearly that he was cooperating not only totally with the committee, but in excess of the committee's wishes. I think that some attention should be drawn to the inaccuracy so far as those assertions. And I believe if this is the appropriate time, I would like to hear from counsel with reference to this matter.

The CHAIRMAN. Well, if the gentleman would defer, I think it would be appropriate at this time, since there are two other communications which I think the committee is aware of some of their contents, some that have been, I believe, called to the attention of the public by the press, even before we received the communications, I would like to have counsel report on those, and then I think it would be appropriate to make pertinent remarks.

Mr. DOAR. Mr. Chairman——

Mr. MCCLORY. May I ask a question, Mr. Chairman?

We have been furnished with a reply from Mr. St. Clair to Mr. Doar, but we do not have the letter of Mr. Doar.

The CHAIRMAN. That is correct. That is accurate and Mr. Doar and Mr. Jenner will both comment on that.

Mr. DOAR. The committee has Mr. St. Clair's reply to my letter of February 25 and my letter of February 29. The committee has not circulated the letters that I wrote on behalf of the committee after consultation with Mr. Jenner in consultation with the chairman and the ranking minority member. The reason for that is that there were specific requests for particular documents contained in that letter that, in our judgment as your attorneys, would not be appropriate to discuss at an open meeting the details of it. And so with your permission, Mr. Chairman, I would read the letters but just when I came to the specific request, just generally refer to those until the committee had an opportunity to consider our recommendation with respect to the specific matters referred to therein.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. So far as I am concerned, I do not see how it is possible to act in an intelligent way on the matter before us without knowing what our letters said, or what we requested. Now, this reply in front of us claims that we requested a truckload of irrelevant matter, and I suppose we are going to have to make a decision here as to whether or not that is true or not; whether we want to issue subpenas and what not. And I do not see any way we can do it without

finding out what, in fact, our letters said instead of leaving blanks. I just do not think it is sensible for this committee not to know what is requested. And if it should not be made public, which I am perfectly agreeable to that idea, if that is what counsel thinks, and they should know, why I then, I think, we should go into executive session and see the letters.

The CHAIRMAN. Would the gentleman defer until the counsel has at least indicated what the letters did relate to, and if it does not satisfy the gentleman, then the gentleman may consider whether or not he wanted to take any further action.

Mr. DENNIS. Well, I do not mind deferring for a minute, but I cannot imagine being satisfied by the procedure suggested. I think we ought to go into executive session, and have the necessary information.

Mr. MCCLORY. Will the gentleman yield?

The CHAIRMAN. The gentleman has the floor.

Mr. MCCLORY. I thank the gentleman for yielding.

Do I understand that the part of your request which relates to the index of materials in the White House, to which a response is made in the last paragraph on the first page of Mr. St. Clair's letter to you, will be covered in the material that you are going to read to us?

Mr. DOAR. Oh, yes, it will. There is nothing about that that we would request to go into executive session. It is only that there are other matters——

Mr. MCCLORY. So it is only the specific items, tapes or whatever, to which there has not been a favorable response that would be omitted for the time being?

Mr. DOAR. That is all.

Mr. MCCLORY. For which we might have to go into executive session? Well, I do not see any need for executive session at this time, Mr. Chairman.

Ms. HOLTZMAN. Mr. Chairman?

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Mr. Chairman, I would like to concur with Mr. Dennis, because if we have before us a response to a letter requesting certain information, and this letter indicates that without limitation they are going to limit what they are going to give to us, then it seems to me that the sole question before this committee is whether or not our request was intelligent and an honest search for information so we can reach a decision on it. Now, if we are going to have what we are asking beeped out, while I can understand the need for confidentiality, then we cannot possibly reach a decision as to whether or not the White House has complied. So that it seems to me the important thing is what did we request because the White House letter clearly indicates that they will give us what they want and will not limit that, but they will not give us all that we want.

And another problem that I have here is that without having that letter it is clear to me that we did not ask the President of the United States to determine what is an impeachable offense. And this letter seems to restrict the information that they are willing to turn over to us based on what they think is an impeachable offense. So, Mr. Chair-

man, if it will help to read this letter. I would just like the Chair to know that I am in concurrence with Mr. Dennis, that it seems to me we have to find out in executive session.

The CHAIRMAN. The Chair would like to clarify that counsel, I think, intends to read the letter without going into specifics. And I think that if the members would only defer for that time, they would make a proper judgment as to whether or not this satisfies their question. And I think that if only we would defer for those moments, I think we would probably be satisfied.

Mr. SEIBERLING. Mr. Chairman, I move that counsel read the letters in accordance with the instructions of the chairman.

Ms. HOLTZMAN. May I be heard on that motion?

The CHAIRMAN. I would hope that we do not need a motion to proceed on that, and in a matter that I think is obvious. And I would, if the gentlelady is addressing herself to this——

Ms. HOLTZMAN. Yes. I just wanted to make a specific comment. The rules of procedure before us indicate in rule No. 4 that before the committee is called upon to make any disposition with respect to testimony or papers or things presented to the committee, members shall have a reasonable opportunity to examine those testimony, papers, and things. And I would suggest that it would not be inappropriate if we had copies of the letters that Mr. Doar is referring to, which he could summarize then and we could understand his summary. And we would not necessarily have to make public the details. But, I would think that we ought to have at least a copy of the letter so that we can follow it.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Could I just clarify what our procedures are generally going to be, as far as this kind of a request.

In other words, I thought that I understood the subpena power request and I could understand that the chairman and the ranking minority member would have an opportunity to authorize the issuance of a subpena. But, I will tell you in voting for that kind of subpena power, I did not—I realize that if evidence was obtained by subpena that it would go through a screening process, which I personally approved of. But, for the life of me, I have trouble why those of us on the committee were not apprised earlier of what we had requested in a letter. In other words, I do not know why that kind of material should not be made public. At least, it has been embarrassing, Mr. Chairman, for me, and I am sure many other members that have had to discuss a letter that this committee sent to the White House requesting certain documents, and not ever knowing what we requested. And I really do not understand. I can see why we would not receive the evidence.

The CHAIRMAN. Well, I would like to advise the gentleman that we have been sending hundreds of letters, and if the committee intends, if each member of the committee intends to examine all of those letters, we are never going to get the work of this committee done if we cannot repose confidence in the ability of our counsel to refine the questions that are being directed. And I think that the counsel have, in every case before such a letter has been sent, consulted with me and the ranking member and, especially, in letters that are being sent to the White House.

Mr. RAILSBACK. Mr. Chairman, I think I still have the time. I respectfully disagree with that kind of a procedure. I understand why we should not be able to screen the evidence. In other words, you and Mr. Hutchinson ought to screen the evidence. I certainly think that if any member of this committee wanted to know, wanted to know who we are sending letters to requesting information, and what are in those letters, I would think we would have a right to get that.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I would like to address myself to a matter related to this discussion here which concerns me very much. The status report which the staff presented to us the day before yesterday had a statement that in the next few weeks senior members of the staff will decide which areas of investigation will be pursued. It seems to me that that is not a staff function. That is a function of the committee. I think that what the committee must do is decide the areas of investigation which we think should be pursued and then everything will fall better into place. For example, the material which we are now declining to make public, perhaps the documents being requested relate to matters which the committee will decide are not worth pursuing. So it seems to me this is a cart before the horse kind of a situation.

What I would hope that the committee would do would be to go through the summary given to us the other day, debate it in committee, and decide which areas we want to reject outright, and which we want to center in on. I am particularly concerned about the one potential impeachable offense, which includes the dismantling of OEO.

The CHAIRMAN. If the gentleman will for the moment desist, the chairman is going to absolutely insist that we address ourselves to the matter that is under discussion. The matter that is under discussion at this time is a report concerning letters that were sent by Mr. St. Clair and letters that were sent by counsel with specific reference to certain documents. And the question is whether or not the counsel will proceed now with a report on those letters. And I think that any other matter concerning procedures at this time that this committee is going to undertake, or any matter concerning what substance is going to be considered, are matters that are not now under consideration at this time, and the Chair is going to so rule.

Mr. HOGAN. Mr. Chairman, do I still have the time? I think this is at the very essence of this discussion. If the committee is going to reject certain areas of investigation, that are totally immaterial, it is very material what they have requested, because if half of the material that they are requesting relates to matters that the committee is not even going to investigate, we are wasting a lot of time on our part, as well as the executive branch.

Mr. SEIBERLING. Would the gentleman yield?

Mr. HOGAN. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I suppose on that theory we would also debate every telephone call that Mr. Doar and staff makes before it is made?

Mr. HOGAN. Not at all. But I do think the general perimeters of the investigation which have been outlined represent a challenge to the committee to select which we are going to pursue and which we are not. This is not a staff function. This is a committee function.

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. Am I correct in assuming that any member of this committee may go over to the place of the staff investigation and look at any item of material that the staff has which is the subject matter of this investigation?

The CHAIRMAN. The members may go to the staff under the rules that have been adopted by the committee, and limited by those rules may certainly inquire into every matter.

Ms. HOLTZMAN. Would the gentlelady yield on that point?

Ms. JORDAN. Yes, I yield.

Ms. HOLTZMAN. Thank you for yielding.

I specifically made the request of Mr. Doar when this letter was first sent out to see a copy of it and I was advised that I could not. And I think at this point——

Ms. JORDAN. Mr. Chairman?

Ms. HOLTZMAN. I think that letter should be made available to the committee.

Ms. JORDAN. Mr. Chairman, I would suggest we move ahead with the procedure outlined by the chairman, let counsel Mr. Doar summarize the letter, leaving out the specifics about the material requested, and that each member of this committee recognize his privilege to go and see this communication and the specific information which is sought.

The CHAIRMAN. Without objection, we will proceed.

Mr. DOAR. This is my letter of February 25 to Mr. James St. Clair.

This will confirm my conversation with you last Friday in which I told you we would begin to make specific requests for documents and things from the White House today.

House Resolution 803 authorized and directed the Committee on the Judiciary to investigate whether sufficient grounds exist for the House to exercise its contsitutional power to impeach Richard M. Nixon, President of the United States. That resolution also provided that for the purpose of making such investigation, the committee is authorized to require, by subpena or otherwise, all such information that it deems necessary to such investigation.

Last Friday, February 22, the Judiciary Committee adopted rules and procedures for the security and responsible handling of sensitive material, which the inquiry staff might receive by subpena or otherwise. I sent you on Friday a copy of these rules and procedures, as well as the procedures adopted by the committee for the impeachment inquiry staff.

When Mr. Jenner and I first spoke to you on February 11, we explained we had a responsibility to make a careful, thorough, objective discovery of, and inquiry into, all of the facts surrounding the allegations involving the President. We anticipated that there would be a number of documents and things in the possession of the White House and executive departments that we would want to receive, examine, and copy. Mr. Jenner and I have recommended procedures to the committee for expeditious inspection of all materials necessary to the inquiry.

With respect to the material which we believe to be in the posssession of the White House, I will write directly to you requesting the opportunity to examine specific items. These letters will come forward on a continuing basis.

Chairman Rodino is sending a letter to President Nixon advising him of the procedures we are following and expect to follow in soliciting his cooperation.

The committee's factual inquiry is at an early stage. We cannot now make a decision as to all of the things the committee will require from the President or from others as necessary for its investigation. However, last Thursday, Mr. Jaworski, the Special Prosecutor, furnished me with a list of materials which the President had furnished to him. I would like to request some of the items on that list. The items are listed in exhibit A hereto. Mr. Jenner and I would hope that

you would be able to furnish us this material quickly so that we can begin our examination.

With respect to the recordings of Presidential conversations and transcripts of, and notes relating to, these conversations, we request in each instance all tapes, dictabelts or other electronic recordings, transcripts, memoranda, notes or other writings or things relating to the particular conversations referred to.

When Mr. Jenner and I spoke to you, you mentioned that you had discovered a means of reducing interference from the tapes electronically so they could be more clearly understood. Our request is intended to include along with the original tapes or copies of the original tapes, the tapes with the interference reduced. We must establish a way whereby Mr. Jenner and I can be satisfied that the tapes we receive, which I assume, will be a re-recording of an original tape, or parts thereof, so identified, covers the entire conversation or conversations in which we are interested. My understanding is that this can be done both by listening to a tape and by comparing the tapes with certain notes or other memoranda, particularly those of Mr. Haldeman.

Our request in each instance included the material appropriate to authenticate the tape itself.

When I wrote you last Friday, I indicated that we were interested in receiving a list of material that Mr. Jaworski requested of you, but which you did not turn over to him. You said you would reconsider that request. It would be extremely helpful to Mr. Jenner and me if we had that list as soon as possible.

Meanwhile, we are ready and do request the material relating to certain other Presidential conversations that are necessary to the inquiry. This list is by no means intended to be all-inclusive. And as we have indicated, we expect that further requests will be necessary. The requests which follow in each instance includes all tapes, dictabelts or other electronic recordings, transcripts, memorandum, notes or other writings or things relating to the particular conversation referred to.

And then, if the members, please, there is specified a list of six separate items, some dealing with a particular conversation, some dealing with conversations, all conversations between particular people on particular days.

Mr. McCLORY. Could I just ask, are those six items, items which were not requested or at least not received by Mr. Jaworski?

Mr. DOAR. These are items that were not received by Mr. Jaworski. In all of the requests, the requests related to conversations between the President of the United States and another person.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. A question.

As you read the letter, I could not tell what information other than the specific identification of the Presidential conversations you had omitted. Is that all that was omitted from the letter?

Mr. DOAR. I have not finished the letter but that is all that has been omitted so far.

Mr. WALDIE. I am sorry. I thought you had concluded.

Mr. DOAR. Then I went on to say that:

We are at this time limiting our request for documents to the Special Prosecutor's list because we have not yet implemented the security clearance procedure that you suggested be taken care of before examining the so-called Plumbers file.

And by way of explanation, in our discussion with Mr. St. Clair, he pointed out that Mr. Jaworski had had a meeting over at the White House examining the file known as the Plumbers file and that you had to have a security clearance to do that. And we have not yet secured those security clearances, so some of the material that was on Mr. Jaworski's list referred to the Plumbers file and we did not request

that material. That was the material we did not request from Mr. Jaworski, but in Mr. St. Clair's letter back to me, he said we can have all of that material that he gave to Mr. Jaworski. So that is really a moot point anyway, and I suppose it will be forthcoming.

Now then, I went on:

Furthermore, we believe the next logical step is to have you outline for us how the White House files are indexed, how the Presidential papers are indexed and how Presidential conversations and memorandum are indexed. We are particularly interested in knowing how the files of Mr. Haldeman, Mr. Ehrlichman, Mr. Colson, and Mr. Dean are indexed. If we could work out a way whereby members of the inquiry staff may examine these files for the purpose of selecting materials which, in our opinion, are necessary for the investigation, I believe that the inquiry would be expedited.

Mr. Jenner and I appreciate your courtesy and look forward to receiving this material promptly. It is our view that you and we share the responsibility to assure not only that the committee's inquiry will be objective and fair but that it will be accomplished with dispatched and founded on all of the evidence. We must be sure that there are no needless delays and no necessary evidence is permitted to remain undiscovered or unexamined.

It is for this reason, that I again express our view that it is inappropriate to treat this inquiry as litigation. We ought not be forced to speculate about the nature, identity and content of evidence within the domain of the White House, knowledge of which is necessary for the committee properly to meet its task.

Sincerely.

Now, on the 29th I wrote Mr. St. Clair, or the 28th, excuse me.

Mr. WALDIE. Before we go to the next letter, may I renew that request? Is the only matter that you omitted reading a description of the Presidential conversations that you were seeking?

Mr. DOAR. Well, I will be frank with you. I summarized the statutory language and left out a few words, but everything else is read word for word.

Mr. WALDIE. And the only thing in that letter you are requesting you not be required to disclose today is——

Mr. DOAR. I am not requesting that. I am suggesting and recommending that if the committee is interested in knowing what those items are that it consider going into closed session.

Mr. WALDIE. That is what I am trying to say. I am not trying to put words in your mouth. But, you are suggesting that it not be read today in open session without a consideration?

Mr. DOAR. Without consideration, that is all.

The CHAIRMAN. You may proceed, Mr. Doar.

Mr. Doar [reading]:

Dear Mr. St. Clair. Enclosed are copies of letters I have sent the following people.

The Honorable William Saxbe, The Honorable Roger C. B. Morton, The Honorable Earl Butz, The Honorable James E. Smith, Dr. John Dunlop, Director, Cost of Living Council.

I have told the Heads of the Executive Department that I have advised you of my request. If there is any difficulty about these requests, please call me.

As the Federal Communications Commission and the Environmental Protection Agency are independent agencies, I did not advise them that I was sending a copy of the letters to you.

Then there is a third letter which I wrote on March 1.

Dear Mr. St. Clair. As I told you over the phone Wednesday, the next briefing of the House Judiciary Committee will be held at 10 a.m. Tuesday, March 5. They will expect a report on progress since my letter to you requesting documents.

Have you had a chance to reconsider your position with respect to the list of material Mr. Jaworski asked the White House for but did not receive? Mr. Jenner and I feel we have a responsibility to renew our request for that list.

I called to tell you I was sending this letter and to ask you some questions about the security clearance. But you have been tied up. Rather than wait longer, I will send this letter and try to reach you tomorrow or Monday.

Now, to that I received a reply on the 4th from Mr. St. Clair.

Dear Mr. Doar. I am sorry I was not available to receive your calls on Friday. I do have your letter of March 1. I will try to expedite a response to your request, but I do not believe it can be accomplished before Wednesday of this week.

If you have problems regarding security clearances for your staff I will be glad to assist you in any way.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Could I direct a question to counsel?

In your letter of the 25th to Mr. St. Clair, and I have not seen it, as I recall, did I understand you to say that the White House had informed you that they had found a means of reducing interferences in tapes?

Mr. DOAR. Yes, I did.

Mr. BROOKS. And that your request was going to be for the edited, the new edition. Were you also going to request and ask for the original tapes as well, so that you could compare them?

Mr. DOAR. Yes, we did. It is very clear. We asked for the copy of the original.

Mr. BROOKS. Right.

Mr. DOAR. The originals of some of these tapes are in Judge Sirica's possession, and if they had done anything with this copy of the tape that would clean up the background of noise so that it was more audible, we asked for that copy as well.

Mr. BROOKS. As well?

Mr. DOAR. As well.

Mr. BROOKS. Thank you.

Mr. WALDIE. Mr. Chairman?

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. May I inquire of counsel what the status of security clearances is? Have they been completed yet?

Mr. DOAR. They have not been completed. The CIA has advised us that there is no difficulty with security clearances, but I have not yet heard from the Defense Department or the Department of State.

Mr. HUTCHINSON. Thank you.

Mr. WALDIE. Mr. Chairman, may I ask counsel a specific question?

The CHAIRMAN. Mr. Waldie?

Mr. WALDIE. Mr. Doar, is it your opinion that the response of Mr. St. Clair has denied this committee the Presidential conversations that you sought that were not provided Jaworski?

Mr. DOAR. Well, he has—if you read Mr. St. Clair's letter carefully, and I am sure you have, he does not specifically deny that, but he does not give us that material. And he seems to say to me: Mr. Doar, your case against the President is simply, purely, and only the Watergate

coverup. And he seems to say, second, Mr. Doar, the evidence that you need in your case is just the material that I gave to Mr. Jaworski. And then he seems to say, third, that after you examine that evidence and after you have considered just the Watergate coverup, I am confident that you will find that the President was not involved.

Now, as your lawyer, I say to you that that gives me some apprehension about the ability to obtain the necessary information that I understand Mr. Jenner and I have a responsibility to obtain to conduct this inquiry.

Mr. WALDIE. Well, Mr. Doar, my concern is that it does seem to me that it is an explicit refusal to provide you with the evidence that you have not disclosed today, and if that evidence is essential to the completion of this committee's responsibility, and I assume you believe it to be, or you would not have sought it, then I would think we would be ill-advised to respond in kind to Mr. St. Clair's letter, which is a lawyer's way of playing games to delay the case. And it would occur to me that the committee ought to consider the issuance of a subpena to compel the production of those documents.

Mr. DRINAN. Mr. Chairman?

Mr. SANDMAN. Mr. Chairman?

Mr. CONYERS. Will the gentleman yield to me?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Doar, do you know what Mr. Jaworski requested, what was on his list? Do you know what was on it?

Mr. DOAR. I do. I do not have it in my mind, but there was—I know some of the documents that he requested because they were disclosed publicly in a letter that he wrote to Senator Eastland.

Mr. SANDMAN. All right, now. In your request, did you request these specific documents, or did you just request the list that had been requested by Jaworski, which Jaworski did not receive?

Mr. DOAR. We requested the list of materials that Mr. Jaworski had not received, and then we requested six separate requests for Presidential conversations with particular individuals or on particular days.

Mr. SANDMAN. The point that I am making is you were requesting things that you felt related to a specific incident, or were you just requesting those things which had previously been refused to another prosecutor?

Mr. DOAR. No. We did not make the request on the basis of the refusal to other prosecutors. We made our own judgment that these particular things were necessary for this inquiry.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Doar, in your reading the letters, you frequently used the phrase "it is my understanding" that this, that, or the other thing was the quality of the tape or the recording that you were requesting. You repeated, it is my understanding. Upon what did you base your understanding?

Mr. DOAR. Well, in the course of our inquiry, I have learned and studied some about how to handle the tapes that I feel sure will come to the committee for its examination.

Mr. DANIELSON. But were any of these based upon representations by Mr. St. Clair, or——

Mr. DOAR. Mr. St. Clair said that he had, the White House had a means of cleaning up the tapes so that background noise was omitted, and you could—the tape was more audible.

Mr. DANIELSON. But was your understanding then in that respect based upon the representation furnished to you by Mr. St. Clair?

Mr. DOAR. Well, it was based in part on that but I also knew that independently.

Mr. DANIELSON. Where you are getting a tape which has been subject to this cleaning up or noise-suppressing procedure, do you also request and are getting the original tape which has not been cleaned up?

Mr. DOAR. We are getting it. We are not getting the original tape but we would get a copy of the original tape that had not been cleaned up and we would have an opportunity to verify that it was a copy.

Mr. DANIELSON. A full, complete copy?

Mr. DOAR. Full, complete copy. That is our request. We have not yet received any tapes.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman——

Mr. DENNIS. Mr. Chairman?

Mr. RAILSBACK. I will be glad to yield. Were you going to move——

Mr. DENNIS. No, I am not going to make a motion at the moment.

Mr. RAILSBACK. If I could proceed then, Mr. Chairman. There is still a chance that we may be given the briefcases with the other documents that have been turned over to the court, and in light of that and, also, of course, we are going to be given the 700 and some odd documents and materials that the White House has now agreed to turn over. I wonder what counsel's feelings are about the value of analyzing and examining those materials that are going to be turned over to us prior to adopting what I think was Mr. Waldie's suggestion of going ahead with the subpena for those documents that have not been produced? I wonder if there is merit to that and I would like to hear your feelings about how we could proceed?

Mr. DOAR. Let me say preliminarily to that, first of all, that I believe that this committee should, is entitled to, and should secure all information necessary to its inquiry. There should not be——

Mr. RAILSBACK. I agree with that.

Mr. DOAR. And there should not be any gap, and I want the committee to understand that that is my unequivocal positive position. No. 2, I think——

Mr. JENNER. That is also my position.

Mr. DOAR [continuing]. No. 2, I think that the full power of the House of Representatives should be behind and support appropriate requests for material in the event that the request is denied.

Now, having said that, I will answer your specific question. I think, in my judgment, that it would be well to examine the material that Mr. Clair is sending up. It is going to be 17 or 19 tapes and 700 documents. To process that material, to examine, if Judge Sirica gives us the material in the suitcase or briefcase, and the 50-page document to examine that, and also to go back to Mr. St. Clair and say, now, maybe there was a misunderstanding about what I said in my letter, maybe you overlooked the six requests and you don't say in your letter, if you wish to talk to me about it, I would be glad to talk to you, and I

think that it is just sound procedure if we have the opportunity to examine that material, if the material comes up here expeditiously, so we can get at it and get through with it in an expeditious time.

Mr. RAILSBACK. Mr. Doar, in connection with that, how long would you envision, and this might make a difference as to how the committee reacts as far as getting out a subpena now, how long would you estimate it would take to examine those materials? Well, your estimate, I guess, has to be based on the examining of the 700-some odd documents that the White House will present to us. In other words, what kind of a time span are we talking about?

Mr. DOAR. Oh, I would say it would be a time span of 1 or 2 weeks.

Mr. JENNER. An examination of the tapes alone is very difficult. You have to become accustomed first, and have an ear that is attuned to picking out. We have now learned that we have to have very sophisticated equipment. It takes hours to listen to tapes, the first run-through, and you may have to go through the second time and the third time.

Mr. RAILSBACK. Are there transcripts of those tapes already in existence?

Mr. JENNER. Yes; there are but despite the transcripts, you expect us, and at least we feel as your counsel in our professional responsibility that we have to be able to say to you that the transcripts does reflect accurately what is on the tapes. So we have to listen to the tapes at least once. There are a lot of tapes here and they are lengthy, and it takes a lot of time. Now, Doar and I both say to you that professionally we cannot tell you. It could be 1 to 2 weeks.

Mr. RAILSBACK. But in any event——

Mr. DRINAN. Mr. Chairman?

Mr. RAILSBACK. It is not going to be an interminable delay? It sounds to me, in other words, like it is a fairly brief period of time, and so we are not really postponing for a great period of time the issuance of a subpena if we, acting on your advice, believe that a subpena for additional information would be necessary.

Mr. DOAR. Yes.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Doar, in Mr. St. Clair's response to you dated March 6, he apparently distinguishes between the specific requests you have made and what he says appears to be a request in effect for access to other papers, conversations, and memoranda, without apparent limitations, except as you determine they are necessary. And I wonder is that, in your opinion, the reason he has not yet produced the specific things that you requested?

Mr. DOAR. Well, I do not——

Mr. SEIBERLING. And, second, I want to ask you do you agree that your request to him appears to be, or at least that there is a basis for thinking it might be a request for unlimited access?

Mr. DOAR. No; I do not agree with that. But, I do not——

Mr. DENNIS. Mr. Chairman?

Mr. DOAR [continuing]. But I do not know what Mr. St. Clair indicated except for the fact that he in those paragraphs where he said we believe that the case, the matter before the House Judiciary Committee, is the Watergate coverup and we believe that Mr. Jaworski, all of the material we gave Mr. Jaworski was sufficient to answer and

resolve all problems in the Watergate coverup. Mr. Jaworski said that he now knew the whole story. And so that I do not believe that there was any misunderstanding about the specific requests.

Mr. SEIBERLING. Is there any basis for going back to Mr. St. Clair and clarifying the nature of your request and the scope of it?

Mr. DOAR. Only the basis that the President has assured the chairman and the American public that he will cooperate with this committee, that it ought to be clear that there is no possible misunderstanding between Mr. St. Clair and myself, Mr. St. Clair, Mr. Jenner, and myself about these requests, and that we are absolutely unequivocal and positive and can assure the committee that there just is not a misunderstanding.

Mr. SEIBERLING. Well, of course, he said he would cooperate in doing things that we have not asked him to do, like interrogatories but, you are saying it is not clear the extent to which he is willing to cooperate on things we have asked him to give us.

Mr. DOAR. I say that Mr. St. Clair indicated he would be glad to discuss this matter further with us, and so that it is not yet a certainty that it is clear.

Mr. SEIBERLING. I thank you.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. I am going from one side to the other.

Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman.

I request that at this point in the record the St. Clair letter of March 6, 1974, be inserted.

The CHAIRMAN. Without objection, it will be so ordered.

[Copy of letter to Mr. Doar from Mr. St. Clair follows:]

THE WHITE HOUSE,
Washington, March 6, 1974.

Mr. JOHN M. DOAR,
Special Counsel to the House Judiciary Committee,
Rayburn Building, Washington, D.C.

DEAR MR. DOAR: Your letter of February 25, 1974, and your letter of February 28, 1974 enclosing copies of requests for production of documents and other materials directed to five of the Executive Departments, have been reviewed by the President and he has directed me to reply thereto.

At his direction I am instructed to advise you that the specific materials that you have requested that were furnished to the Special Prosecutor will be made available to you, together with any other materials that have been furnished the Special Prosecutor, without limitation. In addition the President is instructing the Executive Department heads involved to furnish the materials requested to me for delivery to you. Providing copies of some of the materials, particularly tapes of recorded conversations since they must be produced under Secret Service supervision, may take a few days but we will proceed as expeditiously as possible.

The President believes that the materials furnished voluntarily by him to the grand jury, which includes tapes of nineteen recorded Presidential conversations and more than 700 documents are more than sufficient to afford the Judiciary Committee with the entire Watergate story. The Special Prosecutor himself has confirmed in the public press that the grand jury now knows the whole Watergate story.

In addition to specific requests, however, you appear to have requested, in effect, access for your staff to other Presidential papers, conversations and memoranda without apparent limitation except as the staff determines they are necessary for the investigation. Since there is really no effective index of all the Presidential documents and materials, this request, as it appears to me,

means that you contemplate access by staff members to hundreds of thousands of documents and thousands of hours of recorded conversations covering the widest variety of subjects. To produce and review this material would obviously take many months.

The granting of a request for virtually unlimited access to Presidential documents, conversations and other materials would, in the President's judgment, completely destroy the Presidency as an equal coordinate branch of our government and is beyond his constitutional ability to grant. Accordingly the President respectfully declines to grant such widespread access to these materials, assuming it is this that you have requested.

The potential scope of this request is highlighted even more by the fact that the Committee has yet to determine what is an impeachable offense. As I stated at our first meeting, it would seem clear that this question, about which there is a substantial body of differing opinion, should first be resolved before such an inquiry as you contemplate should be undertaken. Obviously, if the definition you and your staff have argued for is adopted, the permissible scope of inquiry, while not unlimited, would be broader than would be the case if the position we have taken that only criminal conduct on the part of a President affords grounds for impeachment were adopted.

Furthermore, before such an inquiry is undertaken, it would seem clear that fundamental fairness would require that the "allegations involving the President" under investigation be identified so that the President could have at least some notice as to what allegations concerning him are the subject of this investigation. Surely a President is entitled to no less consideration than any other citizen.

As the President has stated, he is willing to cooperate with the Committee within the limits of his constitutional responsibility. Toward this end he has authorized me to inform you that he stands ready to respond to relevant written interrogatories if that is deemed necessary to a full understanding of the matters under investigation. Should the Committee decide as a result of such answers that a conference with the President would be desirable I will be glad to discuss with you appropriate procedures therefor.

In the President's opinion, the Watergate matter and widespread allegations of obstruction of justice in connection therewith are at the heart of this matter. By making available to the Committee without limitation all of the materials furnished to the grand jury, a list of which was furnished to you with my approval, he feels that he will have provided the Committee with the necessary materials to resolve any questions concerning him. He is confident that when these are reviewed, the Committee will be satisfied that no grounds for impeachment exist.

I will be glad to discuss these matters further with you if you so desire.

Sincerely yours,

JAMES D. ST. CLAIR,
Special Counsel to the President.

Mr. WIGGINS. Mr. Chairman, it is important that the letter speak for itself, and that members' interpretations of that letter be tested as against the words used.

It strikes me that our counsel's letter of February 25, dealt with three areas: It dealt with the Jaworski material, generally speaking; it dealt with six specific other items and it dealt with the indexing problem.

The letter of March 6, in response to that, considered two further of those requests and it absolutely was silent with respect to the third; namely, the six documents. There is no mention of it at all. I think that in light of that it is especially important that our counsel accept the invitation of Mr. St. Clair to discuss that matter precisely and specifically so that we know exactly what the attitude of the White House is with respect to those six items, and that the White House know exactly what our attitude is with respect to those six items. And that a report of such a conversation be made to this committee, so that we can act knowledgeably under the premises. Any action today in

advance of that, Mr. Chairman, would be very premature, hasty and ill-advised, and I certainly would recommend against it.

Mr. McCLORY. Would the gentleman yield?

Mr. FISH. Would the gentleman yield?

Mr. McCLORY. For a question?

I am wondering if it is not important for us also to know, and if it is possible in a public session to note to what subjects these six items relate? If they relate to an impoundment of funds, I may not be interested. If they relate to the Watergate coverup I am very interested. Is it possible at this public session to inform the committee as to what subject matter is involved in the six tapes?

Mr. DOAR. Yes, it is.

The CHAIRMAN. Counsel.

Mr. DOAR. The six tapes relate to the Watergate coverup.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman, I desire to give to Mr. Doar and to Mr. Jenner all of the support they need so that they can conclude, all of us can conclude, this inquiry as expeditiously as possible. And I, therefore, move that the committee formally issue a subpena for those specific items requested by counsel on February 25, which have not been delivered.

Mr. CONYERS. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I would like to second that motion and speak to it briefly, because it appears to me that this committee and counsel are concerned about misunderstandings which have developed as a result of the exchange of letters. It seems to me that if counsel wants to provide a service to this committee and Mr. St. Clair might want to provide a service to the President, that our counsel should be able to draft a subpena that would be so specific in nature, that it could stand up in order to determine whether or not the White House intended to cooperate and to draw it with such accuracy that we could properly determine whether or not the President is acting in contempt of this committee. So, in support of the second, I would suggest that a proper time, a returnable date be placed by the committee based on counsel's experience as to when it can be. But, I heard Mr. St. Clair say yesterday that even in the limited area that he desires to cooperate that he could not give counsel or this committee any timetable in which he would gather the information, retape it and reproduce that which he is willing to give. It seems to me that the——

Mr. DENNIS. Mr. Chairman?

Mr. RANGEL. The subpena would be concurrent with our reviewing what we have and where we are going with the timetable.

I yield.

The CHAIRMAN. The Chair, recognizing that the gentleman has put a motion before the Chair, I would hope that the gentleman, Father Drinan, would consider deferring that motion in the light of what the committee counsel, I think, has been suggesting and, that is, that materials have been requested which are pertinent to this inquiry; materials are going to be furnished which are pertinent to

this inquiry. Materials have been ignored which are pertinent to this inquiry.

But, on the other hand, the 700 documents and the 19 tapes that are referred to in the letter by Mr. St. Clair, which are presently matters that the Special Prosecutor has and which are very, very important to the work of this committee, to understand better the relevance of the other documents that are being requested. It would give us, it would seem to me, some real idea as to what pertinence and what help that information could be and not restrict us to, I think, an issue which I am sure the committee does not want to be restricted to. It would seem to me if we would only recognize that Mr. St. Clair in his letter, while I agree with counsel that requests have been made, and they have not been fully complied with, they in some instances, I believe, give ample justification to say that there is a distortion of the view that was presented by our counsel for certain materials which were requested and in the case of, I believe, reference being made and not to a request for an index, but an understanding of an index so that there would not be any fishing expedition and I would believe that in the light of the fact that Mr. St. Clair does conclude by saying that there was another discussion—incidentally, and I am sure that counsel would refer to that as well, even after receipt of the letter—that it would be wise for this committee, while I am one of the first to admit that there has been a reasonable length of time, nonetheless, I think that acting as responsibly as we have, I would believe that it would do this committee well to consider, first, the receipt of those documents that they have stated they would give us without limitation, and not at this time take action on the subpena. I would hope that the gentleman would seriously consider that. I think on reflection we would not be doing ourselves the kind of service that we should be doing.

Mr. DRINAN. Mr. Chairman, may I speak to the motion?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. I would like to ask counsel whether they want the subpena power today or if they want it deferred, when are we going to take the subpena power, if necessary, for documents not delivered? Mr Jenner and Mr. Doar?

Mr. DOAR. We do not want the committee to issue a subpena today.

Mr. DRINAN. Why?

Mr. DOAR. Because we think that it is important for us to have the opportunity to examine the material that has been agreed to be sent to us, because we think that if we get the material that is in the grand jury's possession that that will aid in our understanding of it and in the preparation of the case, and that we will then be better able to frame a subpena that will be clear, concise, and within the unquestioned scope of this inquiry, and conducted by the members of this committee And, as a matter of fact, the entire, and on your behalf and through you the House Members and the American public will know just exactly what we are asking. And for the third reason that Mr. St. Clair has said to me he would be glad to talk to me about this and we intend to raise this matter with him today.

Now, if you say how long, I have indicated to you that we ought to be able to examine this material within a week or 2 weeks. Father

Drinan. I do not suggest any kind of a delay at all. I am not arguing for a delay; I am not arguing that we should not get every bit of material that this committee feels necessary and that no one outside this committee should set the limits on this inquiry.

Mr. DRINAN. Well, that is precisely what is happening, though, because you have a letter saying that no later than Wednesday you would have that information, and today is Thursday.

Mr. DOAR. That is right, Father Drinan.

Mr. DRINAN. So that we are being——

Mr. DOAR. That is all right. But you do not—I am just saying to you that as your counsel I think that you are not indicating any sign of weakness by following the procedure that we recommend. We are not saying that we are not going to subpena. We are not going to say we are not going to vigorously go after every bit of material that you feel is necessary. But we feel that we want to do this after we have had a chance to look at the material, if it comes expeditiously, and if we can look at it in a reasonably short time and examine it.

Mr. DENNIS. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I want to support your views as I understand them, and I also want to support counsel's recommendation. As far as my friend from Massachusetts is concerned, if he, acting upon the advice of counsel, at a later time, indicates that we should subpena additional material which we think may be necessary, or our counsel thinks may be necessary, I feel certain that you are going to get support. You are going to get support from our side as well as from your side. I for one do not think that in any way we have compromised our position as far as being able to get material at a later time if we need them. But, I think it makes good sense when we are going to have 700-some-odd documents turned over to us, possibly we are going to have another entire briefcase allegedly bulging with materials turned over to us, to feel compelled to issue a subpena at this time before we could have the benefit of screening all of those other materials. So, I certainly support your views, Mr. Chairman.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I would wish to support the statement that you have made and that Mr. Railsback has made. As far as I am concerned, if we get to the point where there is a clear-cut refusal on the part of the President and his counsel to give us documents we consider necessary, and there is no misunderstanding, I will support the issue of a subpena, and I will do everything I can to support its enforcement, if necessary. But, I do not think that we are at that point as yet. Mr. St. Clair has indicated possible misunderstandings as to the scope of the request that has been made, and has said you will be glad to discuss the matter. And it seems to me we should follow the advice of counsel.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I would like to concur with the Chair but I have a problem with the committee's counsel. Obviously, if after requesting

certain information it becomes clear to you now that your request was not that specific to such an extent that it now has generated a misunderstanding which, of course, Father Drinan and I cannot understand since your request is not before this committee, in order for me to have a better understanding of what we are requesting, can I get some type of assurance from counsel that any request that will be made in the future of the White House will be drawn up in language that can stand up in a subpena?

Mr. DOAR. Yes, you will. And I think that there is nothing unspecific about these six requests. There is nothing unspecific at all about them. But I think that it may well be that after we examine this material, if it comes expeditiously that it might not just be these particular six items. It might be some other items that we would want to include in the subpena that we could actually justify. And, in addition, we would have additional support for those six items. Although I want to say to you that we believe that we can support fully and justify the request for the six items we need. We believe it, that this subpena would stand up.

Mr. RANGEL. But, you do not have any question that those six items have been rejected by the response to your letter?

Mr. DOAR. Well, as—if you ask—I think that there might be a—there is no question that they were rejected but there might have been a misunderstanding about them.

Mr. RANGEL. And the language that you will be using will be language that if this committee sees fit can stand up in a subpena to the President of the United States?

Mr. DOAR. Yes, sir. No question.

The CHAIRMAN. I would like to make clear to Mr. Rangel that the reason why I made the reference to the fact that that specific request was not addressed at all in the letter by Mr. St. Clair to Mr. Doar did not in any way, in the Chairman's mind, suggest that it was not a rejection. However, in order to proceed as we have been and because Mr. St. Clair did ultimately call and suggest that they would talk further, I feel that it is necessary to put it to them once again and say these are six other items. But, again, as the counsel states, I do not believe that it is going to be limited to those items and, therefore, I think it would be best if we framed our request after we have had an opportunity to examine this other material.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

Counsel, Mr. Wiggins earlier outlined the six separate items as totally not responded to in Mr. St. Clair's letter of the 6th. Is it not also true that your initial request for the list of materials requested by the Special Prosecutor, but not supplied, and your request for some of the items that were not furnished to the Special Prosecutor also are matters that are omitted?

Mr. DOAR. That is right.

Mr. FISH. In Mr. St. Clair's response?

Mr. DOAR. That is right. And I talked to Mr. St. Clair last night at about 5:30 and I said what about that list? And he said that Mr. Jaworski—well, he said, you can get that from Mr. Jaworski. And

I said well, Mr. Jaworski seems to want to get your approval of that and he said, well, I will consider that and we will talk tomorrow about that. That was——

Mr. FISH. Do I understand your position that while you are studying these 700 documents, and we talk in terms of 2 weeks, that it may be 2 weeks before we get them, that you will be vigorously pursuing all of the requests of your initial letter of February 25, that have not been responded to and hopefully have a status report on that for us next week.

Mr. DOAR. Oh, yes, we will.

Mr. DENNIS. Will the gentleman yield?

Mr. FISH. Yes.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. DENNIS. Well, Mr. Chairman, the gentleman had the floor and he yielded to me.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Chairman, I am prepared to approve of your suggestion and that of counsel. However, I think that it ought to be made very clear that I think that the White House is attempting to define on its own the limits of our investigation and our inquiry and that that is totally unacceptable. I think that it is very clear that the White House intends not to give us certain documents that we feel are necessary. And I again think that that is totally unacceptable. However, for the time being I think that the suggestions made by counsel are reasonable and at this time I am prepared to go along with it for a limited time.

The CHAIRMAN. Does the gentleman from Indiana want to be recognized?

Mr. DENNIS. Well, I thank the Chairman for recognizing me. I just want to say very briefly that I concur with the chairman about this matter now before us and with those others who have spoken. And I only wanted to add a couple of things which possibly have not been said.

One is that we have got this very able and distinguished counsel here and vigorous counsel, and I think it is usually a pretty fair idea to take their advice unless we have some very good reason not to.

And the second thing is that when and if we get into the subpena business, and I would like to make it clear I will go for a subpena, too, if we have to do it, but when and if we get there we have got a real constitutional impact, and we do not really know where we are going, just what we can do about it if a subpena is ignored, and that is a very deep question. We have got trouble. We may need litigation and undoubtedly counsel are thinking about those things among other things. And if we can get essentially what we want without getting into that position, it certainly makes sense to do it.

Now, I am the fellow who raised the question here of closing the meeting, and I am willing to defer on that as long as we go ahead and try to get this thing done in a sensible fashion. But, I will guarantee you if I have to vote on a subpena that I am going to try to insist on seeing what I am trying to subpena before I do it. So, let us go along.

Mr. HOGAN. Will the gentleman yield?

Mr. DANIELSON. Mr. Chairman?

Mr. DENNIS. Yes; I will yield to the gentleman.

Mr. HOGAN. I think the gentleman makes an excellent point and it occurs to some of us when counsel says he is confident that the subpena will stand up, then that gives rise to another question, stand up where? We have asked a number of times what our procedure is going to be if the subpena is rejected, and the committee has not resolved and the counsel has not advised us as to what procedures we are going to take at that time. So, how will the subpena stand up? Will we go to court or will we go to the House floor or what will we do?

Mr. WIGGINS. Would the gentleman yield?

Mr. HOGAN. I would like to have him answer the question if I might.

Mr. DOAR. The first thing is, Mr. Jenner and I would not submit to the committee for approval of a subpena without laying out for the committee the exact language of the subpena and the justification for it. And I really recommend that that be included and provided to the committee members a reasonable time before the meeting so that they could have an opportunity to study it.

Now, if the committee in its wisdom then decided to approve the subpena, and if the committee decided to approve it and it was denied or there was no compliance, then one way the subpena would be enforced would be for this committee to recommend to the House of Representatives that the person that refused to comply with the subpena be found in contempt. Now, legally, I am confident that any subpena we prepare, and that you, your committee approves, would be found to be legally proper under the resolution that was authorized by the House of Representatives.

There are questions about the authority to go into court to enforce a subpena that we have not fully studied or had the opportunity to brief for the committee. There are also questions about the wisdom of going into court with respect to enforcement of a subpena that we have not had the opportunity to brief for the committee, and there is a question with respect to possible legislation with respect to subpenas that we have not had the opportunity to brief for the committee. And then there is also the possibility that the person upon whom this subpena was served would himself or herself go to court and move to quash the subpena, and we would have to advise the committee as to our judgment as to what position the court would take on that initial judisdictional question, that would be raised as to whether the court had any power to deal with the subpena at that stage.

Mr. FLOWERS. Mr. Chairman?

Mr. HOGAN. I thank you and I thank the gentleman for yielding.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I suppose your position that we should at this time defer the issuance of a subpena. I emphasize at this time, because under proper circumstances, I would certainly favor it. I point that in the last paragraph of President Richard Nixon's letter of March 5 says:

> The interest of our country and the American people require that this matter proceed as expeditiously as possible and I am sure that you and Mr. Hutchinson will see that these proceedings are not unduly delayed.

I respectfully submit that if the White House continues to refuse to produce or to obstruct our obtaining of evidence, the public will soon recognize that the delay is not occasioned by this committee but by the respondent in these proceedings, himself.

Lastly, I would like to point out that I am not fearful that a subpena would not be recognized. There are a substantial number of people on this committee who feel that the failure to recognize a valid subpena might be impeachable conduct in itself.

And, lastly, the President will certainly learn of these proceedings before another hour has gone by, and we have already had a unanimous vote on a very critical issue.

Mr. FLOWERS. Mr. Chairman?

Mr. DANIELSON. I yield back.

The CHAIRMAN. I am alternating from one side to the other.

Mr. Butler.

Mr. BUTLER. Mr. Chairman, I will not trespass on the time of the committee very long. I just want to affirm myself that the recommendations of counsel are sound, in my judgment and are consistent with the posture of firmness and fairness and diligence that we are supposed to have under these circumstances. But, I would like to inquire at the moment as to two things:

Specifically, your telephone conversations with Mr. St. Clair, one of which you reported to us a moment ago, I assume that you are making memoranda of these conversations and that they will be available to the committee membership if we want to examine them? Is that a fair statement?

Mr. DOAR. Well, I have not made a memorandum of every conversation that I have had, but I will do that from this point on and they would be available to the committee for examination, certainly. But I will say to the committee that I believe that I suggested to Mr. St. Clair at our first meeting that our communications be formalized and reduced to writing. If we continue to talk, we have meetings, we may talk for 2 or 3 hours but that after that meeting that the understanding or the lack of understanding, or what was discussed, be confirmed in writing so that there would be no question a month from now as to what was said, or what was promised or what was refused.

Mr. BUTLER. I thank you.

Now, Mr. Chairman, a parliamentary inquiry?

Am I correct in my understanding that the gentleman from Massachusetts has now withdrawn his motion for a subpena?

Mr. DRINAN. I have not withdrawn my motion.

Mr. FLOWERS. Mr. Chairman?

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I would like to add this to the discussion on this motion. Last night the President of the United States was asked, would it not serve the purpose of a speedy conclusion of an impeachment hearing for you to give the committee whatever materials, tapes and documents they consider pertinent to their investigation. His report of the response was:

It would not lead to a speedy conclusion, it would delay it, in my opinion, because all that is really involved in this instance is to cart everything that is in the White House down to a committee and to have them crawl through it on a fishing expedition, it will take them not a matter of months, so that they can complete their investigation, and we trust their decision by the first of May which I understand is Mr. Rodino's object, but it would take them months and perhaps even as long as a year.

Now, in view of that arrogance, as I define it and choose to term it, I think that the conclusion that the chairman suggest that we follow to delay the issuance of a subpena is going the last mile with the President and with his representatives who have made it clear at the very first modest research for information in as specific a manner as can be made, that we are going to be in for a serious confrontation. Now, it is very, very difficult for me if this motion is put to a vote, not to support the issuance of a subpena now. And I will state, Mr. Chairman, that the issuance of a subpena does nothing more than formally and legally put our request on a footing by which we can act.

Now, if it is not the wishes of the majority of this committee, if the counsel for this committee feel in their judgment that in the face of this again-termed arrogance that we will now delay further, while the President of the United States continues to imply to the rest of this Nation that he is in full compliance with this committee, then I think that we are showing a generosity that has never been demonstrated by the While House in these matters. Their record has been one of consistent refusal to cooperate with all of the committees and legal branches of Government that have sought to get information.

The CHAIRMAN. I recognize Father Drinan.

Mr. DRINAN. I appreciate the sentiments of counsel and the chairman. I am not entirely persuaded of their point of view. I am afraid, frankly, that a profound mistake may well be being made at this particular moment in the history of impeachment. But, for a variety of reasons, and in deference to counsel and the Chair, and simply because the votes are not here I withdraw the motion.

The Chair would like——

Mr. RANGEL. Parliamentary inquiry, Mr. Chairman. Having seconded that motion, is it necessary that I withdraw?

The CHAIRMAN. No, it is not necessary, Mr. Rangel.

Mr. RANGEL. The second of it? I would just like to ask counsel whether he has any problems in determining contempt of Congress as an impeachable offense?

Mr. DOAR. No, I have no problem with that. None whatsoever.

Mr. JENNER. And I share that view.

The CHAIRMAN. The Chairman will recognize the fact that there is a quorum call and the Chair had intended that we might have scheduled a meeting, but under the rule of the committee that we have to schedule meetings with 24-hour notice, the Chair will state that the next regular meeting will be on Tuesday next. There will be no regular meeting tomorrow. And the committee now stands adjourned.

[Whereupon, at 12:08 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Executive Session, Committee Business

TUESDAY, MARCH 12, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:50 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Brooks, Edwards, Hungate, Conyers, Eilberg, Waldie, Mann, Sarbanes, Seiberling, Drinan, Rangel, Jordan, Holtzman, Owens, Hutchinson, McClory, Smith, Sandman, Wiggins, Dennis, Fish, Hogan, Cohen, Lott, Froehlich, Moorhead, and Latta.

Also present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Franklin G. Polk, associate counsel.

The CHAIRMAN. The cameras and others will please leave the room.

The Chair, before getting into the agenda for today's meeting, which as we all know from the notice was scheduled purposely for the consideration of the pocket veto legislation, would like to make several announcements.

One, the meeting was called specifically for the purpose of considering this legislation. As you know, this committee is, notwithstanding our preoccupation with the question of the impeachment inquiry, is concerned also with various other matters that are issued by the various subcommittees, and these are pertinent pieces of legislation and, therefore, the Chair, in consultation with the ranking minority member, and the subcommittee chairmen from whom he had sought information as to what legislation was ready for consideration by the full committee, I made a decision that the pocket veto legislation, which is pertinent and relevant, and certainly timely, is a matter that I think should be considered. It has been pending for some time.

And the Chair is hopeful that the other subcommittees which are presently considering legislation, and I know do have some legislation to report, are aware of the fact that we will be devoting some of these scheduled meetings and the regular Tuesday meetings to sessions for the consideration of legislation that is to be reported to the full committee.

The Chair would also like to state that upon reading this morning in today's press that the White House had made some reference to a request for a number of tapes, and suggesting that this committee and

its counsel through letter that was sent, as all of us know, by Mr. Doar, with the approval of Mr. Jenner, with the approval of Mr. Hutchinson and myself, specifying certain requests for tapes and documents, that we did not make public the letter that Mr. Doar had sent because there were some items that we considered that at that time it would be better not stated publicly. However, my understanding is from a reading of the press this morning that the White House issued some statement concerning in one paper it is reported 43 tapes, and in another as 42 tapes that were being requested. And again with the suggestion that possibly this was covering a broad area, and possibly trying to reflect on the ability of this committee to confine its requests to specific areas of inquiry which I think are pertinent, and necessary, and relevant to this committee's proceedings.

I would like to state that the request specifically addressed itself to certain dates and events, as was stated, and the dates that were actually, dates that were actually pertinent to our inquiry were dates of February 20, and these were conversations relating to Mr. Haldeman and the President; the date of February 27 relating to conversations between Haldeman, Ehrlichman, and the President. The date of March 17 and conversations relating to Mr. Dean and the President. Then the date of March 20, conversations relating to Mr. Dean and the President. The date of March 27 and conversations relating to Mr. Ehrlichman and the President. The date of March 30 and conversations relating to Mr. Ehrlichman and the President.

It was considered that all of these, which may be 41 conversations in all, but which occurred on these dates, would shed light on some of the discussions that took place. And all of them, we have reason to believe, all relate to the Watergate incident.

There were other conversations where the subject of these requests, and there were dates relating to April 14 through 18. And these were conversations between the President and Haldeman, Ehrlichman, Kleindienst, and Peterson, relating also to Watergate.

Now, counsel, and this is counsel that was appointed, special counsel and the minority counsel all thought that these requests were specific enough to address themselves to these particular dates because they bear on very important matters that are really matters that leave a lot of questions still unanswered. And it is not the intention of this committee to go on any fishing expedition, as has been suggested. And I regret that the press in reporting this, while I know that they are reporting what has come out of the White House, unfortunately would suggest, and this is not that the press suggested this way, but I think that the suggestion is that, in the kind of a statement that was issued, that the committee was again going over a broader area, and I restate that this certainly is not our intention. I would hope that this is a matter that the White House is aware of, and I am sure Mr. St. Clair is aware of this.

I would like to also state that some tapes have arrived. They arrived Friday night. And some documents arrived Friday night. Presently the staff is setting up its system of listening to some of the tapes and going through the documents.

There was also last Friday morning a meeting between counsel, Mr. St. Clair and Mr. Doar and Mr. Jenner, and a request again was made

by Mr. Doar regarding the items that now are under discussion. And Mr. St. Clair stated that the President was away, and he would take up the matter with the President today.

Together with that, I would like to——

Mr. McCLORY. Mr. Chairman, would the gentleman yield for a question?

The CHAIRMAN. Please let me finish my announcement.

Mr. McCLORY. Sure.

The CHAIRMAN. I would also like to state that the Chair, in accordance with the direction of this committee, sent a letter last Friday by hand to Judge Sirica containing the instructions that this committee had given to the chairman requesting the documents that were the subject of a vote that was taken here. Judge Sirica that same afternoon did respond with a letter by hand in which he merely stated that the matter was under consideration and that the Judge would, as he stated, in the near future make known his decision. This morning I spoke with Congressman Mills regarding some matters that he is inquiring into. He has assured me of total cooperation and assures me that there will be close liaison between that committee and our committee. That is taking place, but we are insuring that there is an even closer relationship so that our committee may be able at least to ascertain just what time limitation that committee is setting on itself since we are under a time factor.

Mr. BROOKS. Mr. Chairman, would the chairman yield for just a moment?

The CHAIRMAN. I yield.

Mr. BROOKS. I would like to say that I think that this release of this letter is an affront, really, to the comity that you would hope to exist between the White House and the Congress of the United States. I think that the White House hucksterism in this event does not detract in any way from the decency and the forbearance which this committee has tried to exercise and does exercise. I think it leaves the basic question answered. The White House is not going to cooperate fully with this committee or with the Congress in this investigation, and it is just a matter of time before we are required to send a subpena down and let them fulfill it or not.

Mr. McCLORY. Mr. Chairman, would the gentleman yield to me for a question?

The CHAIRMAN. Yes.

Mr. McCLORY. Would the chairman advise if you think it is appropriate to advise us whether any of the six additional items that were requested beyond those which were previously delivered to Mr. Jaworski have been received, or do we have assurances that any of them or all of them will be received?

The CHAIRMAN. I stated that was the subject of conversations between Mr. St. Clair, Mr. Doar, and Mr. Jenner at last Friday's meeting, and Mr. St. Clair then stated that he would take this matter up with the President today.

Mr. HUTCHINSON. Will the gentleman yield?

The CHAIRMAN. Insofar as I know, none of those have been received, other tapes have been received, other documents, but those are all documents and tapes that relate to those that have already been sent to Mr. Jaworski.

Mr. HUTCHINSON. Mr. Chairman, would the gentleman yield?

The CHAIRMAN. Yes, sir.

Mr. HUTCHINSON. Just for an observation there. I was informed that the committee has received three of the tapes covering three of the six events. I was informed of that yesterday afternoon late.

The CHAIRMAN. Well——

Mr. HUTCHINSON. Mr. Jenner told me.

The CHAIRMAN. I cannot be specific about the items. I know that those items that were items that Mr. St. Clair discussed with Mr. Doar as to the so-called six items or six events, that those were to be taken up as a matter of question with the President today.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Yes, Mr. Conyers.

Mr. CONYERS. I would like to ask that we include in the record the copy of the New York Times at page 43 which finally tells us what was in the letter that we sent to the President. It is my first knowledge of what it was we asked for. I understand it was on ABC, thanks to Mr. Sam Donaldson last night, and members have been pointing out at the last meeting, they have been trying desperately to see it. I remember Ms. Holtzman making that point. So, now we finally know what we were asking them. It seems perfectly reasonable from newspaper accounts, and I yield to my colleague from California if I can.

Mr. WALDIE. Mr. Chairman. I simply appreciate Mr. Conyer's yielding. I have two questions. Has anything arrived from the White House since Friday?

The CHAIRMAN. I cannot state at this time whether or not there has been anything since Friday. I do know that they began to send material, and it could be that there may have been material which was being sent.

Mr. WALDIE. Second, Mr. Chairman, I hope now that you in fact will order the Doar to St. Clair letter released to the press and copies to the committee, that apparently is part of the public domain now, and it was—would seem to me——

The CHAIRMAN. I see no reason why it should not be. It has already been.

Mr. WALDIE [continuing]. That it would be nice for us to have a copy.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. In view of the fact that the President through his counsel has pierced the rules of confidentiality that we have placed on ourselves, I would like to suggest or move that sometime today we have the opportunity to have an executive briefing, if you will, to review the self-imposed rules, and that at the same time, that the committee members be advised by our counsel as to what, if anything, has occurred since our last meeting, because while I know that the record is vague as to the time that we have given to the President of the United States to respond to our letter, it seems to me that many of our members had hoped that at the meeting today we would be able to find out the degree of cooperation that is coming from the White House. And it seems to me that one of the items that we have to consider, in fairness to the President since we have been charged with a fishing expedition, is to provide a subpena that specifically states what we are requesting. And

then, of course, if the request is vague on its face, it can be struck down.

So, I do not know the parliamentiary procedure, but it seems to me since we are all together, if we could agree that this type of briefing and review of our self-imposed rules is appropriate, then I so move.

The CHAIRMAN. Well, the motion is not in order. The Chair was merely making an announcement prior to the taking up of the business that this meeting has been called for. And the Chair will consider calling a meeting. However, I would state that presently I am in no position to state that we could call a meeting since counsel are preoccupied at the present time with the consideration of some of the materials that are coming in. And I would hope that, I would hope that we understand that that is the case right now. And if further members will defer, and I am not going to recognize Ms. Holtzman, then we can get on with the business. But I do have one further announcement to make.

I think that we can take up the business when we are convened for the purpose of discussing the impeachment inquiry. Presently, as I stated, the meeting is not scheduled for that reason.

A letter was also addressed by Mr. St. Clair to Judge Sirica requesting that if, in fact, the courts should make a determination to turn over the materials to the Committee on the Judiciary for its impeachment inquiry, that Mr. St. Clair felt that he should be given, on behalf of the President, as he states, in fairness, the right to review it, and that the court should pass on this, and a copy of this letter was addressed to Mr. Doar. This came to my attention only very late last night. We are presently, in the light of the fact that this committee was clear in its instruction in the letter, which I will not take the time of the committee to read, but the committee was clear in the instructions that it gave to me, and I addressed a letter in accordance with those instructions to Judge Sirica, and I think that it would be appropriate, and we are now considering sending a letter to Judge Sirica merely clarifying the position of the committee, and not engaging in any discussion that might even suggest that we feel that this is a proper matter for the court to make a determination on.

Mr. SANDMAN. Mr. Chairman, may I ask just one question?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman, for yielding. I have a question first as to when we may expect to have a briefing session with regard to the impeachment inquiry, and the reason I ask this is that I think the country believes very strongly that we ought to have compliance by the President with requests for information from the Judiciary Committee. And I think we all want to be fair to the President with regard to the extent to which he has been cooperating. I think we are left in enormous doubt in this meeting as to the extent to which even the materials you requested concerning the materials given to Mr. Jaworski have been turned over, and that there has been some confusion about whether or not there has been any compliance with our six other requests.

And I think in fairness to the President and in fairness to ourselves, we really need to have a briefing session as soon as possible with regard to this.

The CHAIRMAN. Well, the Chair will announce a briefing session as soon as he has been able to confer with counsel and determine whether or not——

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN [continuing]. A briefing session is in order within the next day or the next couple of days, or whether we have anything to report which would be of interest so that the committee might appropriately discuss it.

Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, I do not know whether I would be out of order with this question, but my patience is beginning to be a little bit strained. All I hear about is we get a briefing here, once a week at best, and all I hear is a contest about how far the President will not go on various things. What I am beginning to wonder, and I know the public are wondering, when are we going to start running this investigation, we, the committee? When are we going to start doing something, and how long do we have to keep coming here to try to find out and get information from the counsel, who are working for us? We are not working for them. When are we going to get on with this?

The CHAIRMAN. I appreciate the gentleman making the statement, and I am sure the gentleman is deeply concerned. And I know, I am sure, that the gentleman too is aware of the fact that he is not going to be able to make that kind of a judgment unless he has all of the available information and gets the documents, and the professional staff has been diligently at work on this in order to supply us with the kind of information that I think is going to be pertinent. And I think that the gentleman, upon reflection, will recognize that there is no other way that it can be done.

Mr. HOGAN. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

Mr. MCCLORY. May I make one comment?

The CHAIRMAN. The Chair is going to go on with the meeting for which we had been scheduled this morning, and I am not going to entertain any further questions.

Mr. MCCLORY. I would want to make——

The CHAIRMAN. No; we are going to go on with the meeting.

I recognize the gentleman from Ohio. The meeting has been called just to discuss H.R. 7386, to provide a rule in the case of pocket veto for the implementation of section 7 of article I of the Constitution.

Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

This is a very simple bill, and I just would like to make a statement explaining the purpose and the effect of it.

The Subcommittee on Monopolies and Commercial Law approved H.R. 7386 without amendment by unanimous vote on October 4 of last year. The bill has been popularly referred to as the Pocket Veto Bill, because it would make clear the circumstances in which the use of a pocket veto is appropriate.

H.R. 7386 would eliminate uncertainty about the use of a pocket veto during a session of Congress by defining the adjournment which prevents the return of a bill to Congress as one which is a sine die by the Congress or by either House. If either House has concluded its legislative session by adjourning sine die, there is no further opportunity for Congress to reconsider a bill that session in light of the

President's disapproval, but if both Houses of the Congress are in recess during a session, then there will be an opportunity for reconsideration.

Article I, section 7, of the Constitution provides that if the President disapproves of a bill passed by Congress and presented to him, and wants to veto it, he must return it to Congress unless, and I am quoting:

> Unless the Congress by their adjournment prevents its return.

For 100 years, the failure of a bill to become law when Congress, by its adjournment, prevents the return of a bill from the President, has been called a pocket veto. However, the scope of the pocket veto at the present time is unclear because of uncertainty over which adjournments of Congress are adjournments which prevent the return of a bill to the Congress from the President.

The problem raised by this uncertainty is illustrated by President Nixon's claim that the Family Practice of Medicine Act was pocket vetoed because he was unable to return it during the 4-day Christmas recess of Congress in 1970. A recent District Court decision on the alleged pocket veto in the Family Practice of Medicine Act does hold that a 4-day recess of both Houses of Congress does not prevent the return of a bill that the President disapproves to the Congress. *Kennedy* v. *Sampson*, which, however, has been appealed, more than 3 years after the Family Practices of Medicine Act was passed by Congress, there is still no final judicial decision, so whether that bill was pocket vetoed or became law without the President's signature. The use of pocket vetoes where Congress is ready and able to reconsider legislation the President disapproves erodes the legislation power of Congress. The records of the Federal Constitutional Convention in 1787 demonstrate that the framers intended to give the President a qualified veto power only. They intended that the Congress have final word on whether or not a bill becomes law. The framers voted on an absolute veto power twice and soundly rejected it both times. But, the pocket veto is an absolute veto. Congress has no opportunity to override a pocket veto and, hence, the need for H.R. 7386 to insure that the pocket veto does not become an impediment to reconsideration by Congress of bills vetoed by the President.

Thank you, Mr. Chairman. I will be glad to answer questions, or if I cannot, counsel can.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

This bill, as reported by the subcommittee, will limit the area of pocket veto to only those cases where either one House or the other has adjourned sine die. I am under no illusions that the passage of this bill will settle the issue, because I am certain that the next time that any President pocket vetoes a bill the matter will be litigated, and there will be thrown into the cauldron at that time this particular bill, if it should become a law. And the court will, in addition to other matters, determine whether the Congress can define whether a pocket veto, I mean when a pocket veto can be exercised.

I am prepared to support this bill simply because I think the Congress has a legitimate function in offering its judgment as to the

proper time in which a pocket veto is effective. But, as I say, Mr. Chairman, I am under no illusions that because Congress passes this bill, that it will be so. I think that in the end, the Supreme Court will have to hammer the thing out by decision.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I would like to go on record as indicating my unqualified support for the motion embodied in this proposed legislation. It is really long overdue. It is surprising how long it has taken us to react to a fundamental omission that has been dealt with by Presidents down through the ages. I think we should make clear that we are not reflecting upon the present administration as this legislation moves through this committee. All Presidents have exercised the pocket veto in the past, and it is clearly derogatory to the constitutional function of the Federal Legislature. And I am very, very pleased to enthusiastically support it, and wonder if there is any indication of support coming from the other body?

The CHAIRMAN. There is a bill pending. I cannot state just what the other body may do, but it would seem to me that with the wealth of material that has come to our attention, and the fact that there are some of the members of the other body who have had this matter come to their attention because of some issues that developed which were the subject of pocket vetoes, that I am sure it is going to engage their attention.

Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I just have two questions. Perhaps the gentleman from Ohio can answer them.

In the first place, does the declaration that uncertainty exists at this point, will that in any way jeopardize the decision in the court in the case you referred to previously?

Mr. SEIBERLING. I do not think so, because while the court has ruled one way, the case has been appealed. And, therefore, until the appeal is finally decided by the Supreme Court, uncertainty will exist.

And furthermore, there are two leading cases on this subject which sort of straddle the matter. There is the *Wright* case which holds that a recess does not authorize a pocket veto, but that was only a 3-day recess.

And the Department of Justice tries to make a distinction between a 3-day recess and a 4-day recess, for reasons which I will not go into.

And then there is the pocket veto case, in which there is some dictum the other way, but there is no flat holding by the Supreme Court on this subject, which is completely clear, and therefore, we thought in drafting this that it was fulfilling the power of Congress or pursuant to the power of Congress to enact laws to carry out the Constitution. And that is what is behind the bill.

Ms. HOLTZMAN. And could you define sine die adjournment for me? What is meant by that?

Mr. SEIBERLING. Adjournment sine die is adjournment without any date fixed for return during that particular session.

Ms. HOLTZMAN. So that what you would have in mind then would be the end of the year adjournments, in essence?

Mr. SEIBERLING. Correct.

Ms. HOLTZMAN. Thank you.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman, I would like to inquire why we are going the bill route and why we are not going to constitutional amendment route? If we are going the constitutional amendment route, we would clear up all doubt, and we would not have to take it to the Supreme Court. And I would question whether or not by merely stating you are implementing this provision of the Constitution, it is quite correct. In my humble judgment, you are limiting this section of the Constitution.

Mr. SEIBERLING. Well, if I might answer the gentleman, from my own point of view, at least, the Constitution does not spell it out in so many words. As the language which I read simply says that the President need not return it to Congress, or must return it to Congress unless the Congress by their adjournment prevent its return. Now, if the Congress adjourns sine die they have prevented its return. But, it seems equally clear that the Congress, if it is merely in a recess, and is returning again during that session, that we have not prevented its return, and all we are trying to do is say this is the way Congress interprets this section. And I would think the courts would give that interpretation great weight.

If it turns out that ultimately is not the case, then obviously we can go the route the gentleman suggests. But, I see no reason for going through the complication of a constitutional amendment if there is a much simpler way to cure the problem and the uncertainty.

The CHAIRMAN. I might also reply to the gentleman that as all of us are aware under the necessary and proper clause, the Congress acts and has acted to clear up any question. And I think that at this time, not only is this perfectly appropriate, but it certainly can resolve the question without necessitating the long procedure of a constitutional amendment, which is not required in this particular case.

Mr. LATTA. If the Chairman might yield further?

The CHAIRMAN. I yield.

Mr. LATTA. I quite agree we pass legislation to implement the Constitution, but not to limit the Constitution, and my point is you are attempting to limit here, and not to implement.

Mr. SEIBERLING. Well, might I also point out that if the Congress enacts this bill, and the President signs it or does not veto it, then that would be a fairly strong and persuasive argument for that particular President and future Presidents as to the procedure that was intended to be followed, and that does not mean a President cannot challenge it if he wanted to. But, I would think that he would not if it had become law to that extent.

Mr. Chairman, I move the adoption of H.R. 7386.

The CHAIRMAN. The question is on the motion of the gentleman from Ohio. All those in favor, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it, and the motion is agreed to.

Mr. SEIBERLING. May the record show, Mr. Chairman, that there were no voices in opposition to the resolution?

The CHAIRMAN. The record will so indicate. And there being no further business before the committee, the committee stands adjourned until further notice from the Chair.

[Whereupon, at 11:25 a.m., the committee was adjourned subject to the call of the Chair.]

IMPEACHMENT INQUIRY

Impeachment Briefing

WEDNESDAY, MARCH 20, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY.
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; and Hillary D. Rodham, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order. And before making an opening statement, I would like to point out that there has been a change in the seating arrangement, as a result of a request which was properly made by the ranking minority member to be seated at the left of the Chair. And while this does not indicate any change in attitudes politically, nonetheless, it does suggest a change that has taken place over a period of years when the committee was originally seated in accordance with this present arrangement. I note that we do not suggest again that because they are on our left that this has any kind of meaning, and I know that Mr. Hutchinson might want to respond to that.

Mr. HUTCHINSON. I thought, Mr. Chairman, you would like to listen to my response, and that is simply this: That as the Speaker sits on the rostrum in the House he looks to his own left to discover Republican Members. But, the more practical reason for it is, Mr. Chairman, that whenever Republican Members are called from this bench, they are called to the Minority Office over here to the left. So, it seems much more sensible that minority members sit on this side of the committee, just as a matter of convenience to themselves, and the same

thing is true of majority members who, when they are called would have to be called off to the right.

The CHAIRMAN. I would like to advise the committee that this morning, we received a telephone call from Mr. Lacovara of the Special Prosecutor's Office stating that Mr. Wilson will be making an appearance this morning requesting a stay in order to file an appeal from Judge Sirica's ruling. Mr. Woods of our staff has been instructed by me to wait at the courthouse and will be calling in, in order to receive instructions of the committee. And I would hope that the committee would be of one mind, merely to restate the position that it did state originally with Judge Sirica, and later on during the course of our morning's briefing we will discuss the question of dispatching a letter to the appellate jurisdiction merely restating the position we have taken before, that whatever we do we do without submitting ourselves to the jurisdiction of the court. But, nonetheless, in order to expedite the action on the part of the appellate division, hopefully that we get the material that Judge Sirica has directed be sent to us.

I would hope that if there is no objection on the part of the committee members that I can be instructed to advise that when this call does come in, which will be coming in momentarily, that we may advise Mr. Woods accordingly.

Mr. Hutchinson, not having talked with you before, not about this particular matter, but knowing this is the position of the committee, I would just like some indication.

Mr. HUTCHINSON. I know of no disagreement, Mr. Chairman, to the proposal that the chairman of the committee state to the chief judge of the court of appeals the same position that was stated by the committee to the chief judge of the district court with regard to the position of the committee relative to the documents and papers that were submitted to the district court by the grand jury.

The CHAIRMAN. More specifically, Mr. Hutchinson, Mr. Woods is now at the court, will be calling in, in order to receive instructions of the committee, and merely to restate the position if the question is directed. Before I do, since Mr. Doar received the call, may I call on Mr. Doar?

Mr. DOAR. Mr. Chairman, the application this morning will be made to Judge Sirica, not to the court of appeals, for an additional stay pending the appeal. Mr. Wilson, on behalf of Mr. Haldeman and Mr. Ehrlichman is making this application to Judge Sirica. The Special Prosecutor's Office will oppose the additional stay and the effect of that, if the judge does not grant it, is that the order of the court would go into effect forthwith.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I want to concur in the statement of Mr. Hutchinson and point out that this committee unanimously approved a motion instructing you to write to the court laying out our position. And I would fully concur in that and hope that the chairman will, in the next day or two, get such a letter to the district court or the court of appeals.

The CHAIRMAN. I cannot, since this is not a business meeting, entertain a motion, but I suppose if we were to put a unanimous consent

request, without objection, I am sure that the committee will consider that. Is there any objection?

Mr. HUTCHINSON. Mr. Chairman, how long an additional stay is being requested of the District court?

Mr. DOAR. We were not advised of that.

The CHAIRMAN. Of course the Chair would like to point out that any stay, while of course stays have to be considered by the judge, but any stay does militate against our trying to expedite these proceedings and the getting of this material which Judge Sirica, in a very compelling opinion the other day, stated that this material should be coming to us, and all that I feel is necessary, at this time, is merely that Mr. Woods, who is there, be able to at least receive whatever instructions, that we are merely restating our position and not beyond that.

Mr. JENNER. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Doar and I, in presenting the matter on behalf of the committee to Judge Sirica emphasized that time was of the essence in the work of this committee, and would the sense that you have suggested to the committee include Mr. Woods again stating, as Mr. Doar and I had stated to Judge Sirica and to which he made reference in his opinion, that time is of the essence as far as this committee is concerned?

The CHAIRMAN. Is there objection on the part of the committee to so advise Mr. Woods when he calls in, so that it will merely be a restating of the position, and the judge will certainly consider the request and make his ruling accordingly, and we will have no opportunity to contest that, since we have no part in the proceedings?

Hearing no objection, then, Mr. Woods will be so advised.

Before going on with the briefing, I would like to make a statement.

I would like to say that this committee welcomes the constitutional recognition by the Federal District Court for the District of Columbia of the "compelling need" for an "unswervingly fair inquiry based on all of the pertinent information." That was expressed last Monday in the decision of Chief Judge Sirica. This is one more confirmation that, although the sole power of impeachment is vested in the House of Representatives, the critical and overriding constitutional importance of an impeachment inquiry contemplates not confrontation but the cooperation of the other branches of the Government.

In his decision, Judge Sirica noted that this committee had taken "elaborate precaution" set forth in its Procedures for Handling Impeachment Material, "to insure against unnecessary and inappropriate disclosures."

I would like to reaffirm, at this point, the committee's determination to abide by these procedures. The committee members decided on these procedures and will continue to work within them.

The inquiry staff has observed and will continue to observe and to implement this and all other decisions reached by the committee.

To insure against even the appearance of inappropriate disclosures of any sort whatever, I have instructed the Special Counsel, John Doar, and the Minority Counsel, Mr. Jenner, and the inquiry staff to decline interviews with any members of the press for the duration of our inquiry. In view of our responsibilities this is proper and necessary.

Judge Sirica has respectfully requested the committee to avoid any "unnecessary interference" with the ability of the court to conduct fair trials of persons under indictment.

In adopting our rules of confidentiality we took this into consideration. We will continue to avoid any interference with constitutional processes, rights, and institutions as we go forward.

For some time the Nation's constitutional processes and institutions have been under considerable tension and strain. This tension has been brought about by events which have occurred in the executive branch of Government. For some time the Department of Justice's most pressing public business has been the investigation and prosecution of matters for which the executive branch is administratively accountable.

There is a contradiction when the executive branch is both investigator and the subject of the investigation. And there is a contradiction when efforts to determine whether the office of the President is being faithfully executed are met with the claim that the faithful execution of the office precludes disclosure of the relevant facts. It is these events and these contradictions that forced the House by a vote of 410 to 4 to set in motion this impeachment inquiry. The House of Representatives acted out of a clear sense of constitutional necessity, a shared perception that the impeachment inquiry was the way and the only way which the Constitution provides to deal with the grave stresses that threaten our institutions.

It is in this spirit that we proceed.

Mr. Conyers.

Mr. CONYERS. I thank the chairman. Three matters occur to me.

It seems to me that notwithstanding all of the efforts of this committee, particularly those of yourself and the ranking minority leader, that we are already in some state of confrontation with the President, since he has been out of compliance with the letter sent February 25.

The second thing that seems to me that it is fair to say that so far before the full committee not one thread of evidence has come before us for evaluation.

And my final conclusion is that, so far, we are, although we seem to be getting cooperation from everywhere but the White House, we are still confronted with so much work of sorting out the evidence that we cannot predict accurately either on our part or on the part of the attorneys that constitute the staff when we will be able to predict the conclusion of this matter and report back to the Congress.

Are those statements fairly correct?

The CHAIRMAN. The statement, I think, will best be answered by counsel and it is for this purpose that this briefing was ordered this morning. I think that in suggesting that the staff is not in a position to make a determination now, I think the gentleman is accurate. I believe, however, that we are in a better position now than we were 3 weeks ago. And concerning the question of the sifting of the evidence, I believe that after hearing from Mr. Doar and Mr. Jenner this morning, we will know that we have gone quite a long way and are in the middle of the process of not only accumulating this evidence, but we have sifted it and are in the process of analyzing it in order to present it to the committee at some time in the near future. And as soon as that is ready, that will be done.

Now, rather than engage in any further discussion, I think it would be well for the committee members to listen to the briefing up to this point, and I think that then there may be questions which might be directed to the counsel.

Mr. Doar.

Mr. DOAR. Mr. Chairman, members of the committee, the first matter that I would like to report to the committee on this morning is the progress of the investigation. We have received almost 100 percent of the material which the Senate select committee has collected and analyzed in connection with its investigation. I would estimate that we have received over 100,000 pages of printed material. This material covers, in addition to the testimony that was taken before the committee in open session, other material which is being sorted, sifted, analyzed, and evaluated.

We have received all but one item of the material which the White House delivered to Mr. Jaworski. That one item of material relates to certain documents in the ITT matter. And I have been told by Mr. St. Clair that the problem with those documents is that they were disassembled, and in connection with a matter, so that they are having some problem of reassesmbling the material in exactly the same order that it was given to Mr. Jaworski.

And the second thing is, they have had to get from the Justice Department some of these documents, a few of them, and I would expect that we would get those by the end of the day. If we do receive that material, then all of the material which the White House delivered to Mr. Jaworski will have been delivered to us for analysis.

This material includes tape recordings and transcripts, logs, and other documents.

With respect to tape recordings, we have, of course, had to set up a room where these recordings could be listened to, and we have had to consult with experts to assist us in listening to these recordings. Not all of the recordings are of satisfactory quality and Mr. Jenner and I have had a discussion with Mr. St. Clair in an endeavor to seek and to obtain, and we will obtain for the committee, the best transcript or the best recordings possible, so that when the proceedings are presented to the committee, the committee will be in the best position to hear and evaluate for itself all of the relevant evidence in this case. So, that we have to prepare for the committee what you might call just an electronic problem to get the equipment, to get the recording equipment, the amplifying equipment, the earphones and so forth organized in a way so that this committee when the matter is presented to it, will find that the mechanical means of evaluating the evidence is 100 percent satisfactory to it.

Now, in addition, we have made eight or nine requests to the Departments of the Government for material involving specific matters that are within the scope of the committee's inquiry. We are having no difficulty with respect to the Departments in either going over there and inspecting the documents, or having them photostat the documents and deliver them to us for our examination. In many of these matters, or some of these matters, I am sure the committee realizes that we will find, I think we will find, that there is nothing improper with the way that the agency handled the particular matter,

and when we find that we will so report our findings to the committee for the committee's conclusions as to that matter. We will not determine the course or the direction of the investigation, but we will do our best to collect facts fairly and accurately for the committee, so that the committee can determine the direction of the investigation.

In addition to that, we have begun to interview witnesses and to secure from them an up-to-date review of the testimony or to secure additional information that we have reason to believe the witness or the person may have that would be relevant and necessary to this inquiry. Now, all of that work is going on in the matters that have been under inquiry by this committee. Each day we make more progress in collecting and organizing documents, in identifying and defining relevant facts that can be established, so that they can be presented to the committee in an organized fashion.

However, the work assignment is not a small one. The matters that have to be read and analyzed are considerable. The amount of testimony that has been taken by other committees of the Congress and by other investigative agencies is substantial. And I can assure the committee that we are working as hard as we can and we have got, I think, are beginning to get the matter each day more and more organized for the committee.

We have had several conferences with Mr. Jaworski and his staff with respect to the matters that were delivered to us by Mr. St. Clair, and with respect to other matters that are within the scope of the investigation.

That briefly summarizes, Mr. Chairman, where the work is of the inquiry staff.

The CHAIRMAN. Mr. Doar, I know that in passing you may have neglected to mention specifically, but I wish that you would enlighten the committee as to exactly what the result of that meeting with Mr. St. Clair was regarding other specific requests that were made concerning those items about which there has been considerable discussion, the six items that have continuously come up as items which have been referred to as thousands of hours of conversation, which certainly they are not. And I wish that you would address yourself to that for the committee.

Mr. DOAR. Well, Mr. Jenner and I met with Mr. St. Clair on Monday at 11 o'clock in our offices, and we reviewed again with him the material that we were seeking in the six items that were listed in my letter to him on February 25. And we went over each item and indicated why we felt the conversation was necessary to the committee's inquiry. Mr. St. Clair asked some questions about some of the matters. On 3 days in April 1973, we asked for all conversations between the President and four of his associates, and those conversations plus the conversations the President had with Mr. Kleindienst and Mr. Petersen on those days were the conversations that, taken with other items, added up to some 41 recorded conversations. Now, 41 recorded conversations, I cannot tell the committee exactly how many hours that is of conversation, but it is certainly substantially less than 20 hours of conversation, probably half of that.

We also discussed with Mr. St. Clair the fact that we had received from Mr. Jaworski a list of certain other conversations that he had

requested from Mr. St. Clair, and Mr. St. Clair had not seen fit to give to him. We pointed out to Mr. St. Clair that if you compared the list of matters Mr. Jaworski had wanted from the White House, and a great number of those items were items that we had listed, conversations that we had listed in our specific request. And Mr. St. Clair's position was that the committee, he would hope that the committee would look at the material that had already been furnished, look at the material that Judge Sirica had furnished to the committee, and then try to be as precise and as narrow as was reasonable in making requests for additional recorded conversations. The basis for this request was that it was an arduous job for the President to listen to these recordings. It was an arduous job for the people at the White House to locate that part of a particular tape where the conversation did take place.

We pointed out to Mr. St. Clair that we understood the problem but we made it clear that we felt that the committee would be unswerving in its determination to secure this material.

Another question came up with respect to, well, suppose one of the conversations had no relation to the matter under investigation, and the matter we were inquiring about with respect to these six inquiries, or matters with respect to the so-called Watergate coverup in February, March, and April of 1973, and we indicated that in the first instance certainly Mr. St. Clair, an experienced lawyer with many years of practice, must have had hundreds of occasions where he was called upon to give to opposing counsel material that was not helpful to his client. If he certified that this was the material in the first instance, that that would be a start at getting the material which the committee needed, and we might not have a problem at all with respect to the conversations that we were interested in.

We also pointed out that we had evidence from other witnesses of the Senate select committee where they had testified, Mr. Ehrlichman and Mr. Dean, that they had, in fact, had conversations about the Watergate and that these were conversations that we were interested in; that we did not have any desire to get any conversations involving state secrets or conversations involving matters entirely unnecessary to this committee's inquiry. And Mr. St. Clair made it clear that it was not he that would make the decision as to whether or not the President of the United States would make these recordings available to the committee, but that he would report back to the President, and we would continue to be in touch with each other with an attempt to try to secure this material in a way that was satisfactory to the committee, and in a way that would resolve these particular requests. And, as I say, finally we made it clear that there were other recordings that might also be necessary for this inquiry, and that we would make every attempt to go over these requests carefully. We had to, under the procedures that the chairman and ranking minority member had set out, we had to set forth to the chairman and the ranking minority member, the reason, the justification for requesting this specific item or a specific recorded conversation and both the chairman and the ranking minority member were very conscious of the fact that they did not want us asking for things that were unnecessary for the inquiry.

I think that summarizes it, Mr. Chairman.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Mr. Chairman, thank you.

Ladies and gentlemen of the committee, it would be of interest for you also to know that Mr. Buzhardt attended the meeting on Monday morning with Mr. St. Clair. And it appears that Mr. Buzhardt is chiefly in charge of the matter of making duplicates of tapes and indexing the tapes and managing the tapes.

I do wish to reassure all members of the committee that during the course of that meeting, we were very, very specific with Mr. St. Clair as to the purpose, need, and relevancy of each of the six items listed in the letter to Mr. St. Clair and he did not, in the course of that meeting, nor did Mr. Buzhardt indicate a dissent from that. As Mr. Doar has indicated to you, what he did say was that he must present the matter to the client, the President of the United States, and that decision would be made by the President. But, that the President, of course, would be required to have some time to listen to those tapes.

In connection with the work of the committee, as I indicated in a previous session of this committee, listening to these tapes is a very, very difficult task and it takes hours and hours of time. And it even takes hours and hours of time to read the transcripts of those tapes.

And I also wish to report to the committee, if it please, that our experts who are very, very able electronic people are processing some of the tapes that we already have to eliminate the background noises to help pick up uttered conversations more clearly. And we are experiencing considerable success in that regard.

But, insofar as the six paragraphs in the letter to Mr. St. Clair are concerned, I assured the committee we were very specific with Mr. St. Clair as to the relevancy and the need.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Before we go any further, Mr. Doar, we have received some letters from Mr. St. Clair making requests concerning the questions as to what rules the committee might adopt concerning prediscovery hearings or procedures regarding hearings if hearings are, indeed, contemplated. I have now requested that there be circulated this letter or, in fact, two letters or three letters, I am advised, to the committee members. And I would like Mr. Doar and Mr. Jenner to comment in this briefing because I think that this is a matter of very, very deep concern which effects the very essence of the proceedings that we are about.

Mr. DENNIS. Will the chairman yield for a moment?

The CHAIRMAN. I yield.

Mr. DENNIS. I agree completely with the Chairman's statement that the matter he just brought up is highly important. I wondered if I might be permitted to make a comment before we go into that on the equally important matter of the conversations these gentlemen have been having with Mr. St. Clair on which they have just reported, before we pass on to another subject?

The CHAIRMAN. Well, it was the thought of the Chair that we would leave the discussion until after counsel has made a comment regarding this and then open it to discussion.

Mr. DENNIS. I, of course, will defer to the Chairman. The only point that I am making is that the two subjects are both important and

they are entirely different and, therefore, for that reason I thought it might be more logical to take up the first matter of the discussions with Mr. St. Clair before we got into another important, but entirely unrelated field.

The CHAIRMAN. Well, the Chair considers that both matters are equally important, and I believe we would want to make any comment. I think we would consider them in totality so I would hope that the gentleman would, at least for the moment, desist or defer.

Mr. DENNIS. Well, I will defer to the Chairman, of course.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. In the House resolution which was passed to authorize and direct this committee to conduct this inquiry, a provision was made for the use of a deposition, which is a compelled, sworn statement taken by the committee staff of a witness who is not willing to give the committee an interview or a sworn statement voluntarily. This was regarded by the staff at the time that the resolution was prepared as an investigative device that would be helpful in expediting the matters that would eventually be presented to the committee and we provided—the resolution provided that these sworn statements could be taken outside of the presence of the committee or any committee member in order to relieve the members of the burden of attendance at a particular hearing, and so that we could better organize the proof that we thought should be presented to the committee for your consideration.

At the time that we discussed this matter, we made it clear that if these sworn statements were taken that, of course, at the time of the presentation the committee would determine whether or not they would be received and considered by it as a sworn statement or whether or not the committee would require that the witness come before them to testify orally. There are lots of matters about which there certainly would not be any dispute, and in order to facilitate these proceedings it was thought that this was a very useful device for the committee to use in this unusual and special type of an inquiry.

You will recall that at the time that this was suggested Congressman Butler questioned me about whether or not there was any precedence for the taking of depositions outside of the presence of a member or a quorum of the committee, and I said there was not precedence for it. He asked me if we would provide and adopt rules of procedure for taking the depositions or taking these sworn statements that would be fair to the witness, and I assured him that we would do so and that once those rules were worked out and refined, we would bring them back to the committee so the committee would be aware of them and make whatever objections or modification that they thought was required.

Last week I received from Mr. St. Clair a letter asking me to pass on to the committee and that is the substance of the three letters that have been received, asking me to pass on to the committee his request not only to be present at the interviews which will be taken under oath and where we are able to compel the attendance of a witness, but also that he have the right to cross-examine and, second, that he also asked me to bring to the committee's attention his request that he be granted formally full rights as to participation in any hearings or presentations that may later come before the committee, with the right to

cross-examine witnesses, with the right to call witnesses of his own, and with the right to have the subpena power to compel witnesses to offer testimony.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. I am going to recognize Mr. Dennis at this time.

Mr. Dennis.

Mr. DENNIS. I thank you, Mr. Chairman.

First, I want to return to the matter of counsel's discussions with Mr. St. Clair on the 6 topics of the 42 tapes, as you may want to designate them.

Mr. DOAR. It is 42 recorded conversations.

Mr. DENNIS. All right, the 6 topics, 42 recorded conversations. I would just like to observe that it is my prima facie feeling, with the limited information I have, that these 42 or 6, however you want to refer to them, are relevant material matters which the committee is entitled to and which you gentlemen are entitled to pursue, and which it seems to me we should have.

Now, there was another part of counsel's letter, and that is the paragraph in which you went on to say, furthermore, and this was Mr. Doar's letter to Mr. St. Clair of February 25:

> Furthermore, we believe the next logical step is to have you outline for us how the White House files are indexed, how Presidential papers are indexed and how Presidential conversations and memoranda are indexed. We are particularly interested in knowing how the files of Mr. Haldeman, Mr. Ehrlichman, Mr. Colson and Mr. Dean are indexed. If we could work out a way whereby members of the inquiry staff may examine these files for the purpose of selecting materials, which in our opinion are necessary for the investigation, I believe the inquiry would be expedited.

Now, you gentlemen did not actually ask for anything there.

Mr. JENNER. No.

Mr. DENNIS. I recognize that fact. What you asked for is specific and as I have already stated, in my opinion, prima facie relevant and proper. But, this paragraph, in my judgment, and I say this not in any critical sense—I say it critically but not in a personal way, because we all make mistakes, but this paragraph contemplates a future procedure which, to my mind, is far less obviously justifiable than the requests that have been made, far more controversial and, moreover, it is furnishing the basis for what the White House is now saying about alleged fishing expeditions, sending up the U-Haul truck and so forth. Now, it seems to me that it was a mistake to put that paragraph in the letter, but that has been done. We have got to take up that question and see whether we want to pursue it later on, and there may be various points of view in the committee. But, what I would like to suggest at the present time is that you gentlemen definitely try to separate those two things and, at least, defer the matter of the indexes and the sending someone down to go through the White House files and so on, and concentrate on the place where the committee's position is strong, and not so debatable because the public discussion in the press has not been concentrated on our requests at all. It has concentrated completely on this paragraph, which by being there has given the chance to concentrate on that and obfuscate the issue. And whatever you gentlemen think you ought to be able to do is in the future, and I may disagree with you. I think we ought to be able to agree now that that is something to shove back there and defer, and get an answer on the six issues

or six categories, or whatever you call them, before you take this matter up or argue about it or insist on it.

Mr. DOAR. Congressman Dennis, we have had no further discussion with Mr. St. Clair about these other matters except for the six items since he advised me in his letter that the White House files, there were no indexes to any of the White House files. Now, once you said that there was no indexes for the White House files, then there was no way that we could specifically identify in a preliminary way and in a way which would not necessitate looking at materials that were not necessary for this inquiry, there was no way we could do this.

Now, I regret very much that Mr. St. Clair misunderstood the nature of the request. It all started when in the first meeting we had, I asked him orally how the White House files were indexed, because if that were so it would enable us very sharply to narrow and be as specific as possible with respect to requests. He said "I do not know how that is done, I will find out for you." When he reported back later that there was no index to any of these files, no index to Mr. Haldeman's files, no index to Mr. Ehrlichman's files, no index to Mr. Dean's files, no index to Mr. Colson's files, we then just put that matter aside and concentrated on the six specific items, the 41 recorded conversations.

Mr. DENNIS. Well——

The CHAIRMAN. I might advise Mr. Dennis that I saw that letter before it went out. Mr. Hutchinson reviewed the letter. Based on the initial conversation that Mr. Doar had with Mr. St. Clair concerning the index, it was my understanding that Mr. St. Clair had discussed this with Mr. Doar before the letter was prepared. And, as a matter of fact, had suggested that he would try to be helpful in that regard, and that was the only reason that that paragraph was included. And it was included for the purpose of trying to narrow and to be specific as to what, if the indexes showed any files that might be pertinent, that we would address ourselves to that. And following the question or the misunderstanding on the part of Mr. St. Clair, we did not pursue that matter any further.

Mr. DENNIS. Well——

Mr. CONYERS. Mr. Chairman?

Mr. RANGEL. Mr. Chairman?

Mr. DENNIS. I think I might still have the time and I will be quite brief with it. I am glad to know all of that and I do not have any particular desire to argue about what ought to have been done.

I will say in passing, because it touches on another matter that I am concerned with, that I think that perhaps if the full committee had had a look at that letter somebody might have come up with the idea that this was not such a good idea, but that is over the dam.

But, what I am very glad to know is that apparently everybody concerned agrees with me that the thing to do now is to concentrate on the six specific requests, and that is what we are going to do. And I certainly am in accord with that.

Mr. DOAR. Congressman Dennis, could I make one more point with respect to that?

Mr. DENNIS. Yes.

Mr. DOAR. I think that the committee should know that in our discussions with Mr. St. Clair, Mr. St. Clair advised us that the President had permitted a member of Mr. Jaworski's staff to go to the White

House and go through a particular file and specifically, to examine the "Plumbers" file and that this idea of examining specific files was not something that was heresay as far as we could tell, because it was a procedure that when a particular file was identified and had been recognized as being relevant, that the White House had consented to having it done. And we were saying that if there are other specific files that are necessary, that are reflected in an index, then we would like to know that so we can consider it and report it to the committee.

Mr. DENNIS. Well, Mr. Chairman——

The CHAIRMAN. I am sorry.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to say for the committee I think our basic problem now is quite obviously who is going to run this inquiry, Mr. St. Clair, or the Congress of the United States under the Constitution, and this Judiciary Committee by the instructions of the House of Representatives. I think Mr. St. Clair is obviously a great lawyer and has made a lot of money practicing law, and he is concerned, and a little bit, I think he may know, but he does seem to understand that this is an inquiry. We are not having two trials. We are not having any trial. John Doar, Mr. Jenner, you are not preparing a trial of the President of the United States in the House of Representatives. This is only an impeachment, articles of, consideration of. And Mr. St. Clair seems to think that this is a trial and that we are going to try the President in this committee, and that they are going to try him over in the Senate. And this is not what the Constitution provides, and I think that his request is—I do not object to him writing it but I think we ought to be blowing from a hollow horn if we let him come in and sit, and examine who our witnesses are, and determine who we are going to call, and sit there with him and his representatives puting the evil eye on them. And we have an agreement and a committee policy that we would have confidentiality.

Now, how are we going to live up to our agreement, and our statement as to confidentiality with Judge Sirica, with the court, with the witnesses, with the public, with anybody, if we are going to have them sitting there every time we call somebody or before we call them? There is no way to prepare for this inquiry if the man who is the subject of the inquiry sits there and says, yeah, I want to talk to him. It is just foolishness.

Now, I think that any collaboration with Mr. St. Clair would be an error for this committee. I think it is foolishness for us to really seriously consider it. I think that it is quite clear that Mr. St. Clair, who is mentioned in all of these papers in New York and all of these legal journals, he is not mentioned in the U.S. Constitution, but the Congress of the United States is and we have that responsibility, not him.

Now, I particularly object to the defamation of our Republican counsel. I think somebody ought to defend those Republicans. They are both good lawyers. They are sitting there. I have high regard for Mr. Jenner, the Republicans' Republican counsel, and I have high regard for Mr. Doar, the Democrats' Republican counsel. I think they are both fine lawyers, and I think that it is absolutely essential that

we disregard the effort by some to cut up our lawyers. There is nothing wrong with our staff that we cannot cure. We hired them. We can fire them, and we are happy with them. I do not need—I do not make any recommendation to the President about who he ought to employ as a lawyer, and he has got plenty of them. And I wish they would keep their recommendations about our lawyers to themselves. We do not need them. We will hire who we want to represent this committee, and I think that the committee has done an excellent job, a responsible job. We are not trying to have two trials. We are not putting the President in double jeopardy. If he does that, he does that himself, not us. And I think that really this committee has a responsibility to run the investigation, to run the inquiry. I think we can. I think we are. And I think we will without or by their leave, or by the grace of any lawyer employed by the President or any other body. This is our responsibility, and we might as well quit worrying about whether Mr. St. Clair wants to sit by our warm side while we work at this.

Mr. DENNIS. Would the gentleman yield?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. DENNIS. Would the gentleman yield to me?

The CHAIRMAN. No. I am recognizing Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I would like to ask either you or our counsel if and when we are going to take up some of these questions that were alluded to by my friend from Texas, and I am referring particularly to the comments about whether Mr. St. Clair should be able to participate, at what stages of the proceedings he could be permitted to participate. And I think, and want to make it clear, that I think some of us perhaps disagree with what I am not sure, though, was the thrust of Congressman Brooks' remarks. In other words, I think there are some of us on this side that feel very strongly that we should at least have a scholarly presentation which would allude to the rights which have been accorded respondents in recent impeachment cases, which I understand to be that in the recent impeachment cases the respondent has had a right to have counsel present. I am not talking about depositions.

Mr. BROOKS. Would the gentleman yield?

Mr. RAILSBACK. What I would like to ask first is, are we going to take this up formally and, if so, when are we going to take it up?

Mr. BROOKS. Would you yield to me?

Mr. RAILSBACK. I will be glad to yield to you.

Mr. BROOKS. Surely the committee will take up every facet of procedure as we get to it. But, the basic issue now is whether we are going to run the inquiry or whether Mr. St. Clair is.

Now, I want you to understand that it is my feeling, and I am sure the committee would agree with this, that we welcome any information, any data, any witnesses that he wants us to interview, that Mr. St. Clair would recommend. The committee is not being less than objective about this. But, what we do not want is his interference with the planning and the investigation.

Mr. RAILSBACK. But let me say that I agree with you, and I especially appreciate your last remarks. And I also want to agree that I share the gentleman's feeling about the way this has been handled by

both the majority and minority counsels. I think that they are doing a fine job. I do not mean that. But, I mean there is a genuine issue which is going to come up as to whether the respondent should have a right to have counsel present.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. May I respond to the gentleman since he has asked whether the Chair is going to schedule a meeting for that purpose? I think that since this issue goes to the very heart of this proceeding and since this is a question which I believe is going to be ultimately decided by the committee, it would seem to me that an exchange and certainly a discussion of this issue is in order. And the Chair intends to schedule a meeting for that purpose.

The Chair also is considering whether or not it becomes necessary to have not only our counsel, counsel of the committee staff, but whether or not others might not be invited to discuss this matter before the committee because I believe it is of a sufficient nature that I think the points of view that have been expressed by committee counsel are fine and welcome, and possibly there may be other constitutional experts that I think might and should be heard in order to at least give us the benefit of their thinking since, in my judgment at least, while I may be clear on it and feel that I have reached an opinion or a decision, nonetheless, I think the committee is entitled.

Mr. DANIELSON. Mr. Chairman?

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Doar, I am still somewhat confused about where we stand with respect to the 42 recorded conversations. When I hear the President speak on that issue he seems to tell the country that he will not deliver to our committee anything more than has been delivered to the Special Prosecutor, that we have all we need, and we, and we should proceed with our responsibility. I gather the President's attorney, Mr. St. Clair, is telling you a different story, and I am really asking the question: Whom are we to believe, the President or his attorney? If Mr. St. Clair speaks a different tongue than the President is speaking, I would like to understand why you think that is so, if he does not speak for his client and the President is speaking for himself, are we not wasting time negotiating with Mr. St. Clair for something the President has told the country he will not deliver to this committee?

Mr. DOAR. Well, I think, Congressman Waldie, that in answer to the question, that it seems to me that it would be responsible of this committee to be certain that there is no misunderstanding with respect to the specific items that the committee desires with respect to these reported conversations.

Mr. WALDIE. Well, could I——

Mr. DOAR. And we have tried to do that.

Mr. WALDIE. May I just interrupt you there?

Mr. DOAR. Yes.

Mr. WALDIE. I am really puzzled about the argument and it seems to me it makes a smokescreen of Mr. St. Clair. He suggests that he is not quite certain what we want, and yet within 24 hours after the request he said we wanted 42 recorded conversations. He must have

listened to it or somebody surely must have listened to all of those tapes to identify the number of conversations that allegedly we were seeking, that we did not even know. I gather they know a great deal about precisely what we want. Is there really a question in your mind that Mr. St. Clair does not understand what we want in terms of those conversations?

Mr. DOAR. Well, I think that after our meeting Monday, Mr. St. Clair understood perfectly what we wanted. We have not had a reply from Mr. St. Clair since that date.

Mr. WALDIE. Well, did we not have a reply from the President who spoke and said to the Nation that he would not turn over anything more to the committee? Is not that a reply from the client? Do we need a reply from his attorney when the client is speaking publicly as to what he will deliver?

Mr. DOAR. Well, we have not had a reply from Mr. St. Clair about that. And of course, my recommendation is that this committee should leave no doubt in the mind of any member of the American people that, first of all, there is no misunderstanding about what the committee wants and why it wants it, and that we have really done the most, that your counsel has done and has been as careful and as precise as we possibly could be in identifying that material.

Mr. WALDIE. I certainly do not intend any criticism of counsel.

Mr. DOAR. Could I say one more thing?

Mr. WALDIE. Yes.

Mr. DOAR. In addition to that and I recognize the Congressman's position, but in addition to that it has seemed to Mr. Jenner and me that there is some—that it makes sense for us to examine and analyze the material that is coming to us before we finally put into specific form a firm recommendation for a subpena to deliver particular tapes and documents. Now, we have gotten all of the records and transcripts and logs that were turned over to Mr. Jaworski. We are processing those as fast as we can. And these do help to support our basis for requesting the additional information. And so that from my standpoint, Congressman Waldie, the important thing is to be as certain and as careful as we can with respect to this recommendation. I do not think that I can look behind Mr. St. Clair eyes, and when he tells me that he does not understand what we ask for, when he says to me, now it is more clear to me than it was before this meeting, and now I will go back and explain this to the President of the United States, I take him at what he says. I take him at face value.

Mr. WALDIE. Well, just this comment. I have a sneaking feeling that Mr. St. Clair may be attempting to stall the committee. I have a feeling that is not corroborated by any conduct on anybody's part if the evidence that we seek were not incriminating the President would rent the U-Haul truck and drive it up here and deliver it to the committee. I suspect it is being held back from us because it is incriminating, and the process by which it is being held back is the aversion of claims of ambiguity and misunderstanding. But, I wish the client of Mr. St. Clair would evince similar uncertainties when he speaks to the Nation about his dealings with this committee.

The CHAIRMAN. Mr. Wiggins. I recognize Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman.

A few moments ago a document was circulated entitled "Procedures for Taking Depositions Before the Committee on the Judiciary." It is my understanding that this is in the nature of a proposal only and that no action is contemplated at this meeting on that proposal; is that correct?

The CHAIRMAN. That is correct.

Mr. WIGGINS. It is to be noted that the proposal does not provide for the presence of the counsel for the President during the taking of any such depositions, and since that will be a question which ought to be, and I am sure will be, fully debated by this committee, I request, Mr. Chairman, that the committee staff be instructed to prepare what amounts to a possible amendment and to circulate that, the amendment to provide for the right of the President's counsel to be present during the taking of the depositions and other evidentiary hearings before the committee. Now, I am making this request, Mr. Chairman. I fully understand that that may not represent the counsel's position but that we should have that alternative before us in precise words at the time the debate is undertaken rather than attempt to amend it at the time of that debate. And so, that is the nature of my request, Mr. Chairman, and I hope you will see fit to honor it.

The CHAIRMAN. If there is no objection. I am sure that in the interest of advising the members and informing the members of all sides of this issue, I think that it is entirely appropriate for the committee members to have been so informed.

Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I would like to make a fairly general statement, Mr. Chairman, and I will be as brief as I can.

I agree with my friend from Texas, and I think perhaps that most members of this committee are in agreement this morning. I have listened intently to what the President has had to say recently in his televised appearances, and naturally we have all followed very carefully and very closely the activities and relationships of our own counsel, Mr. Doar, and Mr. Jenner, with Mr. St. Clair.

Let me say in the terms that they use down on Pennsylvania Avenue that I think it is high time that this President stop playing games with our Constitution, the Congress, the Presidency and the American people. On the one hand, one hears on television about full cooperation and the desire for an expeditious inquiry, but we see developing, I think, and I am afraid the intricate maneuvers of a strategy to not only limit our committee but to confuse the issue. Both the Constitution and historical precedents are clear, I think. The House of Representatives has the solemn responsibility and the power of impeachment and in the exercise of this power and responsibility, the House should not be limited in any way whatsoever in its access to the needed material and testimony. There is no requirement nor should there be for the House itself, or acting through this committee, Mr. Chairman, to define what constitutes an impeachable offense or set the scope in advance of this or any particular inquiry.

The impeachment power has come to us in its pure form, so to speak, from the Constitution. It is unfettered by explanatory acts of Congress or bureaucratic interpretations and in my judgment this is the way

it ought to remain. Together with the history of several individual applications on the power of impeachment, we have been served well for about 200 years and I believe that the same tools can serve us well in 1974.

To the President and to the people we should say loud and clear once again, and as we are this morning, that this is not an adversary proceeding. This committee and this Congress are not out to get this President, or downgrade the Presidency. We are intent on fulfilling perhaps our highest obligation as a coequal branch of our Federal Government with no predetermination of what the outcome of our inquiry might be.

Now, one last note; I feel that some comment is in order by somebody on the revelation by the junior Senator from New York yesterday, in what someone described as his announcement for reelection. He has now called on the President to resign as an act of statesmanship of the highest order, and while still protesting his innocence of wrongdoing. I, personally, most emphatically disagree with Senator Buckley. The President should not resign for to do so, in my judgment, would be interpreted by the vast majority of our fellow citizens as an admission of wrongdoing, tantamount to a guilty plea in court or perhaps even worse. It would also bear the mark of quitting under fire and I wholeheartedly agree with Mr. Nixon that the President should not be so limited in the exercise of their awesome duties and responsibilities in leading our Nation. So, Mr. President, do not resign. Do not resign. You might be impeached, you might even be convicted, but do not resign. And if you must do battle with the Congress, let your sword be cooperation and let your field be the whole truth.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. I thank the chairman for yielding, and I would like to make this observation, and again I want to restate a position that I made some time back. And at the outset, I share a lot that has been said on the other side of the aisle. If I were the President's lawyer I would say, come on, boys, back up the truck, anything you want you take a look at it. That would be my advice to him and I wish he would do that.

I am told—now, maybe this is wrong—but the reason that there is a slowness in giving a lot of this information, or some of these tapes, is that it takes countless hours to get to the one that you want. Now, is that part correct?

Mr. DOAR. I do not know whether that is correct or not. We have been told that by Mr. Buzhardt. But——

Mr. SANDMAN. Do we have any information that it is incorrect?

Mr. DOAR. We do not have any information it is incorrect, except that the tapes are carefully indexed. We have the testimony down before Judge Sirica as to how the tapes are indexed, and how the Secret Service has control over those, and that if you want to go in and get one, you go to an index and you pick out the box and then you have got the log that says when the tape started and when the tape ended. And if you know that you want a particular conversation in the middle of the tape, you have to run the tape half-way through.

Mr. SANDMAN. It takes a long time, though, by anybody's estimation to really get to the one that you want, even if you know what you want?

Mr. Doar. I do not know that it does take such a long time.

Mr. Sandman. Well, at any rate let me make this observation. Now, we have been going through this thing and I read in every newspaper in the United States how guilty this man is. You already say you have 100,000 pages of testimony, plus everything that the Special Prosecutor had. Now, if we have all of this, why does not this committee commence today in starting to get to the nuts and bolts on the one issue we all admit, if the proof exists, is impeachable? Why do we not start today on the infringement of his power which has to do with the coverup of the *Watergate* case? Why do we not go along with this now? You must have something we can start with now. As I see this thing, we are going to argue about every single paper that is not produced and if we keep doing this we can very well be here until the end of Mr. Nixon's term, and I do not think the people want to see that, Mr. Chairman. I do not think it is proper for me now, but I hope some day I get the opportunity to move that we start meeting consecutive days, we start on the one issue that everybody agrees is impeachable, if the proof exists, and I have not seen any of it yet. And this is what I think the people want. If we continue meeting on a weekly basis, only to hear what counsel did last week, we are never going to get to the bottom of this thing.

The Chairman. Well, may I say that this is what we are attempting to do, to arrive at that point where this material will be presented to the committee in such a form that it is readily understandable and it will not be on just one point, but on many points that may have some relevancy to the question as to whether or not there does indeed exist any impeachable offense or whether there does exist any impeachable offenses.

Mr. Sandman. Can we discuss a time schedule on where we are headed? I think this is important. When are we going to start meeting here, when is this committee going to start having hearings? Can I ask that question? Would that be proper?

Mr. Doar. Well, with respect to the matter of the Watergate coverup, the specific information that we have asked for all relates to that. They relate to conversations, to recorded conversations within the month before or the month after March 21, 1973. We have not yet received the material from Judge Sirica to examine. It would seem to me, Congressman Sandman, that we would not want to proceed with hearings until we have had an opportunity to examine and organize that material. I think that once the material——

Mr. Sandman. Yes, but do you not think we have enough to start? If we are going to argue about every paper that is not delivered our way, we can never get started.

Mr. Doar. We are not arguing——

Mr. Sandman. Do we not have a substantial amount to start with?

Mr. Doar [continuing]. We are not arguing about every paper that has not come our way. What we are talking about with respect to Mr. St. Clair is six specific items that we requested. And in the meantime, that is not all we are doing. We are assembling and collecting and organizing the proof and involving the entire matter before this committee. And we are doing it as rapidly as we can.

Mr. SANDMAN. Will you give us some kind of a time schedule, in your judgment, as to when we are going to start those consecutive days of hearings here?

Mr. DOAR. Well, it is also difficult for me to say that, but I think we could do it really within a reasonable time. It depends upon just exactly how the committee proposes to proceed. Does the committee want to take parts of this and then adjourn, or does the committee want to take it all at one time? I would recommend to the committee respectfully that the committee let us get the case organized and then present it to the committee at one time.

I am not saying that some time within the reasonably near future we will not be able to tell you that, but it would be irresponsible for me to say that we can do it on this day rather than that day, but I recognize your concern. We have been concentrating on preparing the case. We are making good progress in organizing to present it to you in a fair and objective way.

The CHAIRMAN. Mr. Jenner? Mr. Jenner, would you comment on that as well, since this is a matter that I think is important for us to hear?

Mr. JENNER. Thank you, Mr. Chairman.

Ladies and gentlemen of the committee, I indicated to you my background in the practice of law as a litigator of many years. And I would be very uncertain and somewhat upset, and feeling that I had not represented the committee well, or my clients, if I began to present proof on a partial basis without knowing down the road what the additional relevant evidence is in order to fairly present the matter to this committee, I also feel that apart from the Watergate, the staff has been instructed to investigate other matters which we are pursuing. Some of those matters we reported to you in the March 1 report. Mr. Doar and I are going over for the purpose of making a report to you down the road, in the very near future, that perhaps we think the staff has discharged its responsibility to you and that our recommendations to you for your decision is that certain matters be dropped insofar as requiring the staff to pursue its investigation in those areas.

But, to Congressman Sandman and to all of you, it is very important before your counsel present anything to you, that your counsel have a notion of the magnitude of the presentation, and have that presentation organized. In the trial of lawsuits whether administrative proceedings or in a courtroom, competent litigation counsel have themselves organized as to sequence so that as you present the sequence it begins to unfold the story to you. And there is one thing that is relevant to another, and you must present it all in a context, and that is what Mr. Doar and I are attempting to do.

The 6-paragraph items, or the 42 conversations is part of all of that. We have not heard them. We do know, and we have represented to you this morning, and I repeat it again, they are relevant to Watergate and the coverup. And where they sit in the package to be presented to you in an organized fashion, we do not know at the moment. We hope to find out in the very near future. And Mr. St. Clair did say to us expressly Monday morning in our meeting that he will report back to us.

The CHAIRMAN. Thank you. Mr. Rangel.

Mr. RANGEL. Thank you.

Mr. Doar, I appreciate the efforts that you have made to get the materials requested by this committee, to get on with our investigation, especially your understanding patience with the confusion which obviously exists in the White House. I share, however, the concerns of Mr. Wiggins as to the rules of procedure for taking depositions before this committee, but wonder under what authority are you, Mr. Jenner and yourself, negotiating the rules of this House and this committee with one, who at times, claims to be counsel for the President and at other times counsel to the Presidency. And I refer to his letter where he indicates that he is disappointed either in you or this committee for his not having input in what I consider the constitutional responsibility of the House of Representatives and this committee. So, under what authority are you discussing the rules of this committee with Mr. St. Clair?

Mr. Doar. We did not discuss the rules of this committee with Mr. St. Clair. Mr. St. Clair asked me if I would bring a request from him to the committee to participate, be granted the right to participate fully, the right to cross-examine, to call witnesses, to have the power of subpena on behalf of the President in all proceedings before the committee. We did not negotiate that. We did not discuss the rules with him. We did not say anything except that we would bring it to the attention of the committee at the next meeting, at the next briefing.

Mr. Rangel. Well, as our counsel, it appears from the letters of March 8, and 13, that Mr. St. Clair is requesting to become a member of the Judiciary, with all of the rights and privileges accorded. And I wonder, as our counsel, whether you can determine at this point whether he has any legal standing at all to make these inquiries as to rules, which we have not yet decided?

Mr. Doar. Well, I do not believe he has any legal standing at all, no, and we did not grant him or consider that he had any legal standing. He made the request, we agreed to bring the request to the attention of the committee.

Mr. Rangel. Well, I would just like to conclude, and my final request is, is there any statutory or constitutional provision for a citizen to be employed as counsel to the Presidency?

Mr. Doar. Well, that I do not know. I do not know.

Mr. Rangel. Well, I am just saying that if, in fact, these letters refer to him as being counsel to the Presidency, someone that he cannot confer with, and some object which is not under investigation, it could very well be that he has no standing in connection with any conversations with this committee.

Mr. Doar. Well, Congressman Rangel, I saw the letter that the President wrote to Chairman Rodino, in which he said he had instructed, or maybe it was Mr. St. Clair wrote to Chairman Rodino saying that the President had instructed him, President Nixon had instructed him, to be in communication with me and Mr. Jenner to discuss, on his behalf, matters that were before the committee.

Mr. Rangle. Mr. Chairman, I do not want to get involved in preparing letters for our counsel, but it seems to me that whatever response Mr. St. Clair gets as it relates to the rules of this committee and the House, that we advise him that when we have reached that decision that not only he but the American people will be so advised.

The CHAIRMAN. Well, the Chair will advise the gentleman from New York that we will take no action until the committee has taken that action, or that matter under consideration.

Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

I would like to go back to the first issue that was before us this morning, presented by Mr. Dennis, which concerned the letter of February 25. In the paragraph Mr. Dennis mentioned after the very appropriate request as to how files are indexed, there is the additional sentence which says: "If we could work out a way whereby members of the inquiry staff may examine these files" in what otherwise was a very tight, concise, proper request, this single sentence has been picked up and been the subject of an offensive against this committee, and has put us in a vulnerable position. It even appeared in the press before we knew about it, and I would like to suggest that the rules of confidentiality that apply to incoming materials, documents, records, tapes, etc., should not be stretched to cover outgoing material from our inquiry staff. And I do not think that we would have given ammunition then to Mr. St. Clair, had members of the committee seen the letter or draft of the letter before it went out. I think that it would help us, particularly in view of the restraints that counsel is under about meeting with the press, et cetera, to know ourselves, to be responsible for everything that goes out of our committee. And I, therefore, Mr. Chairman, would like to request that you consider this change in procedure and that there is a definite distinction between the availability to committee members of material before it goes forward from our staff as distinct from the very proper confidentiality rules that apply. And I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I have before me the procedures for handling impeachment inquiry material, and I support it, frankly, setting up these confidential procedures. But, I feel that it is very embarrassing for a lot of us that are concerned about the scope of the inquiry, we are concerned about what requests are being made, that in the case already alluded to by my friend from New York, we did not even have any idea. I did not have an idea, I think, until a week afterwards what we had actually requested of the White House. I think it is very clear from the procedures that we have set up, that they were designed to screen evidence, which I can understand and I approve. But, as far as limiting our knowledge, members of the House Judiciary Committee, with this kind of a responsibility from knowing what we are seeking, I cannot understand that. I agree with the gentleman from New York. It seems to me that we are misconstruing or misinterpreting our rules here.

The CHAIRMAN. Well, I would like to state that if the gentleman is suggesting that each time that a communication or a letter is going to be addressed to an agency, or an individual, which is within the purview of the investigative areas that have been outlined, that I think we would be here from now until doomsday merely sending out correspondence and getting first the approval of each and every individual member. And I never believed that this was the intent of the committee, that every letter that is sent by the committee chairman with the approval of the ranking member, would have to be circulated to all

of the individual members and to every member before a letter would be sent out.

Mr. SEIBERLING. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman, can I just ask you——

The CHAIRMAN. Yes.

Mr. RAILSBACK. I think you are right, that we maybe should perhaps not automatically be entitled to get every single request. But, when a member, and I understand that Congresswoman Holtzman did ask to see the letter, and I think others of us thought this was particularly significant, then it seems to me in such a limited case as that we ought to be able to get it. I do not know any reason why not.

Mr. MCCLORY. Mr. Chairman, may I just comment that I think what the gentleman has in mind is that we do not want to get our information from the New York Times. We want to get it directly as members of this committee.

The CHAIRMAN. Now, we have been making statements and I will recognize Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, thank you.

I would like to address a question to Mr. Doar and Mr. Jenner.

When the House Committee on the Judiciary was designated to go into this matter of impeachment, were we not essentially designated as sort of a grand jury?

Mr. DOAR. That is the closest analogy.

Mr. DONOHUE. Going on your background and your experience, what are the duties of a grand jury? Are they not in the nature of an inquiry?

Mr. DOAR. Yes, they are.

Mr. DONOHUE. Now, is the subject, the person under investigation by the grand jury entitled to have counsel appear before the grand jury and cross-examine any of the witnesses that might be called before the grand jury?

Mr. DOAR. No, he is not.

Mr. DONOHUE. In other words, that is entirely in the hands of the grand jury or the person that is their legal advisor, is it not?

Mr. DOAR. That is correct.

Mr. DONOHUE. And is not that the way we are proceeding and should proceed?

Mr. DOAR. That is my opinion; that is the way you are proceeding and the way you should proceed.

Mr. MARAZITI. Mr. Chairman?

Mr. LATTA. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Butler, did you seek recognition?

Mr. BUTLER. No, thank you, Mr. Chairman.

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Chairman, thank you.

Mr. Doar, in reference to the point raised by Mr. Sandman as to whether or not we had enough information to proceed now, on the issue of February 27, the New York Times, it quoted Mr. Jaworski as saying that he believed he had the full story at Watergate. And has Mr. Jaworski indicated to you, have you had any conversations with

him as to whether or not in his opinion, he had sufficient information to have the full story on Watergate?

Mr. DOAR. Yes. We have had conversations with him. He says that is not an accurate quotation. He does intend to request additional information from the White House, and that with the information that he has, he had to make a decision whether or not to delay the returning of these indictments and litigate with the White House the question of these additional tape recordings or recorded conversations that he thought were necessary to his case. And he has made it quite clear to us, and to both of us, that he intends to seek additional information.

Mr. MARAZITI. But he thought that he had enough information to proceed before the grand jury on the Watergate story?

Mr. DOAR. That is right.

The CHAIRMAN. In light of the fact that there is a quorum call, the chairman is going to call, in view of the fact that more of the members would like to be heard, the Chair is going to hold another briefing session tomorrow morning at 10:30.

[Whereupon, at 12:12 p.m., the briefing was adjourned to reconvene Thursday, March 21, 1974, at 10:30 a.m.]

IMPEACHMENT INQUIRY

Impeachment Briefing

THURSDAY, MARCH 21, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m. in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Butler, Cohen, Lott, Moorhead, Maraziti and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel; and Hillary D. Rodham, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

First, I would like to announce that this morning I dispatched, after approval of a letter by Mr. Hutchinson and myself, the letter that the committee under unanimous consent request yesterday, authorized me to dispatch to the appellate court, merely restating the position of the committee insofar as the material that is presently in the hands of the district court, Judge Sirica. As we understand, Mr. Wilson is appearing this morning in order to take up arguments appealing from the decision that was handed down by Judge Sirica, and it is my understanding that there is going to be argument in opposition to in-stay by the Special Prosecutor's Office.

Do we have any further word on that, Mr. Doar?

Mr. DOAR. Mr. Chairman, we do not, except that the argument was scheduled before the full court this morning at 10:30 on the merits, the merits of the petition and on the application for stay. The Special Prosecutor was directed to have his brief filed in opposition by 9 o'clock this morning on the merits.

The CHAIRMAN. I would like to state that the committee members have the letter before them. I would hope that the committee members,

recognizing that this is presently now being delivered by hand to Chief Judge Bazelon, that out of courtesy this not be made available otherwise.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. The letter is being distributed at this moment. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I wonder if I might be recognized to just make an announcement of some action for the next committee meeting?

I think some of the members here, including this one, are having great difficulty with the flood lights in this room, when we are having hearings and they are being televised. The lights are painful to the eyes, they distract us and make it difficult to concentrate on what the staff are telling us. And I think they are incompatible with the kind of judicial atmosphere that I think the committee is striving to achieve in this very grave matter and, therefore, for those reasons they interfere with the committee's work. And I intend to move at the next meeting of this committee to prohibit flood lights and flash bulbs in this room, while the committee is in session, because of those reasons, and I just want to notify the other members and the media that use flood lights so that they can make whatever adjustments are necessary, if such resolution should be adopted by the committee.

Thank you.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

The CHAIRMAN. Just a moment, please.

The Chair would like to state that in light of what transpired yesterday, the more senior members were recognized and the more junior members were not recognized, and the Chair is merely looking upon this briefing session as a continuation of yesterday's session, and I was going to recognize the members who were not recognized yesterday in the order of their seniority.

Mr. CONYERS. Well, Mr. Chairman, if that is the case, I had not made a presentation yesterday.

The CHAIRMAN. The Chair recognized the gentleman yesterday when he commented on some of the matters that were before us, even before the counsel began his presentation. The Chair is going to adhere to giving fair treatment to all of the members and I, therefore, recognize Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I want to follow on from yesterday's discussion, and I want to raise several points with you, with the members of the committee, and certainly with the counsel regarding Mr. St. Clair's comments to this committee and regarding the access to the information. And it seems to me before I ask just two questions, I would like to state my position that it seems to me that Mr. St. Clair is suffering from what I think is a sad misunderstanding of what our inquiry is. I guess, as counsel to the President, he cannot bring himself to realize that he cannot set the ground rules for our inquiry. Now, he is suggesting that he and any of his associates play an active role in our inquiry, and I would submit that that should be rejected out of hand.

Our inquiry is not the area for an adversary proceeding, as was pointed out by some yesterday, and I thought it was clear that what we are doing is searching for the evidence and there is no opposition rule in the script. And I would hope that we can somehow convince Mr. St. Clair that the only proper way for him to present his case is to cooperate and provide the committee with all of the evidence.

I would also submit that based on that evidence, the full House and this committee will decide whether or not Mr. St. Clair's highly praised adversary talents are actually needed. If the President is impeached, Mr. St. Clair will get his chance to demonstrate his own renowned trial techniques, but if that comes that will be further down the pipe, and there is no useful purpose in permitting Mr. St. Clair to give us the preview during the inquiry stage, which is what this is.

And I think what disturbs me most about the role that I see coming from the White House is that it seems, too, that Mr. St. Clair has become a full-fledged member of the President's orchestrated PR machine and has joined the work gang assigned to attempt to drive a wedge between the committee and our staff and between Democrats and Republicans, because this is what I sense is developing.

And now I want to hit a very delicate nerve that bothers me most regarding recent revelations. Now, we see that Mr. St. Clair is coming to the Hill to meet with Members and for all we know he is discussing matters that many members of our committee are not privy to. And I also notice that Mr. St. Clair seems to restrict his so-called briefing sessions only to Republicans. And for a man who sees himself representing the Presidency, it seems that he is ignoring more than half of his audience. And I wonder whether Mr. St. Clair is practicing law or playing politics, and is he the President's counsel or is he the President's lobbyist.

So, I think as a member of this committee I really resent the thought of what is happening because we are trying to be objective, we are trying to run a fair investigation and now I think that we see a political storm trooper coming here to represent him.

Mr. RAILSBACK. Will the gentleman yield?

Mr. MEZVINSKY. With that in mind, before I yield, I would like to raise two questions and then I will be glad to yield. I would like to find out from the counsel whether or not Mr. St. Clair has any guidelines that he is operating under, insofar as Mr. St. Clair and Nixon are concerned about our procedures and we are being guided by confidentiality, and in light of the fact that last week we found a release of a confidential letter, and we do not know whether or not the exhibit A was even given to any members of the opposition side or of the Republican side, and I think it is important that we know just what his plans are. So, do we know what kind of guidelines Mr. St. Clair will operate under concerning procedures for any confidentiality, not only with members of this committee, but with Members of the Congress as a whole?

Mr. RAILSBACK. Will the gentleman yield?

Mr. MEZVINSKY. Yes.

Mr. DOAR. The short answer to that is that we do not—Mr. St. Clair has not advised me or Mr. Jenner of any guidelines that he is operating under.

Mr. RAILSBACK. Mr. Chairman?

Mr. MEZVINSKY. Now, I would like to add the second point and then I will be glad to at least assert what rights I have as a member of this ber I want to at least assert what rights I have as a member of this committee. We indicated yesterday that Mr. St. Clair told us that before our requests for information will be met that we have to study all of the evidence available to us. And I am concerned that we are into the proceedings as to getting the grand jury material, and does this mean that St. Clair is telling us that if the grand jury evidence is tied up in the court for an indefinite period of time, that the committee will be denied other evidence until all appeals are adjudicated? Do we have any indication that that is the position?

Mr. DOAR. No, it does not mean that. Mr. St. Clair did not, nor did he tell me or Mr. Jenner that we should study all of the material as a precondition to making requests for further material. He did say that to the extent that our request reflected review of the material we already had, and set forth as specifically as we could the basis for our request, that that would be helpful to him and so that he did not lay down any condition with respect to that. He did not.

Mr. MEZVINSKY. So, there is no position on our part that we cannot request what information we think is necessary, irrespective of the time line that we may find ourselves under concerning trying to get access to that material from the grand jury?

Mr. DOAR. Congressman, both Mr. Jenner and I were both very specific and very clear about that, that if there was a delay that there was no question that the committee, as far as we could sense the will of the committee, was that they were interested, felt that it was necessary that these six specific items be produced, and that we did not think that it was possible, or it was right, or that we could fairly represent you by not pressing as hard and as strenuously as we could for the delivery of that material, and that what may or may not have happened in the court with Judge Sirica's material was of not inconsequence with respect to the position of the committee.

Mr. RAILSBACK. Would the gentleman yield?

The CHAIRMAN. The gentleman has no further time within which to yield, and I would like to state that while we are not operating strictly under the 5-minute rule, since this is a briefing session, nonetheless, I would like to advise the members that I would hope that they would restrict their remarks so that there is not a speech made, but there is a question directed to the counsel for the purpose of being at least informed as to what this matter is all about; that that be the procedure that will be adhered to. Otherwise, the junior members and those who remain to be recognized are not going to be recognized within the hour that is left to us.

I now recognize Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

My concern is that, as the counsel indicated, with the procedures for taking depositions before the committee. I have felt that depositions in this particular instance, my view of it is slightly different from what I understand counsel to say yesterday. I, for all purposes, believe they are evidentiary hearings of the Judiciary Committee out of the presence of the committee or a subcommittee, but they have all of the evidentiary value of evidence taken before the committee.

Therefore, I think it is very important that we adopt our rules and that we consider them carefully and that we recognize what we are doing. Are they different from an affidavit, are they different from an investigation report in that they are evidence of a hearing available as part of the evidence of the committee? Therefore, I would like at this time to receive your assurance that I, as a member of this committee, will be personally notified of the taking of any deposition and given an opportunity to be present, if I so desire.

The second thing I would like to be assured of is that no further deposition will be taken until the rules have been formally adopted by the committee for the taking of these depositions. If I could receive your assurances in these two, then, Mr. Chairman, I will have used my time well.

Mr. Doar. Congressman Butler, I am prepared, of course, to assure you with respect to the second matter. I would hope to be able to persuade you that prior notice to the committee members with respect to the taking of the depositions would not serve the best interest of the committee. And I say that respectfully. I would say that really these depositions are not any more evidentiary than a sworn statement taken under oath.

If you see the last paragraph of rule 11 at the top of the last page, page 4, it says that the deposition, if received by the committee, and so that the committee, the intent and spirit of these depositions rules is that depositions would only be considered by the committee, if the committee decided at the hearing or at the presentation that they would be received. If the committee were to decide otherwise, then they would not be received, and then they would call the witness themselves before the committee. And there was no intention here, Congressman Butler, to build massive evidence outside of the presence of the committee. The purpose was to expedite the presentation with respect to evidentiary matters about which there might not be any dispute, and, second of all, to help us in our investigative inquiry where we had a witness who would not testify except under the compulsion of a subpena and that it would serve the interests of the committee and expedite things if that kind of compulsive testimony, prior to an evidentiary hearing, was held without the necessity of the committee members being present.

I personally feel as your counsel, that in preparing this case we can better serve you if we go out, if we follow this procedure under your instructions and guidelines as quietly and in as professional a manner as possible. It seems to me that based on my observation of how the Senate selected committee worked, the more people outside the staff that were aware that a particular person's deposition was about to be taken, or in that case it was before a committee member, that that became news in the paper, it created public attention and, in my judgment as a lawyer, it makes it more difficult to search out the truth. So, I would hope that with respect to your first assurance, that the committee would consider that before it adopts it or a rule, but of course, if the committee asked me to give that assurance, you can be sure I would. With respect to the second matter, I give you that assurance. No depositions will be taken until these rules are determined and established by the committee.

But, we went ahead and took one deposition last week before this came up, and I explained that to the Congressman, it was the deposition of a man who wanted to be subpenaed and it involved what I do not think was a controversial matter, a former U.S. attorney from California that gave us some testimony. And, as I say again, if the committee were to review that and say we would like to have this man come in and examine him on that, of course we would. He would be, of course, brought before the committee.

Mr. BUTLER. Well, I thank you. I appreciate your assurance that we will resolve these questions before we go to the taking, before we take any further depositions. I am still strongly of the feeling that the committee is entitled to make the decision as to whether we would attend the taking of the depositions or not, and I would like to be advised of it for that reason. I think if it develops that you cannot depend upon the discretion of the committee; if it develops that you cannot depend upon the members of this committee to respect the importance of the proceeding quietly with this sort of thing, then, of course, it creates another problem. But, for the moment, that would be my view of it. Of course, it is a policy decision, as you recognize, that the full committee will have to make when we undertake the formal consideration of these rules.

I thank you very much, and, Mr. Chairman, I would like to yield.

The CHAIRMAN. I would like to advise Mr. Butler that we presently have under consideration whether or not we will formally hold some hearings on that question, which I think is very central to this whole issue. And I feel this is important and must be resolved, and the decision ultimately will be the decision of the committee. I would hope that we also recognize, however, that this is going to also create problems with regard to the question of expediting these proceedings. And all of that will have to be taken into consideration. But, the Chair is considering this and will be consulting with the ranking Republican member, Mr. Hutchinson, and if we reach a decision that hearings are necessary, and at this time, I feel they might be, but I do not expect that to be a final judgment, at least on my part, and I would think that we will then advise the committee.

Mr. MCCLORY. Will the chairman yield on that point to me?

Is this not a subject that we are going to resolve in this committee, and on the basis of the precedence? We do not have to have any hearings on this subject, do we? The question is——

The CHAIRMAN. Well, I would like to remind the gentleman that if there are precedents, the precedents are both ways, and whether or not the precedents establish the right of any counsel representing the individual who is the subject of the inquiry is something that I think is not resolved, is something that certainly, in my judgment, does have an impact on the total constitutional process, as I see it. And I do not think that we can dismiss it lightly as the gentleman would suggest.

Mr. MCCLORY. Well, no, Mr. Chairman. I am not suggesting that we dismiss it lightly. But, we have been able to adopt our other rules of procedure without having any hearings, and it seems to me that this is something we could do as a committee without conducting hearings on our procedure, because we can go down the line with regard to other items of procedure and this could go on and on and on, as the Andrew

Johnson case did go on, because they got into such confusion as to how to proceed.

The CHAIRMAN. The Chair does not intend to delay this proceeding at all, and the Chair has not made any decision and will not until we have consulted.

Mr. BUTLER. Mr. Chairman, I just want to make it perfectly clear that I am very much interested in moving this along, and my insistence on this is not to delay. I hope we can early resolve the question of these rules and move on.

The CHAIRMAN. We must and we will.

Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, thank you for yielding to me some time.

I am interested, particularly, in the subject of whether or not Mr. St. Clair or any other person who is a stranger to these proceedings could participate in any respect in these proceedings, and I want to make it clear that although this is a briefing session, I think it also, shall I say, is a debriefing because I think that the chairman and the ranking minority member and the other members of the committee, as well as our counsel, should know how each of us feel about it. I fully expect our able counsel to take their instructions from the committee as a whole and not from an individual member. But, I want my position to be eminently clear.

I hope that the counsel will continue their past practice of working in a very professional manner with Mr. St. Clair or anyone else with whom they have to work in order to meet the responsibilities of the committee, and I am confident that they will. But, when it comes to the question, if there be one, of whether White House Counsel, Mr. St. Clair, or anyone else should have any right to participate in these proceedings, I would submit that that is not negotiable. The Congress recognizes, and it provides expressly for vacancies in the Office of the President. It recognizes those vacancies can take place by removal of the President from office by his death, his resignation, or his inability to perform his duties. We are not here concerned, obviously, with death or inability to discharge duties. And we are not, for the time being at least, concerned with resignation. But, we are well along, I submit, in the process provided in the Constitution for the removal of the President from office, provided expressly in the Constitution that the President shall be removed by the process of impeachment. It says that the House of Representatives shall have the sole power of impeachment, and that the Senate shall have the sole power to try impeachment cases, and that the punishment, in case of impeachment and conviction is removal from office.

I want to point out that, in my opinion, Mr. Chairman, this is a sole and exclusive power vested in the House of Representatives. It originates in the Constitution. It is not limited, it is not subject to qualification. It is not subject to limitation, and is not at all permissive of limitation or regulation or even reviewable by the executive or the judicial branches of our government.

I submit that we, as members of this committee, and Representatives of the House of Representatives, have no right under the Constitution to relinquish or abdicate or delegate any part of our responsibilities

in the process of impeachment. Neither Mr. St. Clair nor anyone else has a right to interfere with the orderely discharge of our duties. And that also goes to the naive concept that some so-called impartial third person should pass upon what we are going to be able to examine in our inquiry.

Now, as to the so-called grand jury papers, which I understand are now before an appellate court, I hope and trust that the judicial branch will recognize forthwith, today I mean, that they have no jurisdiction over those papers or over this proceeding, and that they will order them delivered to this committee today. In my opinion, the judicial determination of what is a legislative question would work just as much mischief as a legislative determination of a judicial question.

One last point: I am a little bit tired of seeing on television, hearing on the radio, reading in the paper, that the White House says that this committee is indulging in delaying tactics and is stalling and dragging its feet. All of the stalling and delaying I have been able to discover emanates from outside sources, many of them at the White House. There is the withholding of necessary evidence which is simply a delaying and obstructing procedure, and I hope it terminates forthwith.

I yield back the balance of my time.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

If I might be permitted, I would like to yield briefly to the gentleman from Illinois, my good friend, Mr. Railsback, for a brief statement.

Mr. RAILSBACK. Mr. Chairman, this will be fairly brief, and I hope that it is fairly emphatic. I have been proud of the way this committee has been handling itself. I think that since our initial little partisan exchange over the one-man subpena power, we have proceeded with, by and large, fairness. We have been judicious. We have tried to be nonpartisan.

I suggest to you, Mr. Chairman, that if we do not give the respondent the right of counsel present, some of us, I think, are running the risk of causing a real partisan confrontation. And I say that as being one of those that is supposed to be, according to one of the magazines, the persuadable, and I think I am a persuadable. Let me just say that since 1876 and the impeachment of the Secretary of War, William Belknap, every respondent in every such inquiry, which resulted in impeachment, has been permitted, on his request, the privilege of having counsel present. And in addition to this privilege, which has been granted in a total of five impeachment hearings, the respondent or his counsel has been granted the privilege of cross-examining witnesses, raising objections, and testifying in his own behalf.

I do not know what we are trying to do in this case. This is by far the most serious impeachment case. I think the only way you are going to have a successful inquiry is to see that this respondent is treated as other respondents have been, particularly in recent cases. You are looking, in my opinion, for nothing but trouble if you do not give him the same privileges that we have given other respondents.

Mr. COHEN. If I could have my time back, now?

Mr. RAILSBACK. Yes.

Mr. COHEN. Thank you.

Mr. Doar, yesterday the gentleman from Massachusetts asked a question as to whether or not we were proceeding in a fashion similar to that of a grand jury, and your statement was unqualified that we were. It seems to me that that is not the case, that if we were proceeding as a grand jury we would be proceeding on an ex parte investigatory basis, in which it would be secret. And I would just simply suggest that to the extent that we are going to make these meetings, or briefings or revelations about our process and progress public, then the proceeding is not necessarily investigatory. It becomes accusatory at some point along the way and I think this has a bearing on what Congressman Railsback is saying. To the extent that we are conducting this in public, we ought to have some concern about the rights of those who are going to be ultimately accused by the process. And it does become in that middle ground between investigatory and accusatory, and I think we have to take due consideration of the rights of the respondent.

And second, I have another question, and that deals with the uses of depositions. I have not been out of the practice of law too long, but it seems to me that both in civil and criminal practice that we would use depositions for the purpose (1) perpetuating testimony if someone were dying or in danger of dying or leaving the country and not coming back where you might use the deposition for purposes of positive proof. But, basically, you use a deposition only for purposes of impeachment: namely, impeaching the credibility of a witness and not as a basis for positive proof. So, I was a little bit concerned about your statement that the committee can either accept a deposition or require the testimony publicly or privately, as we decide. It seems to me you might have a different result, that if we call a witness to testify there may be a ruling that we have the counsel of the other respondent present, whereas if we just call for the deposition, there is no opportunity to cross-examine. And all I am suggesting is that we still have not received any guidelines from your staff as to whether we are proceeding as a grand jury and, if not as a grand jury, exactly how we are proceeding and what are going to be the evidentiary guidelines. And I think this would solve a lot of problems for many of us.

Mr. Doar. Congressman Cohen, we are working on these guidelines and as soon as they are finished and they should be finished within a few days, I would hope by early next week we would provide these additional sources of information to you.

Let me say this: I respect your views very much with respect to and your experience as a lawyer, and your experience with the use of depositions in litigation. I think, however, that that really reflects what our problem is perhaps in that we all, having background as lawyers, tend to think of an impeachment proceeding as a trial or a pretrial and, constitutionally, that is, in my judgment, not the case. The Constitution says that the trial shall be in the Senate. The Constitution says that the House shall have the sole power of impeachment which means that the House, as I understand it, shall have the sole power to investigate, to inquire and to decide whether to bring charges.

Now to that extent, then, we are not talking about using depositions at a trial. If one of these depositions were, they could not pos-

sibly be used if the proceeding went so far as to involve the trial in the Senate. But, before a grand jury, from time immemorial, there have been use of sworn statements and taken outside of the presence of the committee and this committee, in its wisdom and judgment, could do that here.

Mr. COHEN. I would like a clarification on the point, if we are, in fact, proceeding as a grand jury, what are the guidelines to be followed here, and I would like to yield just a moment to my friend from California, Mr. Wiggins.

Mr. WIGGINS. Counsel, would you state your opinion as to whether or not the fifth amendment of the U.S. Constitution is applicable to these proceedings?

Mr. DOAR. I have no doubt that all of the Constitution is applicable to these proceedings. No question about it.

Mr. COHEN. On the question of the grand jury, could we have in your recommendations in the next couple of days exactly what the guidelines are going to be?

Mr. DOAR. Yes.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

I want to respond in one small way to the remarks of the gentleman from Illinois, Mr. Railsback, and Mr. Danielson. I would not want anybody to think that there is a polarization taking place on this committee on the important and really vital issue of representation by counsel of the President or the other matter of depositions. This committee is also the guardian of constitutional rights as well as the impeachment committee. And, above all, we intend, I am sure, to be very fair in everything we do. And I have great respect for the lawyers on the other side. I think that we have proven that we can work together. I think we have virtual unanimity on the vital issue of the evidence that the White House has refused to give us to date, the fragments of 41 tapes. So, we have proven we can work together. And I am not going to vote on these rules that are going to be proposed until we have had an exhaustive and explicit study of the precedence, because there are precedents that can apply in this area of representation.

I think that the gentleman from Illinois was absolutely right when he said that counsel—well, now, counsel for judges, judges have not been represented by counsel, these judges under impeachment in the investigatory process preceding the actual hearing before the Judiciary Committee. But, when they did get before the Judiciary Committee, judges, all of them that I have been able to quickly look up in the 20th century, by the time they got to the Judiciary Committee, when the proceedings started they were, by grace, not by right, represented by counsel. And whether or not all of these precedents apply in this case is something we are going to have to sit down together and talk about. And I think we can resolve it. And I am sure that we are not polarizing Democrats versus Republicans on this issue, because I certainly do not intend to be.

The CHAIRMAN. Mr. Lott.

Mr. LOTT. First, Mr. Chairman, I would like to yield very briefly to my colleague, Mr. Dennis.

Mr. DENNIS. I thank the gentleman for yielding. I would just like to point out to everyone that this is a very serious matter and we ought to give it careful and not partisan consideration. Mr. Railsback is right about his precedent and if we go into the cases that were not brought to trial, he is even righter. There are about 40 of them and in more than half of them it is a matter, not of right, but of what the committee thought was right, and in more than half of those other cases counsel were here before the committee.

We pay a little attention to Jefferson's Manual. Let me tell you what it says, section 505:

> In many instances the committee has made its inquiry ex parte. But, in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine, and be represented by counsel.

Now, that is not limiting the inquiry or letting anybody lay down the ground rules. That has been done because the committee has felt that that was fair, and that that was the best way to arrive at the truth, which cross-examination usually is. And it also applies to depositions, because under our very proposed rule here, these depositions, if accepted by the committee, and we can accept any of them, may be used without restrictions in the inquiry, and in the same manner as testimony taken in the presence of the full committee, and that is evidence. And the right to appear or the grace to appear because it is fair or right, applies there as well as here, if you have got an evidentiary type of deposition, which is what we are talking about in these rules.

I thank the gentleman for yielding.

Mr. LOTT. Mr. Doar, I would like to ask you a couple of brief questions. Is the staff preparing or doing some studying further for the committee members as to exactly what the precedents are in this area of rights to counsel?

Mr. DOAR. Yes; we are.

Mr. LOTT. Are you giving consideration, and maybe I should address this to the chairman, to having maybe some hearings and some testimony perhaps from experts on this subject, as I heard on the radio coming into work this morning?

Mr. DOAR. Well, yesterday, Congressman, the chairman announced that he was giving consideration to that. We are taking the directions from the chairman and from the committee. If it is the committee's will to do that, we would attempt to present it in a fair and as objective and professional a way as we could.

Mr. LOTT. One area that is obviously bothering the members of the committee, and the news media, is this letter that we have discussed so often and the six areas of materials and tapes that you have requested. Let me ask you to reemphasize you are continuing to discuss this particular area of trying to work out some agreement with Mr. St. Clair, are you not?

Mr. JENNER. We are undertaking that, and we do have conferences with him. We understand it is the direction of the committee that we proceed accordingly, and we have been adhering to that quite literally.

Mr. LOTT. So, this is proceeding?

Mr. DOAR. Yes; it is.

Mr. LOTT. Like most members of the committee, I was very disturbed about the way that was handled, and I do want to emphasize before

I would support taking any additional steps. I would have to know more about why this material is relevant and what other material or information, what reasons you requested it. I assume you are giving some consideration at some point, if it is necessary, to have a meeting and directing your comments and allowing us to ask questions on this particular subject, or perhaps we are at a stage where that is not even being considered right now.

Mr. DOAR. Well, with respect to the six items of material of items that were requested, Mr. Jenner and I reviewed that, those six items with the chairman and the ranking minority member in detail, setting forth the justification for those six items. When Mr. St. Clair asked us what the reason we wanted those particular items were, we gave him all of the information which formed the basis of our request, and that is the way we proceeded.

Mr. LOTT. I will yield back.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. I wanted to follow along with some comments which Mr. Edwards made, because I think after we give some careful thought, we may make certain judgments as to how we ought to proceed with respect to this request for participation. But, I think in thinking about that we have to be clear in our own minds of the nature of the proceedings that we are embarked upon here, because it seems to me Mr. St. Clair's approach basically treats this as a pretrial matter, and that he is entitled to participate in it in a way that he would be if there was an accusatory process taking place. I did not understand the endeavor on which we are embarked to be of that nature. I understood it to be in the nature of an investigation and an inquiry with no predetermination as to the end results. And, in fact, leaving open the question that the end result may be that no charges should be brought, as well as the possibility that charges ought to be brought. So, I think it is important to have some understanding of the nature of the process that we are in and I would appreciate it if counsel could respond to that question in terms of the kind of process we are proceeding under and the nature, as to whether it is in the nature of an adversary proceeding.

Mr. DOAR. Well, it is counsel's opinion that we are not proceeding, our instructions are not to proceed in an adversary fashion, and that this is an inquiry and it is not accusatory.

The Chairman said to me when I was asked if I would accept this job, would I be prepared to develop the facts forcefully, thoroughly and as completely as I could, whether or not the facts as found showed that there was a basis or a complete lack of basis for the charges. And I said I was prepared to do that, and he said that I would not have retained you if you had said otherwise. And he said, are you prepared to state to the committee and to present every fact, whether or not it leads to any further proceedings by this committee. And I said that I was prepared to do that, to the best of my ability.

In the hiring of every member of the staff the chairman has instructed me to inquire specifically whether or not the staff member has any preconceived judgment with respect to the charges that have been leveled against the President of the United States, and if

the applicant responded that he had made a preconceived judgment, one way or the other, that he was not to be hired, and those instructions have been followed to the letter. So the response to your question is that we have not proceeded as if this was an adversary matter. We have not proceeded as if this was an accusatory matter. We have proceeded as if it was a search for the facts so that the committee could determine the truth of the matters that have been presented to it, and which it has, in our judgment, and the committee said this before, an inescapable responsibility to decide.

Mr. SARBANES. Mr. Jenner, could you respond to that point, please?

Mr. JENNER. Yes, Congressman. Thank you.

When I was retained as counsel for the minority, the chairman and Mr. Hutchinson had the same kind of conversation as to character and truth that was to be our obligation, Mr. Doar and myself and the staff, to investigate fully and to present to this committee all of the facts, without any judgment on our part whether they were favorable or unfavorable, except that if we had regarded something as possibly favorable and exonerating, we should be very careful to see that that is presented to the committee as well. And I said to both the chairman and to the ranking member that I thought that was a sound, professional, and constitutional way of proceeding with this matter, and that I could retain my professional integrity and responsibility on that basis. And we have been proceeding accordingly.

Mr. SARBANES. Well, you do not perceive the endeavor that we are engaged in as adversary in any sense, and that whatever judgment we may make on these other questions, they, at least, ought not to flow from a premise that assumes that our endeavor is an adversary one. Would that be correct?

Mr. JENNER. That is correct; that is my judgment. That is my understanding of the attitude of the committee. That is my judgment as to the proper interpretation of the Constitution. And I understand from both Mr. Hutchinson and the chairman that that was their position, and I think it is a sound one.

Mr. SARBANES. Thank you.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman.

I will certainly look forward to the authorities which are going to be prepared by counsel on the matter of these rules for taking depositions and, for my part, I would hope, Mr. Chairman, that we would not have to resort to hearings and take the time necessary to hear a parade of law professors lecture us on a subject which I believe is within our competence to determine for ourselves.

I want to defer any final judgment of the matter until I have had an opportunity to examine the authorities to be presented by a very able counsel. And, incidentally, I want to join with the gentleman from California, Mr. Edwards, in the statement that he made about having respect for counsel in this case, all counsel involved. I think it is important. I recall how bitterly members of this committee on both sides resented attacks on our counsel last week. And I think as members of the legal profession ourselves we should refrain from personal attacks on any counsel involved in this matter.

Mr. MCCLORY. Would the gentleman yield?

Mr. MAYNE. And I think that the gentleman from California said something very much needed to be said. I will yield.

Mr. MCCLORY. Would you gentleman yield?

With respect to the rule of our chief minority counsel, I think that it is appropriate to point out that the minority members of this committee do feel the need for minority counsel and his input in this investigation and this inquiry is substantial. I do not think that the mere fact that we get similar or identical views with regard to the constitutional role of this committee, or its work, should be interpreted as the minority being submerged in the majority. We do have occasion for independent counsel from our chief minority counsel and his input. And his role is substantial, as I assume the minority members' role will be substantial in the course of this inquiry. I think that there is some misunderstanding sometimes as to a delineation of our respective responsibilities here in a common function of this committee at this time.

Mr. MAYNE. Mr. Chairman, I think that it does demean the committee for us to engage in attacks on counsel. Every American is entitled to representation, and we should be aware of that and preserve that right more than anyone else.

Now, as I have said, I do want to defer final judgment until I have seen the authorities to be prepared by counsel. But, inasmuch as others are stating their position, I would like to make it clear that my very strong present feeling on this subject is that the President's counsel should be notified and should be allowed to participate in all depositions. If the committee were to conceal from the President's counsel that it was deposing a witness, or bar such counsel from being present, this committee would itself be guilty of a coverup. I think it would violate every principle of fairplay for this commitee or its staff to be in a position to conceal testimony or to suppress testimony. We are engaged here under the Constitution in a search for the truth, not an attempt to surprise the President with hidden evidence unfavorable to him or to conceal evidence favorable him.

Thank you, Mr. Chairman.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman, I have here before me most of the precedents with regard to the question of whether the respondent can be, in fact, represented. The precedents are not very clear. In the case, for example, of Andrew Johnson he was invited at the second hearing to be present and he declined.

The overwhelming fact is that no precedent, however, is really a precedent because we have an entirely unique situation here. In all of the 50 or more precedents we never had a respondent who had refused to give over documents requested by the committee that was investigating him. The respondent was able to appear in many cases to explain the information that the respondent had already given. But, as long as the present situation obtains, there is no precedent. That is the only clear precedent that we have, that if a respondent asks, for example, to go before a grand jury while he is withholding critical and crucial information from that grand jury, no one is likely to say that he should be heard for reasons of justice or grace or equity.

The situation, therefore, is entirely distinguishable from everything that has gone before. Professor Burger said the other day, the great

expert on impeachment, that the President is acting like a president of a bank who is under investigation, and this president of the bank is telling the investigators what accounts they can look at. And Professor Burger said that if it were not the President of the United States that the entire Nation would scorn him.

There is no real difference, Mr. Chairman, of opinion on this committee. This committee wants to be fair and will give all due process to the President and to his attorney. But, if the President or his counsel want this, then they first must offer all of the evidence requested. Then we might well want an explanation by persons representing the President of all of those documents and tapes which the President would give.

I yield back the balance of my time.

The CHAIRMAN. Mr. Moorhead.

Mr. MOORHEAD. Mr. Chairman, on the subject of whether the President's counsel and the President should have the right to participate, I think it is highly important that we consider that while this committee has a tremendous amount of authority under the Constitution, we also have a great responsibility to see that these hearings are conducted with absolute fairness to the President and to the people of the country. We have a Nation that is greatly divided on this issue, and is important to us and to the Nation that all of the people of the country accept the verdict that is handed down, not only by this committee and the Congress, and if it went that far, the Senate. If we are to have a people that can be brought back together, if we are not only fair but appear to be fair in every single stage of this proceeding, I think we will subject ourselves to tremendous criticisms. The President has asked through his counsel that he have representation and notice of these depositions and these hearings to give him that representation and the right to notice, and it does not do anything to tear down our authority in these hearings, nor does it do anything to destroy the evidence and the information that we will get. But, it will build it up. It will bring out the facts to us that might not otherwise come to us. And I think that to reject it at this time we are flying in the face of fairness, and we will bring discredit down upon this committee.

Mr. WIGGINS. Would the gentleman yield?

Mr. MOORHEAD. I will yield the balance of my time to Mr. Wiggins.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Just for a question, Mr. Chairman. I thank the gentleman for yielding, and I would like to address a question to counsel.

Both counsel have characterized the current proceeding as something other than an adversary proceeding and I should like to suggest to both of you that such a characterization is really not too helpful in terms of the kinds of problems that we are confronted with. If our committee has any charge at all it is to ascertain the truth with respect to the President, and there can be no disagreement around the table on that question. And so, Mr. Jenner, I address this question to you as a man who has had perhaps more experience than any one of us in the trial of cases. Have you not found in your experience, Mr. Jenner, that the right to cross-examine is an important, often an essential vehicle in ascertaining the truth? Is that not your experience, sir?

Mr. JENNER. That is my experience.

Mr. WIGGINS. I think it has to follow then, Mr. Jenner, that the presence of counsel at the proceeding where evidence is to be taken, and according that counsel the right to cross-examine witnesses would be helpful to this committee in ascertaining the truth, which is our overriding mission.

I yield back the balance of my time.

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. Mr. Chairman, I fail to see the necessity for a hearing on the issue of representation at the taking of depositions because it would appear that we are having that hearing today. I would further submit that if the staff of this impeachment inquiry needs any assistance in the development of a memorandum for this committee to help it reach a judgment, that certainly they have had cited this morning enough legal precedents that all they need to do is to get the court reporter's notes after our meeting this morning and they will have all, perhaps all of the precedents they need.

Now, I say that not just to be facetious, Mr. Chairman. I want to know, is it contemplated that there will be a memorandum from staff presented to this committee on the question of the propriety of the representation at the taking of depositions et cetera of the President's counsel?

The CHAIRMAN. The Chair would like to state that the instructions have been given the staff to draw up such a memorandum, which will be a memorandum citing the precedents and citing the Constitution, and without, however, coming to any conclusions.

Well, if this is the case, in the interest, and I am sure that this is the interest of those of us who serve on this committee, since we do have a professional staff. I know that after the submission of such a memorandum we would want to certainly be advised as to the professional opinion of the staff counsel. And I, for one, who stated from the very beginning, and as Mr. Doar and Mr. Jenner have very succinctly and very, very specifically stated, I proceeded, when given this assignment, on the assumption, and this has been my assumption all along and I have not changed my attitude, that this is not an adversary proceeding, that we were assigned the task of inquiring under the Constitution whether or not there, indeed, were facts, evidence, and public records or otherwise which would lay the basis for this committee coming forth with a recommendation either to find impeachable offenses or to recommend against. And it seems to me that although the Chair will defer his final conclusion and judgment until after the memorandum and after a further search, despite the fact that I am aware of precedents, nonetheless, I am going to seek to be as fair as any other member here is going to want to be. This is a matter that is of tremendous concern and interest and of serious importance to the country. And I believe our responsibility is to the people of the United States of America and we speak for them. And I believe that their question is, is this or is this not an inquiry, or is this or is this not at attempt on the part of some people to create an atmosphere that is adversary to the proceedings when there are, in fact, only allegations and no charges before this commitee, as I see it, against the President of the United States.

Mr. HUTCHINSON. Will the gentleman yield?

Ms. JORDAN. Mr. Chairman, I still have the time, even though you made a speech. I will yield to Mr. Hutchinson.

Mr. HUTCHINSON. Will the gentlewoman yield to me at this time?

Ms. JORDAN. Yes.

Mr. HUTCHINSON. I thank the gentlewoman for yielding.

I want to underscore the chairman's instructions to the staff that in the preparation of this memorandum there shall be no conclusions. It is not the function of the staff to draw conclusions.

Second, with regard to the question of adversary proceedings, I would simply state my present thinking which is that I do not believe that cross-examination would make this an adversary proceeding in that strict sense, because as Mr. Wiggins has pointed out, and others, the overriding mission of this inquiry is the truth. And as a lawyer, I do not know of any way to glean the truth better than through the function of cross-examination.

And I just want to make that statement so that if I disagree with the chairman on that, why I do. But, I think that it is important to understand that I do not see how, I just do not see how we could deny the President's counsel the right, I do not mean to say the privilege to request to appear, but I would go this far. I would. I think that it would be within the proper scope of this committee's function to lay down some conditions under which his appearance could be made. In other words, we can say, yes, you can appear, but you will be bound by our rules of confidentiality, for instance.

The CHAIRMAN. Ms. Jordan still has the time.

Ms. JORDAN. Mr. Doar, is it correct in assuming that in the rules that you have simply recommended the draft rules, that any depositions that would be taken within the context of these rules would only be for the interest of the staff in defining the perimeters of the material it will ultimately present to this committee, and that if such a deposition which is taken under the proposed rules, were used before this committee as evidence in the development of either a bill of impeachment or charges or whatever, that all of the rules of due process would be observed at that point in the use of the deposition?

Mr. WIGGINS. Would the gentlelady yield?

Ms. JORDAN. I would like to have the question answered, first, if I could.

Mr. DOAR. The purpose of the deposition rule was to permit us to secure a factual statement from a witness who was unwilling to give information to the staff about matters under the inquiry unless he was subpenaed. And the purpose, the principal purpose, was to secure the information that would help us prepare for the presentation of the case.

In addition to that, there were certain matters that because of the size of the matters that were the subject of the inquiry, that could be, in our judgment, be presented to the committee in the form of a sworn statement rather than having the witness here, if the committee approved that process and felt that it accorded due process and fairness to the proceedings. But, it was the judgment of the committee at the later stage that fairness was actually being applied, that would be the test. So, the answer is "yes", to your question.

Mr. WIGGINS. Would the gentlelady yield?

Ms. JORDAN. Mr. Chairman, I yield back the balance of my time, if I have any.

The CHAIRMAN. Mr. Latta.

Mr. Maraziti was recognized yesterday.

Mr. LATTA. Mr. Chairman, I will yield briefly to my friend from New Jersey.

Mr. MARAZITI. Thank you very much, Mr. Latta.

There has been a great deal of discussion about making analogies between this committee and this proceeding and a grand jury. The human mind likes to make analogies, but I rejected the analogy. There are many differences. In the first place, a grand jury is selected at random. This committee is composed of members of two great political parties. The proceedings before a grand jury are secret, they are not public, and, therefore, I do not think it is proper to draw the analogy and, therefore, come to the conclusion that all of the proceedings should be ex parte, as they are, and as I understand they are before a grand jury.

We have a special, unique proceeding here, impeachment. Now, as Mr. Dennis has mentioned, we set our own rules of what is just and what is fair, and what is equitable. We want to get at the truth. And it has been said here all morning and agreed, there is no better method to arrive at the truth than under cross-examination.

Now, in conclusion, I think the real danger lies in subdivision No. 11 or paragraph No. 11 of the proposed rules, if they are adopted, that the depositions taken under the rules as proposed, may be used as evidence by this committee. That is where the danger exists and we will make the judgment, I know, but how can we really make the judgment that the alleged facts procured ex parte are the facts when they have not been subjected to cross-examination? In other words, we would not know if there are some other facts that could have been brought out. So, I submit to you that, and I agree with the chairman that we are representing the American people, but I also agree and suggest that the American people want a set of rules that are fair and equitable, and I think that calls certainly for presence and the right of cross-examination by counsel which alleged evidence is going to be used as evidence.

Thank you.

Mr. DOAR. Congressman, could I——

The CHAIRMAN. Mr. Latta.

Mr. LATTA. If you would like to respond——

The CHAIRMAN. Mr. Doar.

Mr. LATTA. I am a very patient individual.

The CHAIRMAN. This will be taken out of your time, Mr. Latta.

Mr. LATTA. I know that.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I just wanted to say to the Congressman that I recognize that the analogy to the grand jury is not perfect for the reasons that you have pointed out. But, I think there are two things that I would like to respectfully call the Congressman's attention to.

No. 1 is that we are at the investigative stage of the proceeding, and in the investigation of the proceeding and the development of the facts for consideration, I know of no situation where counsel is per-

mitted to be present during the questioning of witnesses preliminary to presentation to the committee or to the grand jury.

The second thing is that there is a search for the truth here, but the question is that this committee is to decide whether or not there is reasonable cause for the proceedings to go forward.

Mr. MAZZITI. I certainly agree with your observation that you should have, and I would say, the sole right of investigation, which you can do by talking to the witnesses. But, when you have rule No. 11 here which anticipates evidence, testimony under oath, then that may be taken by this committee as evidence and there is where the danger is.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Let me say that being the least senior member on the seniority totem pole and because we are getting close to 12 o'clock, and I have to handle a couple of rules after 12 o'clock, that I had a beautiful speech made up here, but I think most of the questions I would have brought up in my speech have already been answered. But, I do have a couple of things that I would like to note.

I noticed in the press the other evening or, so they report, that the Democratic majority has already met with counsel and decided this matter, but here we have spent an hour and a half on this. And I hope this is not true. I hope this is not true, that this has already been decided out of hand because I am a political realist. I know at any time when any partisan isssue comes up you want to outvote the minority, and can do it, and we do not want this to get into a minority and majority matter. And I like to read these accounts that we are not going to be partisan in this matter, because it is too imporant to the American people and too important to the system of government that we are blessed to have in this country of ours. I think these things are extant, and I think the American people will certainly wonder why the President's counsel was not given the opportunity to cross-examine witnesses. We are lawyers around this table, and as has so aptly been stated by so many, we know that to cross-examine in cases that we have had in court, on cross-examination we learn from our own witnesses things that they did not tell us for reasons of their own. And the American people are going to be asking why. They do not give a hoot about the precedence of this case, or the lack of precedence, they want things upon this table and aboveboard. They want it all out. We have had too many coverups, as this gentleman from Iowa has pointed out. They do not want any more coverups. They are fed up. I am fed up. And I say to this committee, we have a responsibility to come out with it and come out with it now, and I do not think that we need any memorandum, whether it is majority or minority. The American people want the truth, the whole truth, and nothing but the truth, and I think that is our obligation and the sooner we get to the task the better off we are going to be. And that is my speech and I will yield.

The CHAIRMAN. Thank you, Mr. Latta, and the gentleman has no further time left.

Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman, for yielding.

I would like to first comment briefly on a point just alluded to by our distinguished counsel, Mr. Doar. My own experience in the preparation of lawsuits is that it goes through several stages. First is a preliminary investigation, then perhaps a presentation to a grand jury and, finally, if need be, a trial before a petty jury.

I think you have correctly characterized the state in which we now find ourselves at as being a preliminary investigative stage in which our own staff is sifting and screening information, and determining which of that information should be presented and in what form to this committee at a later time. It seems to me most unwise, premature, and improper to allow outside counsel to participate in this screening or developing of material in its investigative stage for later presentation to the committee.

Do you have any comment on that?

Mr. DOAR. That would be my professional opinion.

Mr. WIGGINS. I would like to question that professional opinion if somebody will yield to me.

Mr. THORNTON. If I may continue for just a moment. It seems to me that there is a question, a basic question of fairness, which all of the members of this committee are interested in and have demonstrated, and I was impressed by my colleague, Mr. Maraziti, for his suggestion that maybe a direct comparison to a grand jury is not always appropriate. Certainly there are differences. We are proceeding in public. We are discharging the constitutional duty that is nearly unique in the history of our Nation. But, not long ago we also discharged a constitutional duty imposed on us by the 25th amendment and I cannot help but draw some similarities between the role in which we now find ourselves as determining, as representatives of the people, whether charges should be presented to the Senate for trial, and our duty in that hearing of reviewing for the first time in the history of the Nation whether any man should become Vice President without a vote of the people. And, as I draw that comparison in my own mind, I cannot help but reflect upon the fairness, demeanor of this comimttee as it approached that proceeding and also upon another important factor, that in our search for truth, the now Vice President of the United States did not bring his lawyer to the committee, but his life as an open book.

And I would like to suggest that if we are to get the truth on this important question, the thing for the President to do is to send to this committee the records and the facts and not his lawyer.

Mr. WIGGINS. Would the gentleman yield?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman, for yielding.

I want to go back to some matters that the President referred to in his press conference and I would appreciate counsel clarifying the record for me.

Is it not true that on February 25 we requested of the President, through his counsel, six items of material which we have still not received.

Mr. DOAR. That is true.

Ms. HOLTZMAN. And I understood that the President took the position in his press conference that this request was somehow outside of the Constitution. Is it not a fact, Mr. Doar, that these six items relate to the allegations of the Watergate coverup?

Mr. DOAR. The six items do relate to the matter of the Watergate coverup.

Ms. HOLTZMAN. And is it not true, Mr. Doar, that no matter how you define impeachable offenses, if the President was found to be participating in the Watergate coverup, that would be an impeachable offense by any standard of definition of high crimes and misdemeanors?

Mr. DOAR. Well, that would be the judgment of the committee to make. The extent to which I as your lawyer could go, I think, would be to say that as a legal matter that such a judgment could be made on those facts.

Ms. HOLTZMAN. Has anybody ever suggested the contrary with respect to whether or not participation in the Watergate coverup would not be a high crime or misdemeanor?

Mr. DOAR. I do not know of anybody suggesting to the contrary.

Ms. HOLTZMAN. I understood that the President also stated that giving us this material would delay this investigation. Is it not a fact that this investigation would be delayed by our having to wait as long as we have had to wait, and we will have to wait in the future to get this material?

Mr. DOAR. Yes. I think if we received the material promptly it would expedite the investigation.

Ms. HOLTZMAN. The President also stated in his press conference that we do not need this material, that we would have sufficient evidence otherwise, both from Judge Sirica and from the materials he has already turned over to us to make an ample judgment. Is it the opinion of counsel that, in fact, this material we have requested is necessary to a full and thorough determination of the facts?

Mr. DOAR. It is my judgment it is.

Mr. JENNER. And I would wish to join in that.

Ms. HOLTZMAN. Well, I think it is important to clarify these issues.

Now, has Mr. St. Clair stated to you that these materials in our request exceed our constitutional right?

Mr. DOAR. No, he has not.

Ms. HOLTZMAN. Has he suggested that we do not need these materials because they are not in any way necessary to the scope of our investigation?

Mr. DOAR. He has suggested we might not need them.

Ms. HOLTZMAN. Has he suggested that giving this material to us would delay the committee's investigation?

Mr. DOAR. No, he has not.

Ms. HOLTZMAN. Would you please advise me what position Mr. St. Clair has taken insofar as refusing to give us the materials we have asked for since February 25?

Mr. DOAR. Mr. St. Clair has taken basically two positions: No. 1, that the decision whether or not to give this material to the committee is to be made by the President of the United States, and that he has no authority to make that decision.

No. 2, is that to the extent that the committee counsel, Mr. Jenner and I, can be as specific as we can with respect to the particular items we want, it would be helpful to him.

Ms. HOLTZMAN. But now that that particularization has been made, his own reason for not complying with this request is that the Presi-

dent has to make a decision on this. Have we been advised when the President will make a decision on this?

Mr. DOAR. No, we have not.

There is a third matter that we were discussing that I mentioned before. Ms. Holtzman, and that is that Mr. St. Clair has raised that we have discussed the problem of the authentication of the particular segment of the tapes that we asked for.

Ms. HOLTZMAN. Well, I would hope that this matter could be clarified as soon as possible.

The CHAIRMAN. The gentlelady's time has expired.

Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

Mr. Doar, I, for one, do not think that that section of the letter which has become the most controversial, whereby we requested to know the files of the White House, of those four counsel to the President, Mr. Haldeman, Mr. Ehrlichman, Mr. Dean, and Mr. Colson, to know how their files are indexed so as to develop some kind of a system whereby we can find out what evidence is in those files which pertains to Watergate is improper or was incorrect to have in that letter. Obviously, we have got to get into those files. As I understand it, am I correct in my understanding that neither the Watergate grand jury nor the Ervin committee or anyone else has had access to anything from those four files?

Mr. DOAR. That is my understanding.

Mr. OWENS. It is not the opinion of counsel that we cannot get to the bottom of the President's involvement in these matters without knowing, without materials from those files, presumably?

Mr. DOAR. Well, I would not want to make that statement, no, because I do not know what is in the files, and so that it was for that purpose that we suggested to Mr. St. Clair that if there was an index to the files that then we could identify and pinpoint matters that clearly might be necessary to the inquiry and matters that clearly were outside of the scope of the inquiry.

Mr. OWENS. And that is Mr. Jenner's opinion, too, as I understand?

Mr. JENNER. That is correct, sir.

Mr. OWENS. Well, I share Mr. Edwards' concern that we not be polarized on this key question of whether the President ought to be represented at every stage of the discovery process in this matter. But, it seems to me that we have got to avoid, if we really want the committee to expedite these hearings, we have got to avoid having to try this matter, not just twice but three times. If we go to the concept that Mr. St. Clair has a right to be present at every single discovery process, to introduce his own witnesses, to cross-examine, we will be trying it a third time in the press, as well as in the public eye, and I am one who believes that we ought to conduct the whole thing pretty much in the public eye, just as much as possible. But, I am concerned about the extraordinary delays and about the loss, basically, of national patience if we go through this three times in an adversary way.

After all, if we accept the grand jury analogy at all, and I think most of us on the committee do to some extent, we are really building evidence of probable cause. We are not, as a Judiciary Committee, going to say the President is guilty and ought to be removed from office.

We will draw conclusions that the evidence is so substantial that we ought to put him on trial and, therefore, it seems to me that this is simply an investigation. And, as everybody knows who has been involved in an investigation, that is not a trial, and I think we ought to avoid that polarization in this committee. And we ought to be extremely concerned about how much of a delay factor this is going to have in the collection of evidence, if we make it an adversary proceeding. And I just want to commend counsel, both of them, for their position and their attitudes.

But, I am, on the other hand, very concerned that this be conducted in the public eye and I look forward to this brief which counsel has promised, and I, contrary to what others have suggested, I hope that counsel will give us their advice, they will not make the decision on it, but they ought to give us their best professional advice as to whether under the circumstances this would be wise, under the precedent.

The CHAIRMAN. Before we go to the floor to respond to the quorum, I know the gentleman from Missouri was seeking recognition, but out of courtesy to the junior member he consented to defer until now. So, I recognize the gentleman from Missouri.

Mr. HUNGATE. Mr. Chairman, I could not improve on silence at this time.

Thank you.

The CHAIRMAN. This will conclude today's briefing and the Chair will defer announcing whether we have a meeting or a briefing until later on tomorrow.

[Whereupon, at 12:07 p.m., the briefing was concluded.]

IMPEACHMENT INQUIRY

Impeachment Briefing

THURSDAY, APRIL 4, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:25 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Eilberg, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Railsback, Wiggins, Dennis, Fish, Mayne, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel; and Hillary D. Rodham, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

As the members recognize, this is a briefing session for all members of the committee with respect to the impeachment inquiry, and it is not a business meeting, and the Chair will first read a statement.

It has been 2 months since the House of Representatives by an overwhelming and historic vote authorized and directed this committee to investigate whether grounds exist to impeach Richard M. Nixon, President of the United States.

It is a serious matter for our people and our whole constitutional system. We have gone forward in full awareness of its importance and its seriousness.

We have gone forward assuming good faith and cooperation. As regards the President himself, we have been respectfully patient. The courts were patient. The House has been patient. The people have been patient for a long, long time.

The patience of this committee is now wearing thin. We have a constitutional responsibility in this inquiry. When we made our request, we made it not out of curiosity, not because we were prosecutors, but because it is our responsibility. We have tried to pursue it in a spirit of accommodation with this President.

Yet there comes a time when patience and accommodation can begin to undermine the process in which we are engaged. February 25, the committee made a specific request to the counsel of the President for specific evidence of specific facts of specific relevance to our inquiry.

That request so far has not been honored.

We believe strongly that the impeachment inquiry is not an adversary proceeding, nor, contrary to the express provision of the Constitution, a trial either in this committee or in the House itself.

The Constitution confers the power to remove a President from office in two parallel clauses. The House has "the sole power of impeachment," and the Senate "the sole power to try all impeachments." The House conducts an impeachment inquiry through one of its committees and initiates the proceedings through majority vote to impeach (bring charges against) the President. The Senate hears evidence and legal arguments presented to it by House managers and by counsel for the President in a trial and votes upon the articles of impeachment brought by the House. Conviction requires a two-thirds vote of the Senate.

The committee has instituted its staff to develop the evidentiary data, which it is now doing. The committee has made no charges—it is inquiring for the purpose of deciding whether or not charges will be brought against the President of the United States. That will depend on the committee's judgment and decision only after a full consideration of the evidentiary material presented to the committee.

However, in order that we not deviate from our pursuit of the facts, and so that we are not entangled in a web of procedural questions, we instructed our special counsel to prepare a staff memo—without conclusions—on the subject of procedures, with a view toward arriving at some accommodation as to the question of the President's counsel's participation in this inquiry. It wouldd appear that at a subsequent meeting—when the staff memo on this subject and Mr. St. Clair's memo, which has been distributed have been carefully examined, we can reach a resolution as to the question of procedure during the evidentiary presentation. I am certain our committee members would want to have the views of counsel on this subject.

However, we are going forward. We have asked for evidence. We have been asked to be more specific with respect to the matters to which the 6 items relate—the 41 recorded conversations, and, so as to avoid any possible basis for misunderstanding, we have instructed our counsel to send to Mr. St. Clair another letter setting forth specifically why the committee has the responsibility to examine the particular conversations.

We shall not be thwarted by inappropriate legalisms or by narrow obstacles to our inquiry.

We have waited patiently to get the recorded conversations. We can subpena them if we must. Whether the evidence is inculpatory or exculpatory, we will scrutinize it fairly.

In the meantime we will proceed, as we have been proceeding, with other aspects of our inquiry and hope that out of respect for our institutions, out of respect for the integrity of this process, out of respect for our institutions, and out of respect for the integrity the American people have a right to expect from the elected officials of

their Government, some of our spirit of accommodation will be reciprocated by the White House and our President.

Mr. WIGGINS. Mr. Chairman?

Mr. MCCLORY. Mr. Chairman, would the chairman yield for a comment on your statement?

The CHAIRMAN. Before I yield for any comments, I am going to ask Mr. Hutchinson if he would like to comment. And following that, I am going to ask Mr. Doar to read the letter and then I am going to make some other announcements, and then we may comment.

Mr. HUTCHINSON. Mr. Chairman, this committee has displayed an extreme amount of patience, and I think that we continue to be patient. But we do think that this matter can be disposed of more expeditiously. Of course, if there will be turned over to this committee such documentary and other evidence as is relevant to our inquiry, it seems to me that counsel, our counsel, and counsel at the White House, all being most able lawyers, should be able to, by discussion, clearly understand what it is that is necessary. And I cannot understand why there should at this late date still be any doubt in anybody's mind as to what it is we are after. We are not after irrelevant material, we are not after a state secret. We simply are after the information that is going to bring this matter to a conclusion.

And I say to you, Mr. Chairman, I appreciate your statement. I agree that we have been patient. I think we should continue to be patient because I do not think confrontation will settle anything.

I would say, Mr. Chairman, that I hope that you can set a business meeting of this committee before the commencement of the recess for the reason that there are some matters that this committee as a whole should decide and I implore you to have a meeting, a business meeting, next week on these matters so that the committee can express itself.

Mr. WIGGINS. Would the gentleman yield?

The CHAIRMAN. I am recognizing Mr. Doar for the purpose of reading the letter which is going forth to Mr. St. Clair.

Mr. MCCLORY. Mr. Chairman, may I just supplement that?

The CHAIRMAN. I have recognized Mr. Hutchinson and we will not go beyond that. We will get into a discussion after Mr. Doar has read the letter that is going to Mr. St. Clair.

Mr. DOAR. Mr. Chairman and members of the committee, on Monday afternoon, Mr. Jenner and I met with Mr. St. Clair and in the course of that discussion, he asked if we would send him a letter, being more specific with respect to what the 6 items, the so-called 41 recorded conversations related to. And we said we would do that, and we have prepared this letter which I would now read to the committee.

Dear Mr. St. Clair:

In response to your request at our meeting of April 2, which you and Mr. Buzhardt, Mr. Jenner and I herewith supplement the specific basis for obtaining the items of information therein set forth in our letter of February 25, 1974. Those items were as follows:

1. Certain conversations between the President and Mr. Haldeman and/or Mr. Ehrlichman, or Mr. Dean, in February, March and April 1973, as follows:

(a) Conversations between the President and Mr. Haldeman on or about February 20, 1973, that concern the possible appointment of Mr. Magruder to a Government position.

(b) Conversations between the President, Mr. Haldeman, and Mr. Ehrlichman on or about February 27, 1973, that concern the assignment of Mr. Dean to work directly with the President on Watergate and Watergate-related matters.

(c) Conversations between the President and Mr. Dean on March 17, 1973, 1:25 to 2:15 p.m., and on March 20, 1973, from 7:29 to 7:43 p.m.

(d) Conversations between the President and Mr. Ehrlichman on March 27, 1973, from 11:10 a.m., to 1:30 p.m., and on March 30, 1973, from 12:02 to 12:18 p.m., and

(e) All conversations between the President and Mr. Haldeman and the President and Mr. Ehrlichman during the period April 14 through 17, 1973, inclusive.

This request includes in each instance all tapes, dicta-belts or other electronic recordings, transcripts, memorandum, notes or other writings or things relating to the particular conversations referred to.

Before sending you our letter of February 25, Mr. Jenner and I reviewed our request with Chairman Rodino and ranking minority member, Mr. Hutchinson, and it was sent with their specific approval. After the request was sent, we have on numerous occasions reviewed with the entire committee the basis for the request and have been directed by them to pursue our discussions with you in the hope that the House Committee on the Judiciary could secure these recorded conversations and related materials reasonably promptly without the assurance of a subpena.

In view of the matters already of public record in the possession of the committee about the events of February, March, and April 1973, respecting the investigation of the Watergate break-in and related matters, the Judiciary Committee concluded that it has a Constitutional responsibility to examine these particular conversations to determine:

1. Whether any of the conversations in any way bear upon the knowledge or lack of knowledge or action or inaction by the President, and/or any of his senior administrative officials with respect to the investigation of the Watergate break-in by the Department of Justice, the Senate select committee, or any other legislative, judicial, executive, or administrative body, including members of the White House staff.

2. Whether any of the conversations in any way bear upon the President's knowledge, or lack of knowledge of, or participation in, or lack of participation in, the acts of obstruction of justice and conspiracy to obstruct justice charged or otherwise referred to in the indictments returned on March 1 in the District Court for the District of Columbia in the case of *United States* v. *Haldeman*.

3. Whether any of the conversations in any way bear upon the President's knowledge or lack of knowledge of, or participation or lack of participation in the acts charged or otherwise referred to in the information or indictments returned in *United States* v. *Magruder*, *United States* v. *Dean*, *United States* v. *Chapin*, and *United States* v. *Ehrlichman* in the District Court for the District of Columbia, or other acts which may constitute illegal activities.

The committee believes that it has the Constitutional authority and duty to make the determination of the relevancy of these conversations and that it must do so under House Resolution 803, a copy of which we have heretofore furnished you. Of course, if any of the conversations requested in our letter of February 25, concern a subject entirely unrelated to the matters that I have outlined, the committee would have no interest therein. In the final analysis, however, the committee itself would have to make that determination. I am sure it would give careful initial consideration to your response in making its determination as to a particular conversation which you might believe to be totally unrelated to the matters that I have outlined.

The committee is under considerable pressure to proceed expeditiously with its inquiry. We have now had the opportunity to work with recorded conversations, and we appreciate the time required to prepare such a conversation for presentation to the committee. We, therefore, request a reply by Tuesday, April 9, at the latest, with respect to whether or not the conversations referred to in our letter of February 25, will be delivered to the committee.

Sincerely,

JOHN DOAR, *Special Counsel.*

The CHAIRMAN. Mr. Doar, this letter is being sent this morning?

Mr. DOAR. Yes, it is.

The CHAIRMAN. Mr. Doar, will you now, in accordance with the purposes for which this briefing session was called, will you now

make a presentation of the memorandum which we instructed you to prepare, regarding the rules of procedure concerning the requests made by the President's counsel, for participation in this inquiry?

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. For what purpose does the——

Mr. WIGGINS. I seek recognition for the purpose of asking counsel questions about the letter which he just read.

The CHAIRMAN. If we are now going to get into some other matters, the letter is being sent out. Mr. Hutchinson and I already agreed that the letter would be sent, and the letter is being sent. I would hope that we get on with the purposes of today's briefing and that is the presentation of the staff memorandum on the question of rules of procedure.

Mr. WIGGINS. Well, I request to ask questions. The Chair can rule against that request.

The CHAIRMAN. The Chair will recognize the gentleman for that purpose later on.

Mr. BUTLER. Mr. Chairman, meanwhile can we have copies of the letter?

The CHAIRMAN. The letters are not available for the members at this time, but the letters can be made available to the members. The letter was finalized in the final draft which was prepared only after Mr. Hutchinson had had an opportunity to finally review it early this morning.

Mr. LOTT. Mr. Chairman, are copies of the memorandum available to the members?

The CHAIRMAN. Copies of the memorandum of the staff have been distributed to your office early this morning, together with the memorandum which was presented to this committee for distribution to the members by Mr. St. Clair. Those were distributed to your office and I am sure if you check with your offices, you will find that the memoranda are there.

Ms. JORDAN. Mr. Chairman, I am holding in my hand the letter sent February 25, and one item which was requested February 25 was left out of the letter that Mr. Doar read this morning. I was wondering if there is any reason for that. It was "all conversations between the President, Mr. Kleindienst and the President and Mr. Petersen during the period April 15 to April 18.

Mr. DOAR. Excuse me, Ms. Jordan, I did leave that out inadvertently from the letter as read. That was included in the letter as sent.

Ms. JORDAN. Thank you.

The CHAIRMAN. Well, I would recognize, having recognized Ms. Jordan, now I will recognize Mr. Wiggins who wanted to comment on the letter so that we will continue our spirit of impartiality.

Mr. Wiggins.

Mr. WIGGINS. Mr. Doar, it would really, truly, be helpful if I had a copy of the letter, but on the basis of some notes, I have some questions and perhaps you can help me resolve those questions.

If a tape recording in the possession of the White House contains conversations which are relevant to this specific request, and conversations which may be irrelevant to that request, does the President have the right, pursuant to your letter, to excise those portions of the tape which are irrelevant?

Mr. Doar. Well, yes, he does. He does, when you say, have the right, in the initial instance. I think the committee in the last analysis has to make the determination if they got the portion of the tape that they considered to be relevant.

Mr. Wiggins. Well, I am not precisely clear then. Do I understand that your request is for full tapes, covering a certain period of time, and all conversations thereon, accepting the probability that some of those conversations will be on extraneous subjects?

Mr. Doar. No. Our request is for conversations relating to the specific matters that we have set out in our letter.

Mr. Wiggins. All right. Then the answer to my question is that if a tape recording contains a conversation on an extraneous subject, the President's counsel would have the right to excise that portion of the tape in responding to your request?

Mr. Doar. He would have the right initially, yes. And if he sent it to us and said, I am sending you all of the material, the committee would consider it, but I think the final judgment would have to remain with this committee.

Mr. Wiggins. All right. Now in the exercise of that final judgment, if the committee determines the irrelevance of a specific conversation, and by the committee I presume that at this juncture we are talking about the staff making an initial determination of irrelevance of a given conversation, what is the dispostion of that irrelevant data?

Mr. Doar. Well, the disposition of any data that has been received by the staff would be that it would remain in the staff files under the rules of confidentiality.

Mr. Wiggins. Well, do I have your assurance that there will be no reference to irrelevant data in any report filed to this committee concerning the evidence in this case?

Mr. Doar. You most certainly do.

The Chairman. Let us proceed to the presentation of the memorandum concerning the rules of procedure. And I am advised, also, the Chair will state, that the Chair recognizes that there is before each member a memorandum, the minority memo which has been prepared, which is a memorandum with conclusions concerning rules of procedure and concerning the request which was made by Mr. St. Clair for participation, which contrary to the spirit of the memorandum that we had instructed staff to develop, is a memorandum with conclusions. And the Chair wants to state that this is the first time, or early this morning, that we were aware that such a position had been taken.

Mr. McClory. Mr. Chairman, could I ask one question on the subject of the letter?

Mr. Chairman?

The Chairman. Mr. Doar.

Mr. McClory. Well, Mr. Chairman, it seems to me that you are discriminating insofar as——

The Chairman. The Chair merely—the Chair has recognized one member from the majority side and one member on the minority side.

Mr. McClory. I asked recognition at an earlier point, and I have one question with regard to the letter, Mr. Chairman.

The Chairman. The gentleman will please adhere to the rules and and the Chair is requesting Mr. Doar to proceed.

Mr. McCLORY. Mr. Chairman, it seems to me you are making the rules as you go along here and that is one of the things——

The CHAIRMAN. I think that the committee has decided that the Chair directs this meeting, and this meeting has been called for that purpose. So, I think rather than get into any wrangling about whether or not the Chair has or has not developed rules, why let us go on.

Mr. Doar.

Mr. DOAR. Members of the committee:

Late last week we received from Mr. St. Clair a memorandum entitled "In support of the President's request for the right to have the President's counsel participate in the impeachment proceedings conducted by the Committee on the Judiciary of the U.S. House of Representatives."

The chairman instructed me to distribute this to the committee at the time that the memorandum, which the staff was preparing, which was entitled, "Presentation Procedures for the Impeachment Inquiry." I apologize to the members of the committee for the late date on which these two memoranda were furnished to the committee. I assure you that this will not happen again. I hope by now that each member has a copy of these two documents.

And in my initial presentation, I would like to turn to page 11 of the memorandum presented by the inquiry staff where the procedures are summarized with respect to the precedence and I would like to read those, if I may, to the committee.

1. There has been a definite trend, especially in this century, towards permitting participation by the official under investigation, particularly in those inquiries in which a proponent of impeachment presented an adversary case before the committee.

2. The issue of participation by the official under investigation has been addressed by committees as a question of grace, not of right, and committees do not appear to have felt bound by the procedures followed in previous impeachment inquiries.

3. In a number of inquiries, including several in this century, the official under investigation was denied some or all of the participatory privileges he sought.

4. No record has been found of any impeachment inquiry in which the official under investigation participated in the investigation stage preceding commencement of committee hearings.

5. The precise extent and manner of the official's participation generally was determined when a specific question arose in the course of the hearings, rather than being decided in advance. And,

6. The extent of participation, especially in terms of the presentation of rebuttal evidence and questioning of proponents' witnesses, was supervised and sometimes restricted by the committee.

I would like to also call the committee's attention to the chart that is attached in the appendix, a table, which, in a tabular form, seeks fairly and accurately to set forth what has happened in all prior impeachments with respect to participation. I think that the committee has to use this chart, together with the text of this memorandum to evaluate precisely the extent of participation in a particular prior impeachment inquiry.

Finally, I would like to discuss paragraph 5 of the memorandum starting on page 22, because I think that the committee will want to know just what the staff proposes, how the staff proposes to proceed to make its initial presentation in this case. And I say that in connection with paragraph 5, in keeping with the instructions, we have not

made any recommendations with respect to what the committee will or will not do. But, we do, just in order to highlight the points involved, we do have several times where we say the committee may wish to do this, or the committee may wish to do that, so that we have alerted the committee to the practical procedural problems involved as we see it.

What we would propose, with the committee's approval, is that we would present to the committee a proposed statement of fact in paragraph form of the relevant facts which the staff believes can be established to the satisfaction of the committee. Each one of the statements of fact would be annotated to related evidentiary material, whether it was grand jury material, whether it was testimony before a court, before another committee of Congress, or whether it was a document or documents, or a series of documents, or whether it was a recorded conversation or whether it was an affidavit. And these annotations to the paragraph of the proposed "Statement of Facts" would be presented to the committee in notebook form. Each member of the committee would have one of these notebooks before them. And then the counsel for the staff would proceed to go over and review each one of the paragraphs and the evidentiary material supporting the paragraphs for the committee. If there was a recorded conversation that the staff believed the committee would want to hear, or a portion of a recorded conversation that the staff believed was relevant, then the staff would ask the committee to listen to that recorded conversation, and there would be furnished a transcript of the recorded conversation for each committee member to follow.

The reason for that, members of the committee, is that some of these recordings are of relatively poor quality, and it is very difficult in some instances to make out every word in the recording. And, in fact, there are many times where you cannot make out the words at all, and where you cannot be certain. We would try to make—there would be no guessing whatsoever with respect to the transcripts.

Mr. Dennis. Mr. Chairman, may I ask a question on that point for clarification only?

The Chairman. Why don't we continue with the presentation and defer the questions until the counsel has made the presentation. And I think we will be in a better position then to ask pertinent questions.

Mr. Dennis. Well, it was right on this subject that he was on, was the only reason I raised it.

Mr. Doar. After the counsel has reviewed this proposed statement of facts with the committee, from beginning to end, then the committee would ask questions, and discuss any questions it had with respect to the evidentiary matters. And the staff, our counsel for the staff, would indicate what additional witnesses—the committee—might want to call, and the reason why the committee would want to call them, and the subjects covered by the oral testimony. The committee itself might decide that it wanted to call witnesses before it, with respect to one or more of the proposed "Statements of Fact." The committee might decide that it wanted to inquire into a matter or matters that were not covered in this initial presentation and would direct the staff to proceed to prepare material on that subject.

Now, within that framework, members of the committee, the committee will have to decide the question of participation by counsel

for the President, Mr. St. Clair. We have indicated that we have concluded that the taking of depositions are not an effective, efficient way to prepare for this, and we have concluded that we will not take any depositions. Of course, we would not take any depositions until the matter of the procedures for taking depositions were resolved anyway, and we have taken no depositions.

Now, within that framework, the committee has two matters to determine. One is to what extent should three matters, to what extent should the President's counsel be afforded the proposed "Statement of Facts:" two, to what extent should the President's counsel be afforded access to the committee's annotation to the "Statement of Facts;" and, three, to what extent should the counsel for the President be afforded the opportunity to question any witnesses that we called or to call additional witnesses in the President's behalf.

And we have made suggestions, and only suggestions, to the committee in paragraph 5 to summarize those three matters that the committee would want to consider, reflect upon and decide.

Now that, Mr. Chairman, concludes my presentation. Perhaps Mr. Jenner would like to add something to that.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman.

Ladies and gentlemen of the committee, I have participated in the drafting of the memorandum which Mr. Doar has now reported to you, thinking that that was the request and direction of the committee given to us at the last meeting.

It does appear that in this present century and perhaps I think fairly stated 100 years, that there has been gradually growing a greater and greater participation on the part of a respondent's counsel in impeachment proceedings. The record we have; and that is the Library of Congress, the records of this House, sometimes are somewhat fragmentary and it is difficult, it has been difficult for us to report with you with great preciseness and fullness the extent of the participation in particular proceedings.

Now, it was Mr. Doar's and my understanding that we should prepare a staff memorandum that did not contain conclusions, and we have done our best to do that in attempting to present to you various possible alternatives for you to decide and not for us to determine. We have presented the type of proposed presentation for action by this committee now fully described and reported to you by Mr. Doar and further elaborated upon in the memorandum itself.

You do have before you, as I understand, on your desk another memorandum of the minority members of this committee which was requested to be prepared on behalf of the minority members. And it is more in the nature of an advocate's memorandum and has been distributed. That will be one of the considerations and matters which you will have in mind in undertaking ultimately, not today, but ultimately to resolve the question of the method of presentation.

May I say to you, that as a trial lawyer of many years experience over the years, it has been my practice in complicated questions, and ones not so complicated, but ones which would take care in presentation of proof to prepare a trial book, and the character of the trial book that I prepare with my partners and associates in these long trials and complicated trials is in the nature and character reported to

you by Mr. Doar and in the written memorandum which you have before you. That is generally, a trial lawyer has a book in which he has a leading paragraph of an objective or a group of facts that he would seek to present to the court and the jury if the case be tried before a jury. And under that paragraph of facts, statement, there is listed the names of witnesses with respect to a particular item, documents and other matters that is, in the opinion of counsel, trying the lawsuit or defending it, either plaintiff's side or defense side, civil and criminal, that is the proof that he thinks he has. Before the trial begins that is all reviewed, and sometimes we excise what we have stated in itemization under our lead paragraphs and sometimes we add to it, and as the trial goes along, of course, and many of you are trial lawyers and realize that the case runs from day to day. And the procedure presented to you is one that Mr. Doar and I consulted on for a good many days, and drew, at least I drew, upon my trial experience in the presentation in this memorandum.

The CHAIRMAN. It is contemplated within the spirit of the document that you have presented that counsel for the President would be given the opportunity to participate at that stage when the evidentiary material is being presented?

Mr. DOAR. It is contemplated that the counsel for the President would be given a copy of the proposed "Statement of Facts" at the same time that the committee is given it. And the question of whether and in what way counsel for the President would be permitted to review the annotations with the evidentiary material which support the proposed "Statement of Facts," the committee would have to consider, depending upon taking into mind some of the rules of confidentiality, and its pledge of responsibility with respect to this material, and at the same time, taking in mind that if the President's counsel, if he were to participate he would be permitted to review that material in some fashion, so he knows the basis upon which the proposed "Statement of Facts" is made.

The CHAIRMAN. May I ask another question with relation to participation?

Has it been the practice in any investigatory proceeding or preliminary proceedings to generally, without regard to the specific instances, give full participation to the counsel of the respondent, or, in this case, of course, where there is no adversary, to counsel of the President?

Mr. DOAR. No, it has not.

The CHAIRMAN. It has been, as I understand it, from the memorandum on an ad hoc basis?

Mr. DOAR. That is right.

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Well, thank you, Mr. Chairman.

Initially, I wanted to commend you, Mr. Chairman, on your statement this morning.

The CHAIRMAN. Thank you very much.

Mr. MCCLORY. And your determination to see that the committee gets the material that we have requested, and also your suggestion that we should take some action at a meeting.

Now, I think my principal comment is that we must and should have a meeting of this committee. At an early stage, I suggested that this

inquiry should be conducted by the committee and it seems to me the only way the committee can do it is for the committee to meet, and for the committee to direct the action to be taken. These briefing sessions are very important but if there is no opportunity for taking action at the session, why I think they are quite inappropriate in the fulfilling of our function.

I would like to comment with regard to the report given to us here this morning, with regard to the procedures and state very emphatically that in my opinion, before we get this trial book, before we get the evidence laid out in the form of citations and so on, that we should adopt our rules of procedure. The suggestion made in this memorandum in the second paragraph on page 22, where the staff suggests that the committee defer adoption of procedures, seems to me to be putting the cart before the horse. We should adopt the procedures and then go forward with the presentation of this case.

Now, it seems to me that in order for the representative of the President to be effective and to fairly represent the President's interests before this committee, it is extremely important that he be present at the time this initial presentation is made. If we wait until we go all the way down this road, as Mr. Doar suggests here this morning, that the committee complete its presentation, or the presentation of the so-called facts from beginning to end, and then decide what we are going to do with respect to testimony, with respect to the presence of the President's counsel, it seems to me that the committee would not be proceeding in accordance with what I would regard as the precedence, and with regard to the question of fairness insofar as the President and his counsel are concerned.

Now, Mr. Chairman, it seems to me that both with respect to resolving this question of what action we must take with regard to these 41 tapes, these requests that we have made to the White House, whether we are going to recommend the issuance of subpenas, or what action we are going to take with respect to them; and, also, with regard to the adoption of procedures, we should have a meeting early next week before we go on recess so that when we return, before starting to lay out the case, and deferring the adoption of procedures, we should adopt the procedures before we go, and then when we come back from the recess, we will be in a position to have the case laid out in accordance with the procedure that we have then adopted. Otherwise, it seems to me we are heading for a chaotic and very confused and very awkward and unwieldly situation which would be most unfortunate.

And so, Mr. Chairman, first of all, I request that you send out notices for a meeting, covering at least these two subjects, or I would prefer to say Tuesday of next week. And I do make that request most emphatically, Mr. Chairman.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. I believe that Mr. Doar wanted to comment on a statement made by Mr. McClory.

Mr. DOAR. Mr. McClory, I am afraid that I did not make myself clear with respect to the adoption of rules, with respect to the proposed "Statement of Facts," and the opportunity to examine the annotations or the factual support for the "Statement of Facts." I in-

tended to suggest that the committee could decide to make that available, might want to decide to make that available immediately to Mr. St. Clair. So that there was no question about waiting until after the whole presentation before you decided that Mr. St. Clair would have notice and an opportunity to review, so that he could present his views to the committee.

Mr. McCLORY. Well, Mr. Doar, as I understand the presentation, the trial book that will be presented with the evidence, or with the citation in support of the various charges will be made here before the full committee, and will be made by you and Mr. Jenner. And I would suggest that, at that time, Mr. St. Clair should have the opportunity to be present, and either to make comments with regard to the matter that is being presented, to object to it, or to make some statement with regard to other material, which he feels is omitted, so that we get the whole case initially and not get it at some later stage.

And, now, if you agree with that then I do not have any complaint about the procedures.

Mr. DOAR. Well, in only one way do I disagree respectfully with that, and that is that I think Mr. St. Clair should have an opportunity to examine it. I think the question of whether he should be here during the meeting depends upon the question of the rules of confidentiality. But, I think that we ought to go through the material without comment, and discussion, and wait until the end for him to then comment on the material.

Mr. McCLORY. Well, may I ask this:

Insofar as the rules of confidentiality are concerned, the committee is bound, too, so in order for the committee to receive this documented material, it would have to—the rule of confidentiality would have to be expanded and it should be expanded to include counsel for the President.

Mr. DOAR. Well, the committee might well conclude when it hears this evidence and the evidentiary material, to be in executive sessions and, of course, the committee at that time would hear this material, whether it is grand jury, some of it, and some of it is recorded conversations. And all I suggested is that if you are expanding that, you have got one person, additional person, besides the committee and the staff that knows what this material is.

Mr. McCLORY. Well, do I understand then that except with regard to grand jury material, or except with regard to material which is bound by the rule of confidentiality, that Mr. St. Clair will be present and will have the opportunity to comment?

Mr. SARBANES. Will the gentleman yield?

This is a decision for the committee to make.

Mr. McCLORY. As soon as I have the answer.

Mr. SARBANES. That is not a question for counsel to answer. Counsel has suggested certain alternatives.

Mr. McCLORY. I am asking his recommendation.

Mr. DOAR. It is my—the suggestion that we make in the brief, and only a suggestion, would be that some way be made so that Mr. St. Clair could review all of that material, all of it, including the grand jury material, subject to him agreeing to be bound by the rules of confidentiality. But, that with respect to commenting on the material, that that be delayed until we have completed our initial presentation.

And that is the orderly way it is done in every kind of a proceeding I have ever been part of.

Mr. McCLORY. He would not be present?

Mr. DOAR. Whether he would be present or not would be the decision for the committee.

Mr. McCLORY. Could I ask——

Mr. SARBANES. Would the gentleman yield?

The CHAIRMAN. The gentleman's time has expired. I recognize Mr. Brooks.

Mr. BROOKS. Mr. Chairman, thank you for recognizing me.

The CHAIRMAN. I have given the gentleman more than 5 minutes.

Mr. McCLORY. Four and one-half minutes.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to say, first, I appreciate counsel, both counsel, both Republican counsel, for their very splendid memo which we had a chance to read this morning. I want to say that we have three memos apparently on my desk, one for Mr. St. Clair, allegedly a Republican; one for myself, and another from the minority. And I hope that we can study those as soon as possible.

I feel certain that this committee will be fair. I know that I want to be. I would say that to add to the interest in procedural matters, I would like to put an excerpt from Representative Gerald Ford, late Representative, and now Vice President, to Chairman Cellar, former chairman of this committee, concerning the President's respondent's, counsel during committee investigations or the proposed impeachment of Justice Douglas. And he said in that letter:

> The adversary proceeding of a formal impeachment trial by the Senate clearly permits the accused and/or his counsel to be advised of the charges against him. When such charges are still unformulated and unappraised by the whole House or even by the full committee on the Judiciary, no such right exists. Counsel for the accused does not sit in the Grand Jury room. If any such procedure is being pursued by the Special Subcommittee, or clandestinely by the staff, the result can only be a sweeping whitewash of every allegation as it appears.

I would say that on procedural matters, that would be an interesting comment for him.

I want to say that I do not want to follow this procedural rabbit trail, and obscure the failure of the President and Mr. St. Clair to furnish this committee the evidence we have timely and graciously requested. We have requested it, we have asked for it, we have talked. We have talked, we have written them letters, letters. There is nothing difficult about it. And I think that the technique of obscuring the real basic need of the committee; that is, to acquire the evidence for a complete evaluation, is the main, principal matter that we ought to be concerned with.

And I will just say in conclusion that we have worked with those people for 40 days and 40 nights trying to get some material that they have, and understand could produce and send down here in 10 hours. And I will conclude by saying as I have said all of my life, particularly before I was married, that fun is fun, but you cannot laugh all night.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I want to thank you for yielding and just say that I share the concerns that have been expressed by

Congressmen Hutchinson and McClory about business meetings. It is my understanding that we have had in respect to this impeachment inquiry, only three business meetings where we can really try to bring anything to a head. And I think that that is unfortunate. I feel very strongly about that, because I think there are a majority of the people on this committee, Democrats and Republicans alike, that would like to just resolve this business about the right of the President to have counsel.

In other words, Mr. Doar, I will say to you that in looking at your memorandum, I find that of the 20th century impeachment cases, something like 19 of them, counsel was permitted to be present, and at 17 he was permitted to cross-examine, and in two other cases he was invited to cross-examine. And then there were 6 of those total of 29 or something like that, and I think I am pretty close, where there was a lack of information as to what procedural rights were extended to him. What it means to me, it is that the whole tendency has been in the 20th century to permit the respondent to be present, or to have his counsel present, and that that counsel has had the right to cross-examine.

And in respect to what my friend from Texas said, let me tell you what Justice Douglas' lawyer said about this. Justice Douglas' lawyer said:

> To achieve this goal, these rules have become well-established in proceedings relating to the impeachment power. (1) Respondent and his counsel may attend every session at which evidence is taken or of which arguments are addressed to the subcommittee; (2) Respondent, personally, and through counsel, may cross-examine all witnesses and call witnesses on his own behalf.

And then he goes on to say that the hearings are judicial in style. We are getting all kinds of countering arguments, but one thing is very clear to me. In recent cases, the respondent has obviously had a right to have counsel. The ACLU, the American Civil Liberties Union has called for the same thing.

I just think, Mr. Chairman, that it is imperative that we have a business meeting so that at least we can resolve these issues rather than defer.

Mr. BROOKS. Would the gentleman yield?

Mr. RAILSBACK. I would be glad to yield to the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding.

I found it very interesting that the nonpartisan gentleman from Texas now accepts the legal judgment of Gerald Ford. This probably makes it the first time in his long career in the House that such a meeting of the minds has been accomplished.

Second, I have a question, Mr. Doar. Congressman Wiggins has raised some doubts in my mind about your answers, particularly your answers to his questions. I think you said initially with respect to those items which have been requested from the White House, and the 41 or 42 conversations, I believe you said, initially, President's counsel could delete irrelevant portions. Now, the question I have is assuming some of the information you are seeking would involve conversations dealing with Jeb Magruder's appointment to an office, and others dealing with national security or other items, and these conversations overlap, as many times conversations do, are you suggesting—and I want

you to clarify this for us—that the President's counsel could initially delete that material he considers to be irrelevant and turn the rest over to us?

Mr. DOAR. Yes.

Mr. COHEN. What method would you have of determining whether the information which has been excised or exorcised from those tapes were, indeed, relevant to this inquiry? How would you check that?

Mr. DOAR. Well, the only way you would check it is that the committee would have to reserve the final judgments on that itself, and it would listen to what Mr. St. Clair turned over, and it would then make a judgment of whether or not it was satisfied.

Mr. COHEN. What I am saying is that in the course of conversations we may have several different subjects discussed, each of which may overlap, and a sentence or a paragraph might have tremendous importance. And if that were, in fact, deleted or excised out of the tapes, how would you really determine that, whether or not it did have a bearing upon our inquiry?

Mr. DOAR. Well, I think that there would be a showing, there would be a showing that there was a deletion in the transcript or in the tape and then the committee staff and the committee members would review that, and if the staff and the chairman and the ranking minority member had a question about it, it would bring it to the committee. But the thing is, the point is, that in the first instance you take the representation of counsel, with respect to the material being what you called for. But, we do not, the committee would not, want to say that in the final analysis it would not reserve for itself that determination.

Mr. COHEN. The second point I would like to raise: On page 23 of the memorandum which you prepared, in a footnote you indicate that the staff has concluded that the taking of depositions is not an efficient way to prepare for the initial presentation and, as I recall it, at our last meeting we raised the question as to whether or not Mr. St. Clair could be allowed to participate in the taking of depositions. It seems to me this is rather a subterfuge of sorts to simply exclude entirely the question by minimizing the importance of taking depositions. And I think we ought to be forthright and simply say we are not going to take depositions because we do not want to reach the question, or vote upon the question, or whether Mr. St. Clair ought to participate.

Mr. BROOKS. Mr. Railsback, would the gentleman yield?

Mr. COHEN. No, I will not yield.

Mr. RAILSBACK. I think I have the floor.

Mr. FLOWERS. Mr. Chairman, the gentleman has had over 5 minutes.

Mr. COHEN. I do not mind the use of affidavits to establish proof of facts which are not disputed, but it seems to me that when we get into areas of disputed facts, that the affidavit should not be used to establish those kind of critical factors. And I would have some serious reservations about voting for it.

Mr. DOAR. I think you will have to make the decision after you see the affidavit and after you see what the facts purport to establish. I certainly agree with that. There was no attempt, however, not to be forthright with respect to these depositions. It really is not an efficient way to prepare.

Mr. COHEN. To the contrary. The use of depositions is the ordinary way to prepare for a case.

The CHAIRMAN. The gentleman's time has expired.

Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman, for recognizing me.

I think we are putting the cart before the horse here. Not that I want to avoid the issue of whether or not Mr. St. Clair ought to be present at certain stages of our proceedings or not. I have already decided in my own mind that we ought to extend that privilege at some point, and I think a lot of members of the committee have. But, I think at the point we are at now, my goodness, the members of the committee have not had that privilege yet. I do not want to give Mr. St. Clair something that we have not got for ourselves, before we get into that stage.

As I understand it, the staff is accumulating evidence. They are putting it together, most of which is largely uncontroverted, uncontested documentary evidence, some of it reported in the media, that will be placed in some sort of a brief presentation to us. At the time that the evidence is presented to this committee, or I think in advance thereof, is when we need to talk about the procedure for handling that stage of it, and that is the point I would envision that the President's counsel should have some privileges extended to him. But, I think that we are making a mountain out of a molehill at this point, Mr. Chairman.

Mr. DENNIS. Mr. Chairman?

Mr. SEIBERLING. Would the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Ohio, first.

Mr. SEIBERLING. I would like to subscribe to everything that the gentleman from Alabama has said. Of course, we want to be fair to the President of the United States. But we also have to carry out our responsibilities and do it in an orderly way. And I do not think anybody can criticize the procedures that this committee has followed up to date, in trying to do it in an orderly way. We have circumscribed our own ability as members to get to the facts until the staff has finished obtaining the evidence and organized it. And at that point, we reach a new stage which is that the evidence will be made available to the members of this committee, and not before. And before the members decide anything, I am sure we will all unanimously agree that Mr. St. Clair and any other counsel the President chooses will have the opportunity to scrutinize the evidence, comment on it, produce additional evidence if he wants. But, to allow Mr. St. Clair to get into the middle of this investigation by the staff would be to totally obfuscate orderly procedure and make a shambles of this whole investigation.

And I commend the gentleman from Alabama for his comments.

Mr. MCCLORY. Will the gentleman yield?

Mr. FLOWERS. I will yield to the gentleman from Illinois, if I have any further time.

Mr. MCCLORY. I thank the gentleman for yielding.

The question I want to ask is this: Do you not envisage the presentation of the trial book with the evidence and citations and the charges as the inquiry that we are conducting? Are we going to have two hearings? Are we going to have that presentation, and then have a second presentation?

Mr. FLOWERS. I am sorry that the word "trial book" was used, because I do not think that that is what counsel really meant, in the sense that this is a presentation for the plaintiff or the State's evidence. I think what he means by a trial book is in the sense that this is a complete layout of the evidence, and this is what we have and we recommend it go.

Mr. MCCLORY. But, that is going to contain all of the references to documentary evidence, is it not, and the question as to whether or not we have live witnesses may never be determined.

Mr. FLOWERS. Well, at that stage of the game is when we ought to have the respondent's counsel present, and we ought to talk about it in advance of that stage of the game. But, we are not there now. That is all that I have said.

Mr. Chairman, if I have one-half minute, then I am going to yield to the gentleman from California.

Mr. DANIELSON. I thank the gentleman for yielding. My sole contribution to this is if Mr. St. Clair wants to be of assistance to the committee and his client at this time, I think the most appropriate thing is to turn over the evidence which we have been seeking for 40 days and 40 nights.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

I have a number of observations I would like to make about the situation. The first thing is that I want to reemphasize and support, as I think the discussion this morning has already reemphasized and supported, the great need of this committee to have a business meeting where some of these issues can be decided. And I would like to specifically request the chairman to call a meeting for next week before the adjournment at which we would consider the matter of the representation by counsel for the President, and the matter of whether we call oral testimony, the matter of narrowing the issues and other important issues which are before us, and which certainly need to be decided before we progress much further in this proceeding, and which cannot be decided as long as we are simply having briefing sessions, which has now been the case for maybe approximately a month. I want to be just as firm on that point as I can be. If we do not have a meeting next week, where we can transact some business and decide some of the questions, including the questions raised by the memorandum submitted by Mr. Doar this morning, we are just going to drift into a situation when we come back, where it will be a fait accompli and we will go ahead on a schedule set forth in this proposal here, because it has been said that is our schedule to start hearings immediately after the recess, and we will drift into that situation without any action by this committee at all on the suggestions by the staff. And I absolutely protest that kind of a proceeding. We have got to have a business meeting, and have the committee decide a few of these things.

Mr. WIGGINS. Will the gentleman yield?

Mr. DENNIS. I yield very briefly, though.

Mr. WIGGINS. Counsel, could you answer the question as to whether or not it is your intention to present a summary of the evidence with respect to all 55 or 56 charges which were detailed in your March 1 memorandum?

Mr. Doar. No; it would not.

Mr. Wiggins. Can you report to us the extent to which you have determined that some of those charges should be deleted from further inquiry?

Mr. Doar. I can report to you that with respect to some of the charges in the area of agency practices, that Mr. Jenner and I are prepared to recommend or to tell the committee that we have looked into these preliminarily and find no basis for proceeding.

Mr. Wiggins. What area was that, counsel?

Mr. Doar. The agency practices.

Mr. Wiggins. Any other?

Mr. Doar. Those are the ones that we are prepared to recommend to the committee now.

Mr. Wiggins. Do I understand, therefore, that Cambodia and impoundment and OEO is still in the ballgame?

Mr. Doar. Well, the decision with respect to those matters are decisions for the committee, not for the staff.

Mr. Wiggins. Obviously so, but I am wondering what your recommendation will be. You are going to make a recommendation with respect to agency practices. Are you also going to make a recommendation in those areas?

Mr. Doar. Well, the questions with respect to Cambodia and impoundment and agency practices, we would be prepared to make a recommendation. I would be, if the committee asked us, to make the recommendation.

Mr. Wiggins. I so request, Mr. Chairman.

Mr. Doar. If, with respect to the other ones, we can say we have looked into these particular matters and find no basis for the allegations on the basis of our investigations.

Mr. Wiggins. I thank the gentleman for yielding.

Mr. Dennis. Mr. Chairman, I still have the time. I think I yielded to the gentleman from California. What he has said to Mr. Doar and vice versa only underlines what I have already said. If we had a meeting we could thrash some of these things and get rid of some of these issues.

Now, let me point out in the few minutes I have remaining, a few reasons why this memorandum, for instance, which has got to be acted on, as counsel well says, it is only a suggestion, we cannot do any of it, either the part someone else wants to do or the part I want to do, or the part I want to object to cannot be acted upon until we meet and act. Now, counsel suggests in here a procedure, subject to our approval. And we have got to approve it. And the procedure is that they present this so-called trial book, they present the documentary evidence that may support the so-called trial book, and they suggest that maybe we will let the President's counsel be present at the time of the presentation. That is up to us. We have got to resolve that question. That question we have got to resolve before we start.

Then the recommendation is after the completion of this presentation, the committee will be in a position to determine how to proceed further. At that point, a decision on participation of the President's counsel can best be made, meaning very plainly all you need to do is read pages 22, 23, and 24 of this memorandum, and as far as counsel's suggestion is concerned, we might allow the President's counsel to be

present at the initial presentation, but we would not decide until after that is over, whether he can cross-examine witnesses or call witnesses of his own or anything of that kind. Now, I do not subscribe at all to that position of this memorandum. I think we not only can but should determine at this point whether, as a general principle—we do not have to decide what evidence is going to be called down—but we can certainly decide right now, and ought to, whether as a general principle, if we call our testimony, the President's counsel is to be allowed to cross-examine. You do not need to defer that until after this initial presentation. That is a matter of principle which can be determined right now as to whether he shall cross-examine when and if we call evidence.

All right. How about calling witnesses? Some of those questions ought to be determined right now. And there are several good reasons for that. We can——

The CHAIRMAN. Would the gentleman yield at this point?

Mr. DENNIS. I will, but I do not want to lose my time, Mr. Chairman. I would like to finish my point, if you will let me finish.

The CHAIRMAN. All right, go ahead.

Mr. DENNIS. I can conceive that this case may be presented partly in documents, presented partly on prior testimony, partly on oral testimony, but I do think we are going to want to call some oral testimony. I think there are some witnesses obviously that have got to be called. Mr. Dean, for instance, some of the other witnesses that bear on this alleged payment on the night of March 21, and they ought to be called, subject to cross-examination, which they have never been subjected to, and those things. And whether the President's counsel will be allowed to cross-examine if they are, ought to be determined right now, not later on.

On the deposition business, we had a long, complicated set of rules about taking depositions, and when it became obvious that there was a majority here that thought the President's counsel ought to be present, if we were going to take evidentiary depositions, it was decided that we would not take depositions.

The CHAIRMAN. The gentleman's time has expired.

Mr. DENNIS. Now, wait a minute. We have got to get a determination on some of these things is my point. And there is one more point, Mr. Chairman.

The CHAIRMAN. Well, now, the gentleman's time has expired. Mr. Hungate. I have given the gentleman more than 5 minutes.

Mr. Hungate.

Mr. DENNIS. All right. We have got to act on this.

Mr. HUNGATE. Mr. Chairman, it is with reluctance that I disagree in part with my distinguished colleague from Indiana, for whose legal ability I have the greatest respect. Mr. St. Clair is certainly a distinguished Harvard lawyer, and I am pleased to see the school recognized at such a high level of Government. But, he is not a Member of Congress or the Judiciary Committee.

Mr. Chairman, there have been current suggestions that the staff has flipped its halter in this investigative work, and I would remind the committee that the Joint Committee on Internal Revenue Taxation filed a report yesterday that I understand the committee had not read and had not approved as such. They presented a staff report, and

on the basis of that a half a million dollars apparently has changed hands. Reliance on staff work is not unheard of in Washington, so long as the final decision and the discretion remains with the committee.

Now, as to this proposed "Statement of Facts" that counsel has suggested, which I understand would contain annotations, would counsel think that perhaps when a "Statement of Facts" is submitted that some of the proposed charges, or this list of 56 or whatever we have might be eliminated, due to this work?

Mr. DOAR. It would not be included in the initial presentation. The question of—they would not be included, that is right.

Mr. HUNGATE. You would at this point have eliminated some of it, some of what are generally referred to as the 56 items, is that right?

Mr. DOAR. Well, the elimination is a matter for the committee to decide but if the committee, after they have looked at the "Statement of Facts" were to say, well, here you have not included one particular subject, and we direct you to include that also, then we would. In that sense, it would not have been eliminated.

Mr. HUNGATE. Well, it would seem to me that it would almost be certain that some, that when you present your "Statement of Facts," with the annotations, that it will almost be certain that some of these 56 items would be eliminated.

Mr. DOAR. It is certain.

Mr. HUNGATE. And depending on the discretion and judgment of the committee, more might be eliminated, more might be added?

Mr. DOAR. That is correct.

Mr. HUNGATE. Well, it simply seems to me that it may be a little premature then for counsel for the President to be examining and cross-examining, and pawing—I would withdraw that—looking over documents over which we may never disagree. Is it not possible that a good part of this material would never have to be worked on by the other party?

Mr. DOAR. It is possible.

Mr. HUNGATE. Is it possible that some of the affidavits that I understand that have been taken or may be taken, would prove to exonerate any one of the charges suggested?

Mr. DOAR. Yes, that is possible.

Mr. HUNGATE. I thank counsel.

If I have time remaining I will yield to the gentleman from Indiana.

Mr. DENNIS. Well, I thank the gentleman from Missouri very kindly for that, and I just want to make one more point, and it is a serious point about the calling, or the determining now as to whether we call witnesses. Some of these witnesses, if we call them, will probably claim their constitutional privileges under the fifth amendment and we will be faced with the question of whether immunity should be granted. Now, as I understand the procedure there, we have to go to court if we want to grant Use Immunity, and get a court order. We have to give the judge 10 days notice, and the prosecuting attorney then has 20 days to answer. And, in effect, this happened in the Ervin committee, you will remember. You cannot call those witnesses for 30 days after the committee here decides on the question of whether we want to grant immunity. Now, if we wait to decide problems like that

until the preliminary presentation is over, and we are down to the calling of evidence, we are going to have to be stymied for 30 days, or else just say, or, well forget it, we will do it without it. And I do not think that we ought to put ourselves in that position. And I just say again we have got to have a meeting where the committee, and not the staff, can decide these things. And if we do not have that, and have it next week and continue to have them, I want to register my emphatic dissent and disenchantment, too, with our entire proceeding.

Thank you.

The CHAIRMAN. I think the gentleman has made his position rather abundantly clear, or perfectly clear, as he said.

Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Doar, in the past briefings it has been my understanding that you have made the point that you wished to complete your work before making any presentment to us of the case. You did not want to do it piecemeal, but to have all of the work done before presenting this to the committee. Is that correct?

Mr. DOAR. To the maximum extent possible. Of course, that turns upon the amount of cooperation that we would get from the White House with respect to materials we request.

Mr. FISH. Well, now, I have also heard that the presentation of the case to the full committee will be ready by the end of April. Is that accurate?

Mr. DOAR. We are trying to have the initial presentation ready so that it could be presented to the committee the first week of May, so we are setting a kind of an end-of-April deadline. But we would hope that we could be finally prepared for the initial presentation in early May.

Mr. FISH. It was my understanding, though, that the hearings, such as they will be, are not going to occur before that?

Mr. DOAR. That is correct. So we would not be ready.

Mr. FISH. Sir, this is the sort of thing about what we were led to believe about all of the work being done first. I will yield at this point to Mr. Railsback.

Mr. RAILSBACK. I would just like to follow this up and offer this suggestion. At one time, we were told that we were going to have the evidence presented on April 22, when we returned. At least, that was the rampant rumor. Would it not make sense to have the first presentation ready at that point, so that then members would be able to request a recess, which we are probably going to do at some time, anyway, and respecting each of your presentations so at that point we could at least go over, those of us that wanted to, and look at the materials that you have indexed for us. Would that not make sense to expedite it?

Mr. DOAR. We just cannot do it by that time. We just cannot do it.

Mr. FISH. Mr. Doar, one further question.

The hearings will be interspersed with the presentation. Can you, without the material in today's letter to Mr. St. Clair, those 42 tapes, can you make this presentation? Will your case be complete?

Mr. DOAR. It will not be complete but we will make the presentation with the best evidence we have available. We will do it. Of course,

we think that these 42 tapes have a bearing on this matter or we would not ask for them.

Mr. FISH. Certainly. I agree with you. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Mr. Chairman.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Doar, I was interested in the colloquy you had with the gentleman from Missouri, Mr. Hungate, and with the gentleman from California, Mr. Wiggins, in terms of items which might be excluded of the 56. I am wondering why there should be, as you suggested, a presentation in which these items do not appear at all? I say this because I think the American people might wonder what disposition was made of them, and why, and what the logic of it was, whether you found no evidence, or what your recommendation is in connection with these. Whether these are agency practices, OEO dismantling, Cambodia bombing or impoundment. And I do not disagree at all with whether these might well be excluded. But, should they not be formally presented with a recommendation that there is no evidence to support this, or that the recommendation of the counsel is that these matters not be pursued for other reasons, other than purely omitted as you suggest might be done?

Mr. DOAR. I did not mean to suggest that they would be purely omitted. I would think at one point in the proceedings they would be presented with a recommendation. But, I am just saying that they would not be presented with the idea that we think that this is a matter that the committee would want to consider factually initially. That is all. And it is just a matter of getting started, and getting organized, and getting the work underway of the committee.

Mr. KASTENMEIER. I understand further that particularly in terms of the OEO, Cambodia, impoundment issues, the staff was not devoting any time to investigating it, particularly at this point. And I am wondering why any early determination that these, any earlier than a determination, for example, in early May, when we get the total presentation, should be made to us, need be made by the committee? Why is there any urgency about excluding at this point, particularly when you have to make presumably a presentation along with the recommendation on these issues, as well as those which you might want included?

Mr. DOAR. Well, there is not any need for an early elimination of any items, except for the fact that we do want to be candid with the committee on what we are working on, and what we are concentrating on. And if the committee were to ask for that, we would be prepared to tell them and make our recommendation. But, there is not any need that that be done.

Mr. KASTENMEIER. Well, my interest in this is in connection with whatever report or recommendation is made, that the whole spectrum of charges be publicly explored by the committee and a rationalization or a justification made either for their inclusion or exclusion, so that the American people may well understand what happened to all of these issues.

The CHAIRMAN. Will the gentleman yield?

Mr. KASTENMEIER. Yes. I yield to my chairman.

The CHAIRMAN. I would merely like to state that I think the staff contemplates, and I believe this was within the instruction from the committee, that all of those charges that have been before us, and all of those allegations that are in the various categories are a subject of investigation. The presentation which will be made is going to be made initially as a preliminary presentation. The committee will then consider whether or not there are other matters that it considers of more urgency. But, no elimination will be made without the decision or the judgment of the committee, and I think that the fact that certain matters which have come to our attention which are being given this priority attention, is just as a matter of necessity and as a matter of procedure and orderly procedure rather than a question of judgment on the part of the committee at this time, as to elimination of any items that are presently under consideration.

Mr. KASTENMEIER. Well, I appreciate my chairman's statement and I only wanted to say that I think there is a case against preemptively excluding certain charges rather than to, as I say, view comprehensively all of them in due course, appropriately, with supporting evidence for or against.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman.

I did want to address my first remarks here to you, Mr. Chairman. Mr. Chairman, in the statement which you read at the beginning of todays briefing, you said that it had been 2 months since the House took its historic vote. But, I think we should recall that it was in October that the Speaker referred this matter of impeachment to this committee, which indicates that we have been proceeding at a very leisurely pace indeed. That is some 5½ months during which the committee has met, at which any action was permitted at all on only three occasions which were outlined. I believe, by the gentleman from Illinois, Mr. Railsback, and even on those three occasions, you, Mr. Chairman, very severely circumscribed the agenda as to what action the committee could take. The only thing that we were allowed to act upon were the subpena resolution on January 31, the rules on confidentiality on February 22, and on March 7, the request to Judge Sirica by letter for certain materials.

Now, it does seem to me that the time is long past due for some action by the committee, itself, that there are a number of very important subjects which cannot be stalled properly or delayed, certainly not until after the Easter recess, which would mean 6 months gone by without any action by this committee. And among the items, the No. 1 item that I think this committee should act on before we go on recess is the unresolved question of the President surrendering these tapes, which Mr. Doar has explained to us this morning. And certainly we have waited long enough and we should take action in the meeting before we go on recess to issue a subpena if that is what is necessary. There is no sense in waiting 6 months for staff and the chairman to work this out in an amicable manner.

Now, No. 2, at this business meeting, we should at least be able to narrow the issues. There are apparently 55 or 56 alleged grounds of impeachment still kicking around. We all know that a lot of those

have no chance of being the basis for a bill of impeachment. We, I think, are entitled to vote on that. The gentleman from Wisconsin elicited or inquired as to how much work was being done on a lot of these window-dressing, filler issues. But, I would like to ask counsel, is it not true that members of the staff are assigned to each and every one of these issues, doing some work on them?

Mr. DOAR. Members of the staff have been assigned but on some issues they are not working on them now.

Mr. MAYNE. Have all members of the staff been taken off of some of these issues?

Mr. DOAR. Yes.

Mr. MAYNE. What issues?

Mr. DOAR. Well, there are two or three issues with respect to practices of the agencies.

Mr. MAYNE. Then with the exception of two or three issues, you still have got staff working on 55 or 56 so-called grounds for impeachment?

Mr. DOAR. Yes. That is true.

Mr. MAYNE. Well, I would like this committee to have a chance to get down to the real guts of this issue and have staff stop frittering away their time and the taxpayers money on developing a lot of information that is not going to amount to a tinker's dam when we get down to making the real decisions in this case. Let us get on with the serious business of the inquiry, and let us vote on that next week. We were assured, it seemed to me, at a briefing 2 weeks ago that staff was going to make definite recommendations to us about dropping a lot of these less serious and unsubstantiated and inconsequential charges. That has not yet been done, and should be decided no later than next week at a business meeting.

Now, another issue which should be decided at that meeting is the question of whether the President's counsel will have the right to appear at the depositions and otherwise in this matter. This was a matter which was very hotly debated at our briefing 2 weeks ago. You gentlemen of the staff presented proposed rules which placed a very high importance on depositions. You put them right out in No. 1 position in that series of procedures, and people on this side objected very strenuously to those depositions taking place without the President's counsel being present. A good many members on the other side, stated just as strongly that it would be unthinkable for him to be present. And that was pushed aside and in the interval, we have seen reports in the press that this is going to be a compromise in some manner, that there would be an accommodation suitable to both sides. Well, what has happened this morning is we see that you come out with a proposal that there just is not going to be any depositions, and it seems to me like a very transparent dodge to say instead of the depositions, which were the crux of the argument, the debate, 2 weeks ago, that you are not going to have depositions now, you are going to have something called affidavits. And, of course, the President's counsel would not have anything to do with that.

Well, now, that is not a decision for the staff. That is a decision for us and we should not abdicate our responsibility to the staff or to the chairman on that. I respectfully urge, Mr. Chairman, that we do have

a meeting at the earliest possible moment. I think the American people are entitled to much more expeditious attention and treatment than the committee itself has been giving to this matter. I think that they are not going to tolerate the kind of delay which we have been permitting, where if we come back after the recess and still have not had a meeting, and taken some action, it will mean that 6 months have gone by without action by this committee.

So, I respectfully urge you, Mr. Chairman, to hold the meeting at which we can at least take action on these items of urgent business that I have recommended to you.

Thank you.

The CHAIRMAN. I would merely, before recognizing Mr. Sarbanes, I would merely like to point out to the gentleman, Mr. Mayne, that he referred to the matter of having been referred to us on October 15. As you know, the resolutions were introduced in the House at that time. But, it was much later that the referrals and the assignments were made, and much later when the House finally gave us the authority that we do have to inquire and the setting up of staff was a matter that took a long time. And we were in the middle, as the gentleman knows, and no matter how much rhetoric is stated here, the gentleman knows that we were in the middle of considering the question of the confirmation of the then Vice President designate Ford and did not complete that matter until the sixth, when the House then went into recess after that. And we did not reconvene until January.

Mr. MAYNE. Mr. Chairman, I did not use the 15th. I said in October. I will now use the date October 23, as the date on which the Speaker assigned this responsibility to this committee.

Mr. SARBANES. Mr. Chairman, there have been a number of——

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES [continuing]. Comments made or phrases used in the course of questioning counsel, or making statements this morning, and I want to be sure that we are clear with respect to those. One statement was that when the staff brought its charges to the committee. Now, it is my understanding that that is not what the staff is doing, and that is clearly not what your memorandum beginning on page 22, "proposed presentation of evidentiary materials" suggests. It suggests that you will be presenting to the members of the committee a review of the factual material, not presenting charges to the committee. The charges are a matter to be determined by the members of the committee and I know that phrase was used in the course of the questioning, and I think it is very important to clarify that that is not the case. That responsibility is ours. And I perceive that the staff understood it and I thought the members of the committee understood it. Perhaps it was an inadvertent use of language.

Mr. MCCLORY. Would the gentleman yield? Is it not true that the facts are in support of specific charges that will be delineated in the fact book?

Mr. SARBANES. No. The facts are carrying out an investigation with respect to allegations that have been made, but they do not constitute charges. And whether there are to be charges, is a judgment for you and me and the other members of this committee.

Mr. MCCLORY. That is the distinction, but I meant the allegations that are made in the resolution——

Mr. SARBANES. Well, I think it is important to make these distinctions because I think the role we have is an important one.

The second point I would like to pursue is the question of the participation of the President's counsel in the proceedings, and I think it poses some important and serious questions which deserve the careful attention of the members of this committee. I agree with Mr. Flowers in the view that he ought not to have a participatory role greater than that of the members of the committee. And we have imposed upon ourselves certain restrictions in terms of our own continual participation, although we have reserved at the end total participation. I think those were wise rules. I think they have contributed to carrying forth an expeditious inquiry, which everyone continues to emphasize. So, it does not seem to me that in addressing that question, or it seems to me that we ought to recognize the minimum nature of the participation that each member of this committee has in these proceedings and ought to move forward and, therefore, I think the question to respond to something that Mr. Railsback says is really it gets into questions at what point and in what manner are we talking about this question, and that is something I think we have to focus on.

Thirdly, I do not believe that it is the staff's role to make a judgment on facts which conclude that nothing further should be done. That is the committee's judgment. The staff may present us the facts and say, well, there are no facts with respect to this allegation, or, on the matter with respect to Cambodia, or impoundment, you may say, well, here are what the facts are. And the judgment of whether the facts are something we ought to proceed with or not is a judgment for the members of the committee to make, and in that sense I support strongly what Mr. Kastenmeier said with respect to the need to be certain that what we receive is the factual statement with regard to these allegations. And that our judgment with respect to the import of those facts is a judgment to be made by the members of the committee.

I regret, Mr. Chairman, that apparently on this serious question of the participation of the President's counsel that some members of the committee have apparently moved to a conclusion without considering, I think, all of the aspects of the thing. I had understood at our last meeting that we recognized it as a possible question to be decided by us, and that we were going to try to come at it in an open-minded way, and receive materials on the past precedents and some of the arguments for and against it. And I would hope that we could revert back to that approach in an effort to try and develop what seems a sensible arrangement.

The final point I want to make is that I really do take some umbrage when members of the committee scorn the committee with respect to the way it has handled this matter, and the work it has done. I think it is rather clear that from the period of October until the Christmas recess, this committee was very much involved. I think, in carrying out in a very fine way, the question of the confirmation of the Vice President. And I think since that time, we have proceeded clearly and expeditiously in carrying forth this inquiry. We are now talking about being in a posture sometime and I take it the first part of May to be

able to consider the evidentiary situation after the facts have been assembled, and I do not really think it does fairness to the job the committee has done or the staff has done to loosely use a 6-month's time period, which I think is totally inaccurate, or to suggest that the committee or the staff is not carrying out its work in a proper and expeditious manner.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I would recognize that we are moving rather rapidly now so I will not take but a moment. But, I would like to inquire further of counsel with reference to the question of depositions again. I think essentially my question is this: In view of the fact that you have abandoned for the present, at least, the depositions and the subpena, therefore, as an investigative aid, what device is counsel presently using to obtain the evidence of a reluctant witness? I am concerned that you are not pursuing reluctant witnesses at this time, and we are about to receive a preliminary determination of fact that really does not pursue this area.

Mr. DOAR. We are not pursuing reluctant witnesses.

Mr. BUTLER. So at the moment, and when you make a preliminary determination of facts or present us with a trial book or whatever we have, we will simply be presented your determination, or your preliminary recommendations of findings as to facts as to witnesses who have come forth voluntarily, who have not declined to be interviewed. Would that be a fair statement?

Mr. DOAR. That is a fair statement, yes.

Mr. BUTLER. Well, now my next question, of course, follows. Are there any reluctant witnesses which you think we ought to be examining before you can make an intelligent preliminary determination of fact? And I know, of course, the quite obvious answer is the President of the United States, but are there any others?

Mr. DOAR. We think not. If there were, we would bring them to the attention of the committee immediately and suggest the committee deal with that.

Mr. BUTLER. Well, would it be fair to ask counsel to assure me that before you make a preliminary determination of facts, or a recommendation of this sort, that you would let us know if there are any witnesses that you think ought to be interviewed who have not been interviewed because of their reluctance to testify?

Mr. DOAR. Yes.

Mr. BUTLER. Thank you.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Mr. Chairman, I am a bit surprised that some of my colleagues would be critical of the speed with which we are moving on the impeachment inquiry, inasmuch as I, for one, thought that this should have priority over the Gerald Ford coronation which this committee took a lot of time in deciding. Nevertheless, I think it is clear from all of the members of this committee that we have delegated to counsel and their staff the availability of far more evidence that we have access to. And it seems from what I understand that we are bent on allowing Mr. St. Clair and his staff to receive rights and access to material that we still have not had before us. And, in any event, I

would have no objection to that if Mr. St. Clair would share access to information he might bring to us for the first time from the White House.

But I hope I misunderstood you, Mr. Doar, in connection with Congressman Wiggins and Congressman Cohen's question as to, are you saying that the White House will have the right in the first instance to erase from any tapes or excise from any documents evidence which they consider national security, or not relevant to this inquiry?

Mr. DOAR. Well, they would not have the right to erase anything from a tape, certainly, and I do not think that would happen. But, if there was a part of a conversation, or a conversation that we had that did not relate to the matters which we have under inquiry, then I would expect that Mr. St. Clair would say that with respect to that conversation it does not have any bearing, and it relates to such and such a matter.

Mr. RANGEL. Now, how would you know that they were telling the truth?

Mr. DOAR. Well, you know, you have to take in the initial instance a lawyer's word. Now, we bring that matter to the committee, and the committee decides that in the last analysis. But, let me give you an illustration. Suppose we asked for 41 conversations and 38 are produced. And Mr. St. Clair says with respect to these three other conversations, or part of the three other conversations, they were unrelated. And we listened to the 38 and we would then bring that to the committee and the committee would then have to make a decision whether or not it wanted to accept this word.

Mr. RANGEL. How in God's Heaven can we make the decision, when we have not heard the three tapes?

Mr. DOAR. You cannot. But you have to decide whether you want to hear the three.

Mr. RANGEL. Suppose the White House tells us that the 42 tapes are not relevant, and the President did not make any statements on them to incriminate them? Then what do you do?

Mr. DOAR. Then you have to decide that you want to subpena the tapes.

Mr. RANGEL. Are you saying in the first instance, they would make a moral judgment as to what evidence we will receive?

Mr. DOAR. Any time you request information from a person who has possession of it, the person who has possession of that evidence makes the first judgment. There is not any other way around it. He has the material. You ask him to furnish it. He furnishes it to you. He is making a judgment.

Mr. RANGEL. Well, suppose the judgment is that the interpretation is subject to different types of reception, depending on who is listening to it?

Mr. DOAR. If he brings that information to you with the full disclosure, the committee would then decide whether they would accept it or not.

Mr. RANGEL. Mr. Doar, if it is full disclosure, we have no problem. But you are saying that since we are not dealing with subpena and since we are dealing with this request, which is long outstanding, we can only take what we get.

Mr. DOAR. No, I am not saying that. I am saying that with respect to that, in the first instance, you take what you receive on the representation of counsel that this is all of the material that you have asked for.

Mr. RANGEL. Well, I hope that you know that we are good on this committee, but we are not good enough to make a judgment on material which the White House says is not relevant.

Mr. COHEN. Would the gentleman yield?

Mr. DOAR. Congressman Rangel, we made that clear in the letter, that the committee has the final authority to decide that it wants all of those recorded conversations. We have not backed off of that one bit.

Mr. RANGEL. My last question before I yield: Has staff considered the effect, if any, on the speed with which this inquiry is going to move if the President removes himself from the jurisdiction for a trip to Russia, or any place else?

Mr. DOAR. No, we have not considered that.

Mr. RANGEL. Do you believe that it would be an important consideration as to whether or not the President was available to consult with his counsel, who now may become a member of the committee, if he is not in the country?

Mr. DOAR. Well, I do not really believe—I think that the President can continue to meet his responsibilities, and it would not interfere with the way this committee would conduct this business. I cannot foresee that, no.

Mr. RANGEL. Well, then, you do not believe that it is possible that the committee might ask the President of the United States to come before us?

Mr. DOAR. Well, I think that that would be up to the committee in its judgment. If it happened to do that, I am sure that could be done at a time when the President was available.

Ms. HOLTZMAN. Would the gentleman yield?

Mr. RANGEL. I yield, I promised to yield to Congresswoman Jordan.

Ms. JORDAN. Mr. Chairman, I recognize our time is short, and I will not take long. But, I do not want us to be misled now. At the last time when we met, you, the chairman directed the staff to prepare this memorandum coming to no conclusion about the extent of the participation of the President's counsel. And the staff did that. Then this morning we are confronted with another memorandum by minority members of this committee, coming to a conclusion, an advocate's document. If any bipartisanship has been destroyed it has not been destroyed by you, the chairman, who has continually asserted that you want to be fair and exercise good judgment and be judicious in the kinds of decisions which are reached. And I hope that the 38 of us who are on this committee do not become the victims of partisanism, partisan devisiveness when we really did not intend to become a part of it at the beginning of this inquiry, and when we wanted it to be open and aboveboard. We ought to have the good judgment to understand when we are being pushed into a confrontation with each other, at the expense of this inquiry.

Ms. HOLTZMAN. Will the gentleman yield?

Mr. COHEN. Will the gentleman yield?

Mr. RANGEL. I yield to the gentleman from Maine.

Mr. COHEN. Thank you for yielding.

I have just one question, Mr. Doar. As I understand it, the ranking minority leader, Mr. Rhodes, has made a proposal whereby you and Mr. Jenner and the chairman and the ranking member, Mr. Hutchinson, would listen in conjunction, listen to those documents and tapes, rather in conjunction with Mr. St. Clair, and would subject it to a majority vote. In other words, the committee could overrule, if Mr. St. Clair's judgment is that he says it is irrelevant and not material to our inquiry, you could overrule that. But, it would seem to me the position you are taking is giving him the absolute authority in the initial instance, and which works to the detriment of this committee.

Mr. DOAR. No, it is not giving him the absolute authority in the initial instance. We have preserved that but we have not said that it would be the judgment of myself or Mr. Jenner or Mr. Hutchinson and the chairman. It would be the committee and if the committee delegated that to us, we have made it clear that the——

Mr. COHEN. It seems to me that Mr. Rhodes' proposition of letting you all listen to it, and decide what is relevant and not relevant, and put it to a vote by the majority would be a much preferable way of handling it.

Mr. DOAR. I agree.

The CHAIRMAN. The second bell of the quorum has rung and the briefing session will adjourn. And the Chair will announce when a further briefing session will take place early next week.

[Whereupon, at 12:20 p.m., the briefing was adjourned to reconvene subject to the call of the Chair.]

IMPEACHMENT INQUIRY

Impeachment Briefing

MONDAY, APRIL 8, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:45 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Mann, Sarbanes, Drinan, Rangel, Jordan, Thornton, Holtzman, Mezvinsky, Hutchinson, McClory, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Moorhead and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel; and Hillary D. Rodham, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

The Chair would like to make a statement. I know that all of the members have before them a letter that has been received from Mr. St. Clair. The press also has that letter. It is a reply to our letter of April 4. Well, the letter should be, a copy of the letter should have been distributed and I am sorry if it is not before the press. But, I had instructed the staff to distribute such a letter and have it in the hands of the press.

On April 4, Mr. Doar received a letter that is before you from Mr. St. Clair. Mr. St. Clair has promised to respond to Mr. Doar's letter by Tuesday, April 9.

While his letter suggests that there will be a delay of a day or two because the President attended the funeral of President Pompidou, Mr. St. Clair has since advised Mr. Doar that we would have his reply by tomorrow. This was as the result of a telephone call I instructed Mr. Doar to make to Mr. St. Clair that we would be expecting a reply by tomorrow.

Accordingly, I propose to hold a meeting of the Judiciary Committee later this week, maybe Wednesday or Thursday, to decide what we should do in the light of Mr. St. Clair's reply, which we cannot speculate upon at this time. And it may be, and I know that Mr. Hutchinson and I would want to discuss this and the members of the com-

mittee will have an opportunity to discuss this this morning, as to whether or not the committee might want to delegate authority for the issuance of a subpena during the recess if, in the judgment of the committee, that is what is required. I would not want to call the committee back during the recess, but it is important to have the authority from the committee to issue the subpena during the recess if, in the judgment of the committee, that is the appropriate course to be taken.

I hope that this will not be the case. But, as I have mentioned before, there is a contradiction in efforts to determine whether the Office of the President is being faithfully executed is met with the claim that the faithful execution of the Office precludes the disclosure of the relevant facts. And if such be the claim, then, in my judgment, we would have to subpena the material necessary to meet our constitutional responsibility.

I discussed with Mr. Hutchinson last week a possible schedule, and I think this would be an appropriate matter for us to talk about this morning. The Chairman intends to schedule a meeting or meetings during the first week after the recess to decide on whether and how the issues before the committee can be narrowed. I think this is an important matter for discussion, and Mr. Hutchinson agreed. And I am sure that this is a matter that is high in the minds of the members of the committee that we do resolve that issue as best we can. And I have instructed the special counsel to prepare a memorandum on those matters which the staff thinks should be brought to the attention of the committee during that week, with full explanation, factual and legal, of the basis for the recommendations.

I know that the committee will have to adopt the rules to govern its procedures during the evidentiary hearings, and I would hope that those could be considered during the second week after the Easter recess. The adoption of rules of procedure is not a simple matter. I think we have got to recognize that once we adopt these rules of procedure, they become inflexible and may tie us down to rules which we may find do not comport with the situation.

Mr. RAILSBACK. Mr. Chairman?

Mr. Chairman, can I just ask a question?

The CHAIRMAN. Let me conclude my statement, if you will.

Mr. RAILSBACK. OK.

The CHAIRMAN. I am concerned about two things:

First, the question of confidentiality during the evidentiary hearings. And I think this is a matter and a subject that should engage the attention of each of us. I am concerned with preserving the integrity of the committee, and adhering to the rules of confidentiality which were adopted with the express purpose that we would be able to not interfere with ongoing trials and not prejudice the rights of individuals. I know that it is going to be difficult to be able to comply with those rules of confidentiality unless we adopt some stringent procedures, and unless we know where we are going during the presentation of the evidentiary material and how we present that evidentiary material. And I would hope that we consider that if it becomes necessary, and we find we are not able to comply with those rules of confidentiality, I would rather prefer that we consider the question of go-

ing into open hearings and opening up everything that we have got. I think that that is a matter that the committee, however, has to consider and consider seriously.

Second, it is my conviction that we should not be bound to inflexible procedures unless we have had the benefit of the initial evidentiary presentation by the staff. And I called this briefing session this morning so that we could further discuss this matter.

And I know that Mr. Hutchinson would like to make some comments regarding this.

Mr. HUTCHINSON. Mr. Chairman, I am delighted that the Chair has announced that immediately following the recess the committee will meet in a business session to narrow the issues before this Committee. That is something that a good many members of the committee have been thinking a matter of priority for some time.

With regard to a subpena, Mr. Chairman, I sincerely hope that it would not be necessary to issue any subpena during the recess. I announced at the outset, Mr. Chairman, that I would not join you in issuing a subpena to the President of the United States, but that that matter would be something that would have to be decided by the full committee, so far as I was concerned. I think it would be unfortunate for this full committee to be asked to decide whether such a subpena should be issued in advance of the circumstances, which might warrant its issuance. I do not feel, however, Mr. Chairman, in view of the public statements that I have made, including statements made on the floor of the House by me, I do not feel that I would be at all comfortable in having the committee direct just you and me to issue a subpena to the President of the United States during the recess, because I, as I say, have rather committed myself in my own conscience, at least, that I would not join you in such a procedure.

With regards to the rule of confidentiality during the evidentiary hearings, Mr. Chairman, I feel very strongly that we must find a way to maintain those rules of confidentiality. I think it would be extremely unfortunate if we decided that we could not do so, and so would simply open the thing up. I think that if we did so, we would not be keeping faith with the grand jury and Judge Sirica who turned the material from the grand jury over to us. While I recognize that the judge and the grand jury certainly realize that once those materials were turned over to us, in our hands, they lost control of them. I think that there was—I think we have a very strong moral obligation, Mr. Chairman, to maintain that confidentiality for the protection of purposes who are being subjected to trial and so I would not happily go along with your alternative, Mr. Chairman, that if we cannot find a way to preserve the doctrine of confidentiality, we throw it overboard. I think we must find a way to preserve it.

Mr. CONYERS. Would the gentleman from Michigan allow a question?

Mr. HUTCHINSON. Yes, I yield to the gentleman from Michigan.

Mr. CONYERS. Thank you. Do I understand you are saying that you have determined in your own mind that you are not going to join on a subpena under literally any circumstances?

Mr. HUTCHINSON. I am talking about a subpena to the President of the United States. And if the gentleman will read my statement on the

floor of the House, during the subpena debate, I made that statement that I would not. That would be a matter that would have to be decided by the full committee.

Mr. CONYERS. In other words, there are no circumstances that you could imagine that would warrant you to evaluate those facts to determine whether a subpena should issue?

Mr. HUTCHINSON. I would not do so, Mr. Conyers. I have stated that I would not join the Chairman in a subpena to the President of the United States. I would insist that that matter be decided by the full committee. I stated that at the outset. I still stand in that position.

Mr. CONYERS. Well, would that allow some people to misconstrue the position of the distinguished ranking member of this committee in having determined prematurely, prior to any analysis of the situation, that it might require us to determine the issuance of the subpena, fully and totally in advance of any fair review?

Mr. HUTCHINSON. I would think, if the gentleman will permit me to say this, I would think the gentleman would be delighted that my position is that the full committee should make the decision on such a grave matter, so that the gentleman, himself, can participate in that position and not delegate it simply to the two members of the committee.

The CHAIRMAN. Will the gentleman yield so that I may clarify?

Mr. HUTCHINSON. Oh, yes; I yield to the chairman, of course.

The CHAIRMAN. I would like to state to the gentleman that I would not want my position to be misunderstood. I think all of us know that the issuance of a subpena to the White House or the President would necessitate the issuance of that subpena by the full committee's authority. And the reason that I made the suggestion that I did would be that in the light of the fact that we may be going in recess, as the House will go on the recess at the completion of business this Thursday, I would want the committee to determine, based on the reply that we might get from Mr. St. Clair, whether or not the committee would want to issue such a subpena. And I suppose this would be only after we considered the reply of Mr. St. Clair. So, therefore, this would be a matter that would be a committee matter.

Mr. HUTCHINSON. I thank the chairman. I have completed my statement.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Just a parliamentary inquiry, Mr. Chairman. I gather you are seeking the authority to act in that regard in the event that Mr. St. Clair does not respond during the Easter recess. When do you propose that authority will be considered by the committee?

The CHAIRMAN. Well, Mr. St. Clair has indicated that we will expect a reply by tomorrow, and only after we have considered that reply are we going to be able to make a judgment as to what action we will take. It is for this reason that I have announced that I propose to hold a meeting of the committee, a business meeting of the committee, either Wednesday or Thursday of this week.

Mr. WALDIE. Well, Mr. Chairman, I hope the committee will authorize the power you seek. I am personally persuaded that Mr. St. Clair has no intention of cooperating; and I am personally persuaded that Mr. St. Clair desires this matter to be delayed, and the delay would

occur if you do not have that power during the Easter recess. And I trust that you will seek it and that we will grant it to you.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I thank the chairman. I would like to make some comments on the statement you made, Mr. Chairman.

I am delighted that the chairman is considering holding a meeting later on this week. I think that it is important for us to have business meetings of this committee. And I have issued a statement indicating my displeasure with the fact that we are having briefings and not meetings, because it seems to me that there is a great deal of business that this committee should be doing.

And in addition to the subject of the subpena, and I gather that the subpena could be issued pursuant to authority of the chairman or the ranking member, or both of them jointly, but if Mr. Hutchinson indicates that he wishes to have this come to the full committee, then that is the way it has to be under the rule as we adopted it.

It seems to me, Mr. Chairman, with respect to your statement about the rules of procedure, and the timing for adopting them, that we must adopt rules of procedure before we get the initial presentation from the staff because, as I understand, this initial presentation, and I stand to be corrected, but as I understand, this is something that is going to take a matter of weeks. We are going to go through a great deal of documentary evidence, and virtually all of the documentary evidence that the staff has put together. And we will meet day after day at this initial presentation which, in my opinion, would be virtually the case insofar as the charges against the President are concerned. And that if we defer the adoption of the rules until after we have this complete presentation, it seems to me that we will, indeed, be putting the cart before the horse and adopting the rules after the case is already made.

The subject of confidentiality is an extremely difficult one, but I know that the decision is ours to make. Judge Sirica has not imposed any restrictions on our use of the grand jury material, and is his own order he has left that subject entirely up to us. But, the question I asked, Mr. Chairman, is this: How are we going to receive confidential material upon which to base a case for or against the articles of impeachment of the President, which we are going to have to report to the House of Representatives without violating the rule of confidentiality? In other words, we certainly cannot make our decision on the basis of confidential material that we will not present to the House, and if we are making it on the basis of material that we are going to present to the House, then it seems to me that we have to adjust or revise this rule in some way so that the basis upon which our decision is made is something that can be reported in a report or statement to the House of Representatives.

I have, as you know, requested a special order for this afternoon on the floor of the House, in which I believe a number of my Republican colleagues and I would join for the purpose of setting forth in a little more detail, not with the limitations we have here in this briefing session, our position with regard to a fair and impartial hearing, not for the purpose of complaining about or indicating any hostility or

indicating any partisanship, but for the purpose of endeavoring to see that this inquiry does remain bipartisan, impartial, and objective to the extent possible. And it seems to me that initially it is important for us to adopt rules of procedure which are going to apply throughout the inquiry. And I hope, myself, that before we go on recess that we can have a draft. As I understand the staff is working on a draft, and if they can make available to us a draft of the rules of procedure, we can study these during the time that we are in recess so that we can act promptly on them when we return.

The CHAIRMAN. Might I ask both Mr. Doar and Mr. Jenner concerning the suggestion of Mr. McClory? I know how hard you have both been working together with the staff on putting together this kind of a memorandum in kind of a draft. I would like you to address yourself to the members.

Mr. DOAR. We did not contemplate that we would be ready to present these until after the recess.

Mr. JENNER. It is not possible, I was going to say, physically, but we cannot get it on paper with the kind of presentation that this eminent committee would expect from the staff before the recess.

Mr. MCCLORY. Could we have, Mr. Chairman, an outline or could we have a rough draft? Now, I have looked over the rules of procedure, Mr. Jenner, that you adopted in connection with the Warren Commission hearings, and it seems to me that what I am suggesting is something comparable to that, with regard to the appearance of counsel, and with the right to comment and cross-examine, and that sort of thing. If we could have an outline of what the staff is working on so that we could have some input if we have suggestions at the return after the recess?

Mr. JENNER. Mr. McClory, I think it is possible to prepare an outline. But, I must say to you, that it will be just that and little or no text.

Mr. MCCLORY. Could I just ask this further? Is there any reason why we should not adopt rules of procedure before we go into the initial presentation, in your opinion, Mr. Jenner?

Mr. JENNER. Well, Congressman McClory, I do not see how it is possible to do that, frankly.

Mr. HOGAN. Will the gentleman yield?

Mr. JENNER. I am sure my response will disappoint you considerably and some other members of the committee. But, until the factual data is all assembled, at least in statement form, it seems to me as a trial lawyer that it is difficult, professionally, to make a decision in that connection until you have at least the general tenor and the general body of what the staff intends to present.

Mr. HOGAN. Would the gentleman yield?

Mr. MCCLORY. We have the Federal rules of procedure which are certainly applicable before we start a hearing, do we not?

Mr. JENNER. I beg your pardon?

Mr. MCCLORY. We have the Federal rules of procedure which are certainly applicable to the procedure before the hearing or before the trial.

Mr. JENNER. That is so, but the Federal rules of procedure exist, and trial orders frame their presentation, their views on pleadings and what not in light of those rules that exist.

Mr. McCLORY. Could I just ask this? Is it not true that the initial presentation that you have in mind is something that is going to take 4 or 5 weeks of hearings by this committee?

Mr. JENNER. The actual presentation may well take 4 or 5 weeks.

Mr. HOGAN. Would the gentleman yield?

Mr. DENNIS. Would the gentleman yield?

Mr. McCLORY. During that time we would be working without rules of procedure.

The CHAIRMAN. No, I am afraid——

Mr. JENNER. I think not.

The CHAIRMAN. The gentleman has completely misunderstood what is contemplated here, and I think if Mr. Doar would address himself to that?

Mr. McCLORY. Mr. Chairman, I have just asked the question. You banged the gavel without letting the gentleman answer the question.

Mr. DOAR. Congressman McClory——

Mr. McCLORY. Whether or not to adopt the rules of procedure.

Mr. DOAR. Congressman McClory, it was our suggestion that we would have proposed rules for the committee to consider after the recess, that some of these rules, or all of them, could be adopted before the proceedings got underway, or at the time the proceedings got underway. We thought that the finalization and the making specific rules with respect to examination of witnesses by counsel, by the committee, and by the President's counsel, depending upon what privileges are afforded the President's counsel by the committee would best await the committee's examination of the material that it has presented to it initially. And I shall await the committee's decision with respect to confidentiality.

Mr. McCLORY. Mr. Doar, the problem that I have appears in the staff brief here on page 22, where you and Mr. Jenner, the staff, say:

> It is suggested that the committee defer adoption of these procedures until it has received and considered the initial presentation.

Now, the initial presentation, I understand, will take 4 or 5 weeks and, consequently, the rules of procedure will not be adopted until after we have the initial presentation. That is the thing that bothers me. If I am wrong on that, I want to be corrected. And I think that should be clarified before we start hearing any evidence in this case.

Mr. DOAR. Well, I guess the problem was in language, Congressman McClory. What was meant is that they defer adopting all of the rules with respect to the presentation until they had the material, and that some of the rules might be adopted before the proceeding started, some of the general rules might be adopted at the time the material came to it, and some of the rules might be adopted at the close of the presentation.

Mr. McCLORY. Well, how about adopting the very basic rule of permitting counsel for the President to be present and to comment and to object, and to otherwise participate?

The CHAIRMAN. I do not think counsel need answer that question. We are not going to adopt any rules at all that are not going to comport with the proper procedure. Now, we as a committee, I think, have an obligation to ensure that the rules that we adopt are going to be fully thought out. And the Chair has announced that the rules will be

considered, rules of procedure will be considered prior to the presentation of the evidentiary material.

Mr. McCLORY. Mr. Chairman, I think you have demonstrated precisely why we have to have a special order and put this thing on the record on the floor of the House of Representatives, because you are preventing the witness from answering the question that I am asking.

Mr. SARBANES. Which witness?

Mr. CONYERS. Mr. Chairman, parliamentary inquiry?

Mr. McCLORY. The staff from answering the question.

Mr. MEZVINSKY. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

Mr. HOGAN. Would the gentleman yield?

The CHAIRMAN. I wish the gentleman would further reflect before he speaks.

Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, thank you.

I am disturbed by the remarks of the gentleman from Illinois. I, for one, feel Mr. Jenner and Mr. Doar should be commended for their efforts. I think the memorandum was exactly what this committee requested. There was no recommendation in that. It was left open.

I think Mr. St. Clair and the President will be given due process. And I think that to get off on a side issue, and I am very concerned about partisanships, it bothers me as one member of this committee. I would like to really have two major points that I think we should at least get on the table and get clear. We are having a special order this afternoon. We had a minority memo that was presented to us. It was my opinion that Mr. Doar and Mr. Jenner were in agreement on this memo from the staff. To me it was unusual to receive a minority memo actually at the same time, in some respects, prior to going over the general staff report. If this is the case, I would like to know first of all who prepared the minority report? Does it speak for all of the minority members? And maybe more specifically are we going to go through this on every issue? When I see that Mr. Jenner and Mr. Doar are in agreement, when I am trying to avoid the partisanship issue, who is speaking, when I see a minority report? Who prepared this report? And does this represent every view of the minority members? Does this represent a separate view of the staff? What is happening? Why are we having this kind of situation, that I think does a disservice to this committee and certainly to the fine work that both Mr. Doar and Mr. Jenner have given to us. So I guess the first point is who prepared the minority report? Mr. Doar, Mr. Jenner, would you care to comment on that?

And I might say I do not question the right of the minority to have its views heard.

Mr. DENNIS. Would the gentleman yield?

Mr. HUTCHINSON. Would the gentleman yield to me?

Mr. MEZVINSKY. Mr. Hutchinson, I will be glad to yield to you.

Mr. HUTCHINSON. I thank the gentleman for yielding to me. The minority views were prepared at the request of the minority.

Mr. MEZVINSKY. Did Mr. Jenner prepare this report? Who prepared this?

Mr. HUTCHINSON. Yes. Mr. Jenner prepared this report.

Mr. MEZVINSKY. Mr. Jenner prepared the minority report?

Mr. HUTCHINSON. He did.

Mr. MEZVINSKY. All right.

Mr. Jenner, it was my understanding that—this was sort of a surprise coming out as far as the timing of that——

Mr. HOGAN. Would the gentleman yield?

Mr. MEZVINSKY. Is that incorrect?

Mr. HUTCHINSON. If the gentleman would yield further to me on that. There was no intent to be surprised about anything here. The point is that once before we put out a minority report and there was a great amount of interest about whether all members of the committee should have access to that minority report. So, as a matter of policy, we decided that we would send it to everybody, including the majority.

Mr. MEZVINSKY. All right. Mr. Chairman, I just want to make my point. As far as I am concerned, we are shifting off, and we are having special orders and we are finding an attempt, I think, to not make it bipartisan. And the gentleman from Illinois, Mr. Railsback, at one point in the briefing said that we have had, to a great extent, bipartisanship, and I think that is important.

Now, the second question I want to raise is that all of us, I think, know that we have had the Joint Committee report on the President's taxes in front of us, and I am convinced, as I have just come home from the district, and I have had a lot of questions as to what is on the peoples' minds concerning this, and what the committee is doing, and I just have several basic questions I would like to ask on that.

Have we requested and, if so, have we received the IRS report, which is really what the President has agreed to abide by? And I might say that I think this is important because it is my understanding that Mr. Nixon waived the attorney-client relationship for the IRS investigation, which reportedly he does not intend to waive for our committee. And I would hope that: One, we have requested these reports; two, that we have a transcript of the interview; and three, that the Joint Committee on Internal Revenue Taxation, the backup evidence is available for us to take a look at. And I might say that I do not think we can avoid the fraud question. And to me, when I see the fact that the President and his tax attorneys are hightailing it away from any responsibility for the errors in his tax returns, it gives the inference that simple negligence was not involved. And I think that is all the more reason for us and for this committee to get to the root of the matter.

So, specifically, have we requested the IRS report for our deliberation on the matter of the President's taxes?

Mr. JENNER. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. DENNIS. Mr. Chairman?

Mr. JENNER. May I speak to the committee on a point of personal privilege, because my professional integrity has been involved by the discussion that has occurred. I participated in the drafting of the staff report presented to this committee at great length and for many hours. And all of what is in that staff report has my professional approval.

I understood, and I still understand, and I think it is correct that the minority may ask me to prepare an advocate memorandum, or any member of this committee, whether minority or majority, may ask me, or ask Mr. Doar, to prepare an advocate's memorandum when it is known that it is an advocate's memorandum. And when the minority, in a caucus, by unanimous vote, requests that a memorandum of that character which you received be prepared, two of the fine young constitutional lawyers on the staff, prepared the memorandum that was delivered to all of you last week as the minority memorandum. I participated in part on that. Now, nowhere to the extent that I participated in the report of the staff memorandum. I sought to go through to eliminate abrasive material, what I thought was abrasive material in that memorandum. And Mr. Hutchinson is correct in his response to the gentleman that I saw to the preparation of that memorandum.

And if you please, Mr. Chairman, ladies and gentlemen of the committee, those are the facts.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. MEZVINSKY. Can I have the answer to the question, if I may, on the IRS question?

Mr. DENNIS. Point of order, Mr. Chairman.

The CHAIRMAN. Well, Mr. Mezvinsky, I would like to state I think that you were making a statement rather than inquiring and I think that you suggested that this material, if it has not been before us, that it be material that we consider. And, as you already do know, the staff has this area of inquiry under study at the present time, and certainly any material that is going to be pertinent to that area of inquiry is going to be received, and is going to be requested if we do not have it. Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, I have been asking the same question now since January 7, when I came back from Jamaica and met with you and the senior members of both sides. And the same questions have not been answered any more than any of the questions have been answered here today.

Now, I do not want to be disrespectful to the authority of the chairman. But, when are we going to vote on some things on this committee? When is this committee going to do something? I have been asking this question.

The CHAIRMAN. Will the gentleman yield at that point, since that is a direct question?

Mr. SANDMAN. Yes, sir. I am not yielding all of my time, however.

The CHAIRMAN. No, I will give the gentleman his time.

I would hope that the gentleman wants to vote on this when he has a thorough and complete report from the staff, when the White House has supplied to us the pertinent information, the relevant information that we are seeking, when we have been able to evaluate this. And I am sure that the gentleman would want to do no less than make that kind of a judgment only after we have had a complete and thorough inquiry.

Mr. SANDMAN. I agree with you, Mr. Chairman, on the facts. I do not want to make any decision on the facts until they are all presented.

This is not what I am talking about. I am bringing up exactly the same things that we discussed around that table with Mr. Doar, yourself, and the ranking members on both sides on January 7, when we brought up the fact of when are we going to decide the rules of procedure.

Now, regardless of what we say here today, and what you have already said in your press release, that you are not going to do this until after you present the evidentiary material, and I never heard of such a thing and neither did you. You do not adopt rules after you start a trial. The rules are adopted before the trial.

And, second, Mr. McClory three times has asked Mr. Doar questions. He has not gotten an answer yet. Is there a good reason why we cannot vote today on whether or not the President should have counsel? Why do you not answer that question? Why do we have to have any evidence presented for you to answer that question? Why do we need another brief?

Mr. SARBANES. Would the gentleman yield?

Mr. SANDMAN. No. I want a question answered by Mr. Doar.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. The matter of the presence and participation of the President's counsel breaks down into a number of elements. Some of the elements can be answered today, in my judgment. Some of the elements should not be answered until the committee has the matters that are going to make up the initial presentation before it. And in my judgment, the matter of notice, the decision with respect to notice of the proposed "Statement of Facts" could very well be answered today. The question with respect to the availability of the material, evidentiary material, that supports the presentation of facts ought not to be answered until the committee thinks through very carefully, Mr. Congressman, the question of its rules with respect to confidentiality, the question about the scope of the examination, and the examination by the members of the committee ought to be considered at the time that the committee has a specific idea of the nature of the evidentiary material, which it has before it. That is my judgment.

So, in answer to your question, there are some things that can be answered today, and I will say to the Congressman that in our memorandum that we were asked to prepare, we were instructed not to make any recommendations about that. That is the reason why we did not make them.

Mr. SANDMAN. Yes, but look. As one lawyer to another, have a right to disagree with what you just said.

Mr. DOAR. Sure you do.

Mr. SANDMAN. Now, I am wondering when am I going to have a right to reflect that in a vote as a member of this committee. Am I going to have a right to do that some day? I do not agree with what he just said. I do not agree with that at all.

The CHAIRMAN. Of course, the gentleman——

Mr. SANDMAN. Well, when am I going to get that right?

The CHAIRMAN. The gentleman is a member of the committee and the gentleman will vote on the adoption of the rules of procedure when those rules of procedure are before the committee.

Mr. DENNIS. Will the gentleman yield for a question?

Mr. SANDMAN. One other question I would like to ask. On the question as to preferring affidavits over depositions, now who made that decision? This committee did not. Who made that decision?

Mr. BROOKS. I have been for it all of the time, and I would like to take a little credit for it. I have advocated it strongly.

Mr. SANDMAN. Let me ask Mr. Doar. Did you advocate it, using affidavits instead of depositions?

Mr. DOAR. At all times since I have been here, I have considered the possibility of using both affidavits and depositions. There never was a situation where there were only going to be used depositions and no affidavits. Depositions were going to be used in a case where you could not get a witness to give you a sworn statement, under oath.

Mr. SANDMAN. All right, now. What are you going to do with the affidavits? Are you going to try to present those as evidence to this committee without witnesses?

Mr. DOAR. They will be presented initially to the committee, some affidavits, some sworn testimony before the grand jury, some sworn testimony before other committees of Congress, and the committee then, when it sees that, will make up its mind what it wants to do with it.

Mr. SANDMAN. And if the committee wants more information that is not discussed by the affidavit, no doubt we will require a majority vote of the committee to have that presented by live witnesses, will we not?

Mr. DOAR. You would.

Mr. SANDMAN. All right. In the absence of an affirmative vote along that line, what posture do those affidavits serve?

Mr. DOAR. The affidavits would be considered for such weight as the committee chooses to give to them.

Mr. SANDMAN. I would like to yield to Mr. Railsback.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Is the gentleman yielding his time?

Mr. SANDMAN. May I yield to Mr. Railsback what time I have?

Mr. RAILSBACK. I think Mr. Hogan—why don't you yield to Mr. Hogan?

The CHAIRMAN. Well, he has yielded to you, Mr. Railsback.

Mr. RAILSBACK. All right.

Let me just say then, briefly, and I think I will have some time, I hope, coming up, and I am going to be very brief. But, you know, I want to agree with some things the chairman said about the subpena. I want to ask him some questions about how far we are going and I think we are kind of—we are beginning to turn into a real partisan squabbling body, and I kind of hate to see all of this partisanship. I do just want to reemphasize what he said about this affidavit business. I cannot help but think that we would be making a terrible mistake if, after rejecting, which apparently you have decided to do, rejecting the procedures that you were recommending for the taking of depositions, if we really did go to a system where we used—I think some of them are just signed statements, I think, or sworn—if we start using those as evidence. I can tell you right now that I think there would be unanimity on this side as far as objecting to that kind of a practice. I am not going to say it is a subterfuge, you know.

That has been said already last week. It seems to me we are going to extremes, really, to keep Mr. St. Clair out of action, and I will elaborate further when I get recognized.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

This is a briefing session, and I would like to hear what counsel has to say about a couple of questions. And I might observe, Mr. Chairman, that I still think in terms of priorities we are still at the stage of collecting the evidence. And that comes first, before, yes, even before the representation of the President, whom I might perhaps facetiously observe seems to be rather aggressively represented presently. I do not know that he even needs Mr. St. Clair.

I would like to go to the question of the tapes and ask, we have before us, of course——

Mr. MCCLORY. If the gentleman will yield, I view my position as representing the Congress of the United States and not the President, and not the prosecutor of the President, but it seems to me that in order for us to be impartial, we should not only have our counsel to present the case, but we should also have as every other, as in every other impeachment inquiry since 1854 or 1876, accord the right to counsel for the respondent to be present here and cross-examine or comment, and that is the only point that I am trying to make; not to try to champion the position of the President but to champion the position of the Congress.

Mr. KASTENMEIER. I appreciate my friend's point of view, and we will hear further from him later in the day.

My point is, that since we have before us the letter of April 4 to you, I think over the weekend, the last 4 days, we have heard a number of reports in the press about whether arrangements have been made, or are being reached informally, with respect to the production of certain of the evidence that we have requested. And I am wondering whether there is anything further you can report to us before tomorrow in those terms, because, after all, whether these reports or opinions of others, which do appear in the press are correct or not, I suppose we ought to know rather than have to await a later date.

Mr. DOAR. There has been no—I have no information with respect to anything further with respect to the position of Mr. St. Clair, except that which is outlined in his letter that we will have his answer tomorrow.

Mr. KASTENMEIER. Are you convinced that his letter tomorrow will be definitive in terms of how we must proceed in terms of what we have requested?

Mr. DOAR. No, I am not convinced of that. I have no idea what his letter will contain.

Mr. KASTENMEIER. Because we may still approach a moment of truth as far as what we will do, and it would seem to me that he has said that, as a result of our discussions, referring to the discussions you have had, that progress has been made, and I wondered whether you could report anything further about that? Are you convinced in your own mind that progress has been made with respect to the end that this committee seeks in getting the evidence?

Mr. DOAR. Well, Mr. St. Clair has said that the last letter wherein we set forth—which spelled out the basis for the six items of requests—

was helpful to him in reaching a decision as to what to recommend to the President with respect to the production of those tapes. That is all I can report.

Mr. KASTENMEIER. One other question. Assuming we get the tapes, or much of the tapes, the question also was raised the last time whether those tapes, whether you had suggested to us that he might be able to edit those tapes. That is to say, to edit, and then the question arose whether the editing that you apparently alluded to should pertain to the segments in which we are interested, or the segments that may be on the tapes which were not included in the matters in which we were interested. Could you illuminate the committee on that point?

Mr. DOAR. Well, I did not use the word "editing." But I did say that in the first instance, that when you request documents from an attorney representing a party that he makes the first decision as to what to to produce. He will produce those conversations that are covered by our letter. And we will have to examine what he produces in order to determine whether or not that is satisfactory.

Mr. KASTENMEIER. You suggested that he had a certain discretion in this connection, and I am wondering what discretion he would have insofar as your requests were quite specific? What discretion ought he to have about any given conversation, whether to make that available to the committee or not?

Mr. DOAR. Well, if one of those conversations, let us say, between the President and one of his assistants, related to a matter involving the Near East totally related to a matter in the Near East, then that would not be covered by our request. And in that situation, that particular conversation would not be produced.

Mr. KASTERMEIER. And you would probably rely solely on Mr. St. Clair's discretion?

Mr. DOAR. No. I would not rely on Mr. St. Clair's discretion at all. I would just report back to the committee what was the answer of Mr. St. Clair with respect to our demand for information. And then the committee would take the final determination as to whether it was satisfied with that or not. And it would take into consideration what information was produced, and the reasons that were given why certain other conversations were not produced.

Mr. KASTENMEIER. Is it contemplated that you or any other member of the committee might listen to those conversations with Mr. St. Clair to make that decision, or to participate in it?

Mr. DOAR. Not unless the committee authorizes that. It is our position right now that it is for the committee to make that decision, and the committee only. The committee and only the committee could decide that it would be for myself and Mr. Jenner, or for several members of the committee to listen to make a decision about a tape that you may desire to have.

Mr. KASTENMEIER. Mr. Chairman, I will not pursue the matter any further. But, I think following whatever receipt or acknowledgement we get tomorrow from Mr. St. Clair, we should be prepared to consider the details of how some of this evidence might be produced or received.

Mr. DOAR. I agree with that.

The CHAIRMAN. Mr. Railsback.

Mr. RAILBACK. Thank you, Mr. Chairman.

I would like to ask some questions, and I think I should direct them probably to the Chair, and maybe counsel would want to help out.

Is it presently your thinking, Mr. Chairman, that if the White House did not produce the additional materials that we have requested, that any subpena power that you would request would be limited to the certain specific items that we felt necessary? In other words, if on Wednesday or Thursday we decide to subpena or authorize the chairman to subpena some materials, I take it that request would be a limited request rather than just a general subpena power request?

The CHAIRMAN. I would rather not speculate on what we might do, what the committee might do, until we have received a reply from Mr. St. Clair.

Mr. RAILSBACK. Let me just say to the chairman, in my personal case, I think I might be willing to support a subpena if it was for certain requested materials that have not been produced.

Let me ask Mr. Doar. Mr. Doar, would it make any difference to you, or do you have a recommendation as to whether we might be able to strike an accommodation with Mr. St. Clair in the interest of expediting this whole inquiry by permitting him to just simply sit in and listen, if we say that he did not have the right to object, or to object as to relevance or anything, but to let him offer any suggestions that he had at the time that we get these additional materials? Would you have any objections to that? This is a proposal that has been put forth, I think, by Mr. McClory and also Mr. Rhodes.

Mr. DOAR. Yes. I do have a recommendation. My recommendation would be No. 1, that as soon as the committee receives a copy of the statement of facts, proposed statement of facts, that they be made available to Mr. St. Clair. No. 2, the committee work out a way where Mr. St. Clair would have an opportunity to make known to the committee the President's viewpoint with respect to the way the presentation is going to be conducted so that the committee would have Mr. St. Clair's view as to whether or not the procedure was, in his view, fair.

No. 3, and I have to preface this with what I want to say to the members of the committee, that I am very, very concerned about the question of confidentiality with respect to the material. I understand what the rules of the House are with respect to executive sessions. But, I also, have great respect for this committee and great respect for the House, and I would be very fearful of the possibility of a leak of this material during the evidentiary presentation, however, it comes out.

Mr. RAILSBACK. Well, let me just interrupt you and just suggest to you: My feeling is that the White House does not necessarily have the right to participate. I think what we are talking about, when we are talking about procedure, we are talking about congressional grace or privileges that we are giving to him. Now, I think that it is very obvious that some of your concern, if he is given untrammeled discretion, say, to object as to relevance or anything along those lines, I think that that can be controlled by this committee, just as I think the question of confidentiality can be protected by this committee. In other words, it is something we could address ourselves to. I think he is coming here because of a privilege we are giving to him. It is something we

should do for him because it has been done the last 100 years. But, I just wanted——

Mr. DOAR. Now, Congressman, I agree with that. I think that the two points with respect to participation depend upon the committee making a decision as to how that can be handled, and the two things that the committee has to do, or has to think about, are: First, the confidentiality; and second, how it can get along with its business, so that objections, viewpoints, positions, are made at an orderly time during the proceedings.

Mr. RAILSBACK. Well, now, I share that, and I think that we can work this out. I think that we can protect the confidentiality. I think we can protect some unreasonable delays. And there are ways to do that and we should be addressing ourselves to that.

Mr. DOAR. Well, now, that is exactly what Mr. Jenner and I are doing, and it is for that reason that it takes a little longer than you might think in spelling out the rules of procedure to govern the evidentiary presentation.

Mr. RAILSBACK. All right, now——

Mr. DOAR. But I want to be clear again with respect to participation and affording Mr. St. Clair the opportunity to have the proposed statement of facts, and know what is in the evidentiary material, that I think that it would be fair that he should have that at the same time that the committee has it, no sooner.

Mr. RAILSBACK. All right. Let me just summarize because you are going to soothe a lot of our minds if you answer this question the way I think you are going to answer it.

Are you proceeding—and am I correct you want to proceed—by presenting us with the trial book, which is going to contain statements of facts, and references, and then before we get into any of the evidence, whether it is documentary evidence taken in executive session, or are we going to determine before we reach that point, whether or not Mr. St. Clair can participate?

Mr. DOAR. No. Well—I do not like——

Mr. RAILSBACK. You see, we have to have an answer to this. It makes a big difference to a lot of us.

Mr. DOAR [continuing]. The words trial book bother me. That does not comport with my concept of how the presentation will work. The presentation, in my mind, would be that there would be a proposed statement of facts, supported by evidentiary materials. This evidentiary material would consist of a document or documents, would consist of sworn testimony before committees of Congress or the courts, excerpts, would consist of grand jury testimony, would consist of portions of all of one or more recorded conversations.

Mr. RAILSBACK. Would it not be references to those various documents, rather than—in other words, I can understand why you would want to get this ready for us so that we have references of indexes to materials that you are going to present to us. But, before we actually meet in executive session to have those things read to us, first I think it is very important that St. Clair, whether he has a right to object or not, at least be present to sit in on all of those proceedings. And I see no reason in the world why he should not be permitted to be here, once we start actually presenting. Now, what are you saying about that?

Mr. Doar. I do not see any objection to that either, subject to the fact that you can adopt rules of procedure where the staff would have the opportunity, would have the opportunity to present this material to you in an orderly fashion.

Mr. Railsback. With Mr. St. Clair present?

Mr. Doar. Well, with him present.

Mr. Railsback. If we agree——

Mr. Doar. If that was your wish.

Mr. Railsback. All right.

The Chairman. The time of the gentleman has expired.

Ms. Holtzman.

Ms. Holtzman. Thank you, Mr. Chairman.

Mr. Doar, I would like to follow up the questions that Mr. Mezvinsky asked because I read the Joint Committee's report, and a number of very serious questions were raised in my mind with respect to it. And I would like to know, are we going to seek the IRS report?

Mr. Doar. The answer is "Yes."

Ms. Holtzman. And the committee is not precluded, and the staff is not precluded from investigating whether or not there was tax fraud in connection with the President's tax returns?

Mr. Doar. The answer is "The committee is not."

Ms. Holtzman. OK.

Mr. Doar. The staff is not, excuse me. And, as a matter of fact, I will say to the Congresswoman from Brooklyn that we have begun to analyze the report of the Joint Committee. We have had meetings with the counsel for that committee. We have agreed to an exchange of information. We have made a number of inquiries with respect to questions in that report, and we are giving the matter careful examination.

Ms. Holtzman. Well, I thank you, Mr. Doar, for that assurance.

I also have been concerned about one other area that I raised with you at the very outset of this inquiry, when you advised me that you were going to make requests of the President, or through his counsel for various materials. And I asked you at that time whether or not you were going to raise the matter of safekeeping of the documents and materials that we requested during the pendency of our requests. Has anything been done to raise such a matter with Mr. St. Clair, especially in view of certain rumors that certain tapes that we have requested are not in existence?

Mr. Doar. Well, each time we have met with Mr. St. Clair and Mr. Buzhardt, they have explained to us how these tapes are now in a safe at the White House, and how the Secret Service checks everybody in and out any time anybody goes in the room where these tapes are kept.

Ms. Holtzman. Are they still writing it down on a little slip of brown paper, or are they keeping better records than they used to do?

Mr. Doar. I think that you would find that the procedure and the recordkeeping with respect to the tapes, you would find it now satisfactory. Now, I have not seen it but that is my judgment.

Ms. Holtzman. Have you satisfied yourself in your own mind that the procedure for the safekeeping of the documents are adequate to insure this committee gets the materials it has requested?

Mr. Doar. I think I should say to the members of the committee that some of the tapes, or the recorded conversations that we have

requested, were for the afternoon and evening of the 15th of April. At the hearing before Judge Sirica, there was testimony offered, there was testimony offered that the tape ran out that afternoon, and that the conversation between the President and John Dean was not recorded. That was earlier in the afternoon of that day. My assumption is that it may be that some of the conversations later on that day are the ones that, as we have gotten in the press reports, may not have been recorded.

Ms. HOLTZMAN. I just wanted to make one final observation with respect to the participation of the President's counsel. One is that I was disturbed to read in Mr. St. Clair's brief that the President wished "to participate fully in all matters related to this committee's impeachment inquiry." That seems to me to be such an extraordinarily broad request and so completely unsupported in the precedents that I found it rather astounding that it was made. I take this to mean participation in the deliberations of the committee, participation in the legal analysis of this committee, rather than the appropriate participation by counsel, and I thought it was an extremely broad request.

I also feel that with respect to Mr. Railsback's suggestion that perhaps we could agree to take less than we have requested, in view of expediting the matter; that the President's counsel has had our request outstanding since February 26, and he has had the opportunity since that time. And it has been over 40 days to give us any one of those tapes over which there was no question. And in my mind, he has not sought to do so, and I think the expedition would come if he gave us the materials immediately, and if he had given it to us when we had asked for it 40 days ago.

The CHAIRMAN. The time of the gentlelady has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I think we did not recognize Mr. Hogan at the last meeting, so we will recognize him now.

Mr. HOGAN. Thank you, Mr. Chairman.

First of all, Mr. Chairman, I would like to ask Mr. Garrison to respond in view of a column which appeared over the weekend, a syndicated column, which carried information which seems to be directly contradicatory of information that Mr. Jenner gave us on this point of personal privilege. I think in fairness we ought to allow Mr. Garrison a point of personal privilege to respond to the question that Mr. Mezvinsky asked.

The CHAIRMAN. If Mr. Garrison would like to respond.

Mr. GARRISON. Mr. Chairman and ladies and gentlemen of the committee, I think the question that Mr. Mezvinsky asked, and that Congressman Hutchinson answered, probably disposes of the essential points that were raised in that article, except that I would like to comment that stories such as that appear to me to emanate from people who basically confuse defense, or, having a different view in critical matters facing this inquiry, with obstruction. I think it is unfortunate that the efforts of both sides of the committee and both sides of the staff to reach agreement, wherever possible, on policy positions, caused him to feel that if agreement is not achieved that that is somehow obstructing or impeding the inquiry. I think that is the same mistake that is made, allegedly, by the administration that we are in-

vestigating, in some instances in the past. And I am very sorry that this minor, usually, and sometimes not so minor, disagreement within the staff seems to be portrayed as obstruction or impediments.

I would make one other comment, and that is, that, with respect to the question of delaying decision on whether the President's counsel should be involved in these proceedings, it is not, so far as I know, the view of these two gentlemen that Mr. Jenner referred to, the minority lawyers who worked on that project, or myself, that that decision need be delayed.

Mr. HOGAN. Thank you.

Now, Mr. Chairman, directing myself briefly to the procedural question, I will not belabor the observations made on both sides of the aisle on the St. Clair question. It obviously seems important that we make that decision before we begin hearing the evidence.

But another procedural question to which we have also not addressed ourselves, which it seems to me we must handle much before that, is what we do in the case of our issuing a subpena and having the subpena ignored. Now, if it is going to be our procedure this week to debate and perhaps vote on the question of whether or not a subpena should be issued, then we certainly cannot delay until after the Easter recess to decide what procedures we are going to follow in the event a subpena issued is ignored. I wonder if counsel would respond to that?

Mr. DOAR. Well, Congressman Hogan, we have a brief prepared with respect to the alternatives that are available to the committee in the event that a person who has been subpenaed chooses not to comply with the subpena. And we would be prepared to present that to the committee at the time that they consider the issuance of the subpena.

Briefly, the committee could consider this and vote to recommend to the House itself, that the person who defied the subpena be held in contempt. The other thing the committee could do would be to take that failure to comply into account in considering the evidentiary material that was presented to it, and the committee would have to decide that.

A third thing the committee might do, or the committee might consider doing, is going to court with respect to enforcement of the subpena. There are substantial and serious difficult legal problems with respect to that course. The fourth course might be that the person who has been subpenaed would choose to go to court, and the committee would have to decide what his posture would be in opposition to an application to a court by the person subpenaed.

We have a brief being worked on, outlining and summarizing those positions.

Mr. HOGAN. I certainly agree about the complexity of it, and that makes it that much more important that this committee resolve those questions as quickly as possible. And since we are going to be departing Thursday for Easter recess, I think it is imperative, Mr. Chairman, that we resolve that question at the same time we resolve any question of whether or not we are going to issue a subpena.

The CHAIRMAN. Well, we would hope to consider——

Mr. DOAR. Could I say, I think, Congressman, that I would caution the committee not to resolve that. I would assume, and I would suggest the committee might be well, if it assumed that any subpena that this

committee issued would be complied with, and that it would not get into the question of what would we do if it were not complied with until that day came and passed that there was noncompliance.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, certainly we are proceeding with a very difficult constitutional matter and the bipartisanship that we have allegedly displayed so far, I think is something we would all seek to retain and regard as our solemn responsibility.

To me it is not unlike a levee along the river. We have just had a 200-year flood that may have influenced me some on the Mississippi, and the levee offers protection, as the Constitution offers protection, and a shield to its citizens as it protects the mayor, the minister, the priest, and the penitents. It protects the prisoners in the city jail. And as our constitutional safeguards are weakened, they will be weakened for all citizens. One that is lowered as a shield for Angela Davis may find that the shield is lowered for John Mitchell. One that is lowered for Ellsberg may find it out of repair for Maurice Stans. One that is a disrepair for Adam Powell may suddenly be applied to Richard Nixon. If we lower the height and standards of a levee we endanger all, good, bad, rich, poor, all colors. And if we do that with the Constitution with Charles Manson that same standard may be lowered when it applies to someone else.

We act here, I hope, professionally, and we are a professional segment of society as well as a political one in the Congress. There are other professionals, doctor, podiatrists, psychiatrists, obstetricians. When I think of the problems with Mr. St. Clair I think of an obstetrician. For an obstetrician to be helpful and competent in delivering a child, it is not necessary for him to attend the conception. Indeed, his presence at that stage may hinder the expeditious completion of the project.

Mr. Chairman, I have been a prosecutor in a very small area, and a sheriff might come in with a complaint or a State patrolman might come in, or the FBI might make a report, or a private citizen more likely would come in, and at that point, it was not customary to call the subject of the investigation, not the defendant, the subject of the investigation, and tell him he can get an attorney, and get down here, and say "I want to cross-examine everybody; I want you to call witnesses." You could never have run an office in that manner, and I do not think you can run this investigation and study in that manner.

It is important to be fair. It is important to be fair to the President and to the American public. And in the choice between being fair and appearing to be fair, I would hope this committee of distinguished lawyers will chose to be fair.

I admire loyalty. I am from Missouri. I think we must not put loyalty ahead of our responsibilities and I am sure we will not. I am concerned about partisanship. We have just had a special, separate recommendation and conclusions the last time we met, sort of a minority view. My input was not sought. We are going to have a separate, special order today. My input was not sought. I would prefer to think that that was because of partisanship rather than competence.

But, you can spell partisanship and that starts to spell it and I hope that we can just dispel it and overcome it. We do need, we have talked about impeachment and rules of impeachment, the definition. Now, we are lawyers and we know better than that. Who of you can tell me the name of any Member of the House of Representatives or the Senate to whom you can dictate his definition of impeachment. We can be persuasive, we can set guidelines, and I think the staff is doing a good job of that. But, to hang up on the idea that you can tell a freely elected Member of this Congress how to define impeachment, we are kidding.

Procedural rules, I would hope you can have some on this committee and this committee can have an input and consider them by the last of this month. I would think that that would be a reasonable time. We must not be precipitous. I do not know about getting the cart before the horse. Mr. Cellar used to warn us against confusing a horse chestnut with a chestnut horse. We must proceed with great care and respect our responsibilities in the Office of the President, and we all have respect for that Office. And we seek to do nothing that would weaken it, and we seek to have the occupant do nothing that would weaken it.

And if I may, in conclusion, Mr. Chairman, my feeling on that issue is related by Brooks Hays in his story of a San Francisco earthquake where the father and the son see the house trembling and they run in the house, and they run to the basement, and the chandeliers and everything are shaking and the father said to his son, he said, "God is great and God is powerful and God is good. Do you want to pray to God to protect us." And he said, "No, tell him to cut it out."

I have my faith in the rules of this Republic, and let us see that everybody plays by them.

Thank you, Mr. Chairman.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman.

Let me say I am not going to make a speech on a conception and the birth of a baby. But, I do want to comment on something that the gentleman has said, and to which I have listened to since I came on this committee, about nonpartisanship. I can count. The gentleman from Missouri can count. If we really wanted to have a nonpartisan display of support of the initial action, the House would have come up with an equally divided committee, so many Democrats and so many Republicans. And as I look at this, we have 38 members on this committee, 21 Democrats, 17 Republicans, and if I were on the majority side, I would say that is nonpartisanship. So, I think that the myth about this being a nonpartisan committee ought to be expelled.

Mr. HUNGATE. Would the gentleman yield?

Mr. LATTA. I will be happy to.

Mr. HUNGATE. The gentleman would agree that the issuance of subpenas is between the chairman and the ranking Republican member?

Mr. LATTA. I said nothing, I did not comment about subpenas. I was talking about the nonpartisanship that we have heard so much about. But, as a new member of the committee, I am interested in knowing who is directing this inquiry, whether it is the staff or whether it is this committee, and I have not been able to find out.

I recall we had one discussion here a couple of meetings ago, or a couple of briefing sessions ago, whichever you like, whichever term you like to use, where I thought at the next meeting of this committee we were going to discuss this matter of subpena powers and the right of Mr. St. Clair to be present at the taking of depositions. Then it came to me that in the staff there was being circulated a memorandum as to how you were not going to take depositions, you were going to take affidavits. So, I took that to mean, and I am not wholly naive, to be a calculated attempt to circumvent the wishes of the majority of this committee. And I might say for the record, I do not like it. I did not like it then.

This idea of waiting until a statement of facts is presented is ridiculous on its face, because everyone on this committee, especially those who have been in political battles and know something about politics, know something about public opinion, know full well that once a statement of facts is issued by the staff, the ladies and gentlemen around that table, and these television cameras will be telling the world that the staff of the Committee on the Judiciary has issued a statement of facts. And for all practical purposes that will be the issue right there. And Mr. St. Clair and company, whoever they might be, will have absolutely no opportunity to have interrogated those witnesses, and I said at the time that this matter was brought up that I think that the American people want the truth, the whole truth, and nothing but the truth. And, as a lawyer, there is only one way you can get all of that truth, whether it is in this investigation, or some subsequent investigation. It is to give those individuals an opportunity to cross-examine.

And even the Washington Post, if you please, and the Evening Star newspaper here, the New York Times and others who have not treated the President very kindly, immediately came to his defense. They want the truth, as the American people want the truth. And they said they should have the right to cross-examine in those depositions. So, we very carefully come up with the idea that we are not going to take depositions. We are going to take affidavits, and we are going to take statements. And I learned that they were already taking these statements and informing the people, Mr. Chairman, that they really did not have to submit to a deposition, they did not have to submit if they did not want to. They were appearing voluntarily.

I do not think, Mr. Chairman, that is the way the American people want this committee to proceed through its staff. And as I raised the question initially, I wonder who is conducting that investigation. I certainly know it is not this gentleman from Ohio.

The question about the staff will soon once again be before the House. As I have heard the reference from Mr. Hays of Ohio, we are about ready to run out of money, and I, for one, am not going to be ready to vote on that, an additional amount of money before we find out how the first $1 million has been expended. And I cannot answer to my people, and I do not know whether we can answer to the American people because we have had so little input.

Mr. HUNGATE. Would the gentleman yield?

Mr. LATTA. I really pray, Mr. Chairman, that henceforth this committee can have more direction in what the staff is doing, and that we

will bring out something that concerns the committee, that the committee will decide the matter and not the staff. After all, they are only supposed to be working for us, and not us working for them.

The CHAIRMAN. Mr. Latta, I merely would like to comment because I think it becomes necessary to do so. It is unfortunate that Mr. Latta has come on late to this committee. But I am sure that had he listened to all of the statements made by Mr. Doar and Mr. Jenner, who have been acting on behalf of the committee, with instructions from the committee, that at no time had they made judgments or decisions except to follow the direction and the authorization of the committee to get the facts, the unadulterated facts which the gentleman is interested in getting and to present them. And I am sure that that was not anything that the committee members contemplated doing, or could have done. And I am sure that if we are patient, as we must be, and await the presentation of this material, and have the rules of procedure before us, as we will——

Mr. LATTA. That is the point, Mr. Chairman, I am raising, that it is too late when you present to this committee a statement of facts, based on what the staff thinks is a statement of facts, and you have no right to cross-examine from Mr. St. Clair, that it is too late, because in the minds of the American people and the minds of the world, the issue will have been met at that point. And I do not think that is fair and I think that we need some instructions from this committee to the staff as to how to proceed before we get this statement of facts.

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Mr. Doar, last week I asked you whether or not you thought the proposed trip of President Nixon to Russia might delay our inquiry, and I think you answered in the negative. Then today our chairman indicates that because the President is attending a funeral, that questions we had raised as of February 25, are now going to be delayed in answering. Do you still believe that the President's proposed trip would in no way interfere with our inquiry, and that Mr. St. Clair and his associates would be able to do whatever they want to do in connection with our inquiry, without the presence of the President of the United States?

Mr. DOAR. Yes, I do. And I will say two things: the first thing is that there are no charges yet against the President of the United States.

And, No. 2, Mr. St. Clair has told me that the information that we have asked for will be submitted to us tomorrow. In his reply he has told me that.

Mr. RANGEL. What have charges got to do with Mr. St. Clair's participation?

Mr. DOAR. It does not have anything to do with it.

Mr. RANGEL. What we are talking about today is they want to participate long before we determine whether there are any charges.

Mr. DOAR. It does not have anything to do with his participation. But, your question was whether or not the President would continue in the performance of his duties pending this inquiry.

Mr. RANGEL. You used the words "performance of his duties." I am talking about leaving the United States of America for a prolonged

period of time, whether in performance of his duties or not. I am asking if the short absence of the President makes it impossible for Mr. St. Clair to respond on time to what we have requested. Why do you believe that a prolonged absence of the President would allow him to be more effective?

Mr. DOAR. Well, Mr. St. Clair has said a short absence would not make it impossible for him to reply.

Mr. RANGEL. Thank you.

Mr. DENNIS. Mr. Chairman?

Mr. RANGEL. I yield to Mr. Edwards.

The CHAIRMAN. Mr. Rangel, have you yielded?

Mr. RANGEL. I yield to Mr. Edwards.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Thank you. I thank the gentleman for yielding and I am only going to make one brief comment.

It seems to me that this morning the majority side is being put into a position where we are being implicitly accused of not offering the President due process. And I want to protest this most mightily. We have not voted on the matter of representation by Mr. St. Clair. Let me say that I disagree very strongly with any idea that this side of the aisle is not going to be more than fair to the President, more than fair all the way down the line with regard to due process, representation. We are not going to end this impeachment, as far as a number of us on this side are concerned with anyone saying that we did not offer him a very square deal.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

The CHAIRMAN. We did not recognize Mr. Butler at the last meeting, and I am recognizing him now.

Mr. BUTLER. Well, I will take only a moment. But, I am concerned about, specifically, the mechanics of this and how we are proceeding. Counsel, I take mild exception to your representation in your letter to Mr. St. Clair that you have been directed by this committee to proceed with these requests, simply because we have not had a business meeting in which the formality of that was undertaken. And I am anxious about the directions, things that are represented as the directions of this committee be actually the actual formal direction of this committee.

I am also concerned that we talk about the precedents, from a point of view of legal procedure. I would like to receive in advance of the committee meeting, where the subpena is going to be under consideration, a formal statement, de novo, as to exactly why we need those items requested, and a copy of the form of the subpena that will be used, and perhaps even the appropriate motion. I am anxious to have an opportunity to think about this step and, specifically, what we are asked to do and why we must do it, because it is a tremendous step and it concerns me greatly. So, can I have your assurance that we will get a formal statement in advance and an opportunity to study it?

Mr. DOAR. Yes, you will.

Mr. BUTLER. All right, sir.

Now, also, with reference to Mr. Rodino's release this morning and his statement, I am pleased that we are going to have a meeting during

the first week after the recess to decide on whether the issues, and how the issues can be narrowed. Now, you have been instructed, as I understand it, to prepare a memorandum on these matters and I think we have had some discussion of it here this morning. I would like to have this memorandum in advance of our return. The impression created here is that when Congress goes into recess that we are out of communication, that perhaps, you know, we are in the Far East or some place. This is my intention, and I would like, if possible, that we would have this memorandum as soon as it becomes available and then we would not have to wait until we get back from recess. I would like to think that we should be able to get it in mid-week, next week, and if it could be delivered to the members of the committee well in advance of the meeting we plan, it would be very helpful to me. Is that possible at all?

Mr. DOAR. Well, I think—I would say that there might be more than one memorandum. Some of the memorandums would be ready and I see no reason why they should not be distributed to the committee for their consideration as soon as they are ready.

Mr. BUTLER. I appreciate that.

Mr. Chairman, may I yield to the gentleman from Ohio. From Indiana.

The CHAIRMAN. The gentleman from Indiana.

Mr. DENNIS. I thank the gentleman for yielding. I am sure that the chairman would have recognized me, and I appreciate the gentleman yielding.

I cannot understand why there should be any question raised here by anybody about the right of the minority to ask their counsel to present a legal brief on a proposition with which the minority is disagreeing. We will do that any time we please, as far as I am concerned, and I cannot see why it should be a matter of comment by anyone. We have a right to ask our counsel to do that, and we have a right to expect him to do what we instruct him to do. And there just cannot be any question about that in my mind.

Second, it is a matter of great gratification that we are going to begin holding some business meetings, which, as I indicated at our last session, I thought absolutely imperative.

Now, I would like to come to the point that we have talked about quite a little bit, about adopting those procedural matters, particularly with Mr. St. Clair, as to Mr. St. Clair's participation before the presentation of the evidence begins.

I am not suggesting, and do not think anyone is suggesting that Mr. St. Clair participate in the investigatory stage. But, what we are all talking about is his right to participate at the time that evidence is presented to the committee, either documentary or, even more importantly, orally. And these two things are connected. We need not only to determine his rights before we begin, or his privileges, or the rules before we begin taking testimony. We need to determine also whether we are going to call some live witnesses. Some of them at least we can determine on now, because his rights are not going to amount to anything unless we have live witnesses to cross-examine. And I have not got my mind made up about this matter any more than the rest of the committee has. But, I am telling you it is going to take a

lot to persuade me to vote for an impeachment on a documentary record without any witnesses here, or without any cross-examination. You might as well understand that right now. I do not think anybody would want to.

Now, Mr. Sandman says "are we going to get a vote on these matters" and the chairman said "yes," but the point that is important is when do we get a vote on them. We ought to get a vote on them before the presentation of testimony begins. Now, Mr. Doar says some things, they are different, and you can decide now and some you cannot. But, you can decide rules now, I will submit.

If you think the thing to do is present your documentary evidence first in a closed session, for instance, we can decide to do that. We can decide whether Mr. St. Clair should be present at such a session or not. Now, I am open to argument on that question. But when we begin to present them publicly he ought to be there. When we call testimony, he ought to be there. And we ought to decide now whether we are going to call testimony, because as I pointed out last time, if we get down to the place where we are presenting this documentary testimony, and we have not decided to call any evidence, then we want to do it. If anybody claims privileges we have got to wait a month, and the result is going to be exactly what Mr. Latta says; we are going to do it on a written record. And I am telling you I am not going to do it on a written record. You have got to do better than that. You have got to determine these things, and you have got to determine them not after you start testimony. You have got to draw the ground rules right now before you put in a bit of testimony before this committee. And we have got to have a meeting where we can vote. Look, if they vote us down, OK.

The CHAIRMAN. Mr. Butler's time has expired.

Mr. DENNIS. They can vote us down but we have to vote before we go to putting in evidence. Anybody who says differently is wrong.

The CHAIRMAN. Mr. Butler's time has expired.

I am advised that the bells have rung. There is a quorum call, and the committee will stand adjourned. We will have a meeting this week which will be announced in accordance with the 24-hour rule.

[Whereupon, at 12:22 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Impeachment Meeting

THURSDAY, APRIL 11, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice at 10:35 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel; and Hillary D. Rodham, counsel; William Weld, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order. The Chair will read an opening statement. During the past several weeks members of the Committee on the Judiciary have considered the procedures to be followed during the evidentiary presentation of our inquiry. We have had two purposes in mind. First to determine how best to meet our constitutional responsibility in a proceeding that occurred only once before during the 200 years of our Republic. And second, to determine how to insure throughout the proceedings fairness to the President of the United States.

I am now prepared as chairman to recommend some general principles with respect to our evidentiary proceeding. First, it would be my hope that the committee would receive from the staff, that the committee intends to receive from the staff and to consider initially all reliable material which tends to establish the facts in issue. At the time that our evidentiary proceedings begin, we should afford the President the opportunity to have his counsel present and to receive such documents and materials as our staff presents to us for our consideration.

Second, during the presentation of this evidentiary material, whether in executive or in open session, subject to the rules of the

House, the committee should afford the President the opportunity to have his counsel present and to hear the presentation.

Third, at the end of this presentation, the committee should afford the President the opportunity to have his counsel make his position known either orally or in writing with respect to the evidentiary material received by the committee. At that time the President's counsel should also be afforded the opportunity to recommend to the committee names of witnesses to be called, and to advise the committee as to the witnesses' expected testimony.

Fourth, if and when witnesses are called, the committee should afford the President the opportunity to have his counsel ask such questions of the witnesses as the committee deems appropriate.

These policies, in my judgment, are fair and accord with the rules of the House and with past policies of the Judiciary Committee and prior impeachment proceedings. In prior impeachment proceedings the committee was always careful to point out that counsel did not appear as a matter of right, but was afforded the opportunity to appear by the courtesy of the committee. I say this not in a narrow sense, but only to point out the fact that the committee, under the Constitution, cannot relinquish its control over its own proceedings, and its sole responsibility to determine the course of its impeachment inquiry.

Accordingly, in keeping with this spirit, I will submit these general principles to the committee at a meeting during the second week after the Easter recess when it will convene to consider rules of procedure for our initial evidentiary presentation.

Mr. LATTA. Mr. Chairman, will we have a copy of those in the meantime?

The CHAIRMAN. This is merely a statement, and I hoped that the statement had been distributed to you.

Mr. LATTA. I do not have a copy. We do not have a copy at this end.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The statement will be distributed.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I am not going to recognize anyone at this time unless Mr. Hutchinson has something.

Mr. HUTCHINSON. No.

The CHAIRMAN. Mr. Doar, will you kindly read the letter which was received by you from Mr. St. Clair?

Mr. DOAR. Mr. Chairman and members of the committee, before reading the letter, Mr. Jenner asked me to explain to the committee that he was unable to be present this morning because he asked last fall to deliver the Henry Scottsburger annual law lecture to the University of Texas in Austin, and that the engagement had been made prior to the time that he thought that there would be a meeting this morning. And he asked me to explain this to the members of the committee, explain his absence.

Now, the letter that the chairman asked me to read is dated April 9, and it is from the White House, Washington. It begins:

Dear Mr. Doar,

I am pleased by the progress evidenced by your letter of April 4. As we have discussed previously, the request of the committee of February 25 consisted principally of a blanket demand for tapes and related materials of all dis-

cussions between the President and certain of his aides between specified dates. Obviously these conversations would have covered a variety of subjects, and this made it difficult to balance the requirements of confidentiality against the legitimate needs of the committee.

However, your letter of April 4 goes a long way toward providing the additional specification we felt were lacking in your original request for tapes and materials. Although further specification might be desirable to assist the President in determining what he should provide the committee, he has directed me to advise you that a review of the material in question is under way. We expect that the review can be completed by the end of the Easter recess, and additional materials furnished at that time will permit the committee to complete its inquiry promptly.

Regarding an important related issue, I hope that the committee will decide on my role in its proceedings before the upcoming recess. There is much work to be done if the committee is to complete its timetable, and I once again urge that this vital issue be resolved as soon as possible.

The President wishes me to reiterate to you and the committee his continuing desire to cooperate so that the pending inquiry can be brought to a prompt conclusion. If any problems develop, I, of course, stand ready to meet with you in an attempt to resolve them.

Sincerely, James D. St. Clair, special counsel to the President.

The CHAIRMAN. Mr. Doar, has there been any subsequent communication from the White House or Mr. St. Clair following the receipt of that letter?

Mr. DOAR. There has, Mr. Chairman. Yesterday afternoon, early in the afternoon, Mr. St. Clair called me and asked if I could give him further information with respect to the February 20, or the on or about February 20, conversation between the President and Mr. Haldeman. And I furnished that information to him in the latter part of the afternoon around 6 o'clock last night, or perhaps a little later than that. He was having difficulty locating that conversation.

This morning around a quarter of 10 Mr. St. Clair called me and said that he would like to know whether or not I thought that if he delivered or was able to deliver to the committee within the next 2 or 3 days, or the next day or two, I do not remember which it was, the first four items that were requested in our letter of February 25, whether that would avoid the issuance of a subpena by the committee. I told Mr. St. Clair that I, of course, could not speak for the committee, but that I would bring that to the committee's attention promptly at the beginning of the meeting. That was the conversation.

The CHAIRMAN. I am advised that all of the members have at their desks and have been handed the brief or the memorandum which justifies the requested conversation. Is that not so?

Mr. DOAR. That is so.

The CHAIRMAN. And I recognize Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, I move that the Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpena to be signed by the chairman, the text of which is at the desk, and copies of which are now before the members of the committee.

The CHAIRMAN. The clerk will read the subpena.

The CLERK [reading]:

By authority of the House of Representatives of the Congress of the United States of America, to Benjamin Marshall, or his duly authorized representative, you are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official, or employee with custody or control of the things described in the attached schedule to be and appear before

the Committee on the Judiciary in the House of Representatives of the United States, of which the Honorable Peter W. Rodino, Jr., is chairman, and to bring with him the things specified in the schedule attached hereto and made a part of thereof, in their Chamber in the City of Washington on or before April 25, 1974, at the hour of 10 a.m., then and there to produce and deliver said things to said committee, or their duly authorized representative in connection with the committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974. Herein fail not and make return of this summons. Witness my hand and seal in the House of Representatives of the United States, the City of Washington, this 11th day of April, 1974, Peter W. Rodino, Jr., Chairman.

Mr. DONOHUE. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. In the hopes of hearing as much discussion as possible, I now ask unanimous consent that general debate on this matter proceed for 30 minutes so that a vote on final passage may take place before 11:30.

Mr. DENNIS. Mr. Chairman, reserving the right to object——

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I have, at the appropriate time, an amendment that I wish to offer to the motion. And, of course, I would like to discuss that.

The CHAIRMAN. The gentleman will recognize that the motion is only on general debate.

Mr. DENNIS. Well, of course, I want to offer my amendment at an early time and we can discuss the whole thing.

The CHAIRMAN. The gentleman's right to offer the amendment will be protected.

Mr. DENNIS. I appreciate that.

Now, the next thing, Mr. Chairman, I do not want to be obstructionary at all. I think we should move along with due course, but we have got a lot of people here, and this is very important. I just do not know whether I want to concede only a half an hour to it, although I assume that my amendment would be adding to that; is that correct?

The CHAIRMAN. That is correct.

Mr. MCCLORY. Reserving the right to object further, Mr. Chairman——

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. My reservation is for this purpose, I wonder if it would not be possible before we set a time limit on the motion of the gentleman from Massachusetts if we could not inquire a little further with regard to the telephone conversation this morning with Mr. St. Clair? I have a great——

Mr. CONYERS. Regular order, Mr. Chairman.

Mr. MCCLORY. I have a couple of questions on that. Could we defer that until we inquire as to the conversation? Would the gentleman from Massachusetts yield for that purpose?

Mr. CONYERS. Regular order, Mr. Chairman.

Mr. MCCLORY. This is a regular order.

Mr. HOGAN. Mr. Chairman, I object to the unanimous consent request of the gentleman from Massachusetts.

The CHAIRMAN. Objection is heard.

Mr. DONOHUE. Mr. Chairman, I move that general debate on this matter proceed for 30 minutes so that a vote on the final passage may take place before 11:30.

Mr. BUTLER. Point of order, Mr. Chairman.
The CHAIRMAN. All those in favor of the motion——
Mr. LATTA. Rollcall, Mr. Chairman.
Mr. MEZVINSKY. Rollcall, Mr. Chairman.
The CHAIRMAN. The question is on the motion offered by the gentleman from Massachusetts. All those in favor please say aye.
[Chorus of "ayes."]
The CHAIRMAN. And all those opposed?
[Chorus of "noes."]
Mr. MEZVINSKY. Rollcall.
Mr. BUTLER. Mr. Chairman, may we have the copy of the motion? Do we have copies for distribution?
The CHAIRMAN. The motion has been offered by the gentleman, and it is a very simple motion, and there is no need that the motion be at the desk of all of the members.
Mr. LATTA. Mr. Chairman? Mr. Chairman? Mr. Chairman, I demand a rollcall.
The CHAIRMAN. A call of the roll is ordered. The clerk will please call the roll.
The CLERK. Mr. Donohue.
Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. Aye.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
The CHAIRMAN. I have a proxy from Mr. Danielson. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Mr. Jordan.
Ms. JORDAN. Ms. Jordan. Aye.
The CLERK. Excuse me. Ms. Jordan. Mr. Thornton.

Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. No.
The CLERK. Mr. Wiggins.
Mr. Hutchinson proxy, no.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. No.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. No.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. No.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. No.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. No.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. No.
The CLERK. Mr. Latta.
Mr. LATTA. No.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The CLERK. Ayes 22, nayes 17. I'm sorry. Correct the record.
The CHAIRMAN. What is the vote?
The CLERK. There are 21 ayes and 17 nayes.
Mr. DENNIS. Mr. Chairman?
The CHAIRMAN. The gentleman is recognized.
Mr. DENNIS. I have an amendment to the motion, if we have the motion before us about the subpena. I guess we do?
The CHAIRMAN. We do.
Mr. DENNIS. I have an amendment to the motion which I think I might as well offer at this time.

The CHAIRMAN. The clerk will read it.

The gentleman recognizes that there is time for general debate?

Mr. DENNIS. All right. I will defer as long as I can add it on at the end of general debate, which I understand you told me before I could do, and would be given an opportunity.

The CHAIRMAN. That is correct.

Mr. DENNIS. All right.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I would like to ask our counsel some questions, if I may.

The CHAIRMAN. Before the gentleman proceeds, will the gentlemen, will the members, kindly indicate who wants to be heard so that the Chair will be able to apportion the time equally?

[Show of hands.]

The CHAIRMAN. The members recognize that the time is going to be apportioned equally up until 11:30, for a half an hour, until it is 11:20?

Has the clerk got all of the members?

The CLERK. We have 19 members, 20, 21, 22.

Mr. DENNIS. Read the names.

The CLERK. Mr. Brooks, Mr. Kastenmeier, Mr. Conyers, Mr. Hungate.

Mr. CONYERS. Take my name off there.

Mr. HUNGATE. People mistake us all of the time.

The CLERK. Mr. Waldie, Mr. Flowers, Mr. Mann, Mr. Sarbanes, Mr. Seiberling, Mr. Drinan, Mr. Rangel.

Mr. RANGEL. Yes.

The CLERK. Ms. Holtzman, Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton, Mr. Mezvinsky.

Mr. MEZVINSKY. Yes.

The CLERK. Mr. Owens, Mr. Hutchinson, Mr. Hutchinson? Mr. McClory, Mr. Smith, Mr. Sandman, Mr. Railsback, Mr. Railsback?

Mr. RAILSBACK. Yes.

The CLERK. Mr. Dennis, Mr. Fish, Mr. Mayne, Mr. Latta, Mr. Hogan, Mr. Butler, Mr. Cohen, Mr. Lott, Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead, Mr. Maraziti.

Mr. HUTCHINSON. Mr. Clerk? Am I on that list?

The CLERK. Yes, sir, you are.

Mr. HUTCHINSON. In the interests of letting everybody else have a little bit more time, you can strike my name from the list.

The CHAIRMAN. How many members are there who are seeking recognition?

The CLERK. Twenty-five.

The CHAIRMAN. The Chair will recognize each member for 1 minute.

Mr. McClory.

Mr. MCCLORY. Mr. Chairman, first of all I want to protest the sharp cutoff of debate. I think that the partisan action taken this morning is a very, very serious, adverse step in connection with the objective, bipartisan efforts which this committee is taking and I want to protest that as vigorously as I can.

Now, I want to ask Mr. Doar. I want to make a further statement. and that it that it is my feeling that whatever we get from the President voluntarily on their part is going to be a lot more efficacious than what we are able to get under the subpena power, which I think we may be completely unable to and incapable of enforcing. Is it not true that Mr. St. Clair did not attach any qualification to his offer this morning, but he said he would deliver the first four items with no strings attached? Or did he say only that he would deliver them if we did not take the subpena route?

Mr. DOAR. No. He said if the committee decided to issue a subpena, he would prefer to comply with the subpena in its entirety, deliver everything that he thought was required by the subpena at one time.

Mr. MCCLORY. Did he indicate that he would comply with this subpena if the subpena was issued?

Mr. DOAR. He did not. But, he did not indicate that he would not.

Mr. MCCLORY. With the four items if the subpena was not issued?

Mr. DOAR. That is what he said.

Mr. MCCLORY. That he would deliver it if the subpena was not issued?

Mr. DOAR. He said he wondered whether or not it would make any difference if he was able within a day or two to bring the first four items, to deliver the first four items to the committee.

Mr. MCCLORY. You interpret that as assurance that he would bring the first four items?

Mr. DOAR. Only if the subpena was not issued.

Mr. MCCLORY. Thank you very much.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I yield my time to Mr. Dennis who has an amendment, and I want him to have an adequate opportunity to present it. And I have a copy of it and can read it.

Mr. DENNIS. Does the gentleman want to yield at this point?

Mr. BROOKS. At the point at which you will take your time.

Mr. DENNIS. Thank you.

The CHAIRMAN. Who is next on the list?

Mr. Smith? Do you seek recognition?

Mr. SMITH. Mr. Chairman, I yield my time to Mr. Dennis.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Well, Mr. Chairman, I would like to observe that there may be a difference of opinion here this morning. But, I think it is a little too late to make a deal. I think the course has been set, and it is important that this committee embark upon it and has not been set by us.

My only reservation, for the record, about the preparation of the subpena is that I would have preferred a return date of April 22, rather than April 25. But, I will not quarrel about that, Mr. Chairman, nonetheless. And I would furthermore suggest that if there is a question about whether or not the last two items are sufficiently specific, it would seem to me that the White House would have had, over all of this time, nearly approaching 2 months and much before then adequate time to evaluate precisely what is involved, and to reply to us in a helpful, cooperative way, which they have chosen not to do.

So, I think all six items are appropriate and we ought to embark on the course suggested by the motion of the gentleman from Massachusetts.

The CHAIRMAN. Mr. Sandman is recognized for 1 minute.

Mr. SANDMAN. Mr. Chairman, I think what we are doing today has personified what a ridiculous thing we are doing overall. I have been trying since this committee first started to get some work done, and nothing happened along that line. We still have not voted on any of the rules of procedure, and it is unlikely we are going to for some long time.

Now, on one of the most important subpenas ever issued in the history of mankind, each of us has 60 seconds to discuss it. I was prepared to vote for a subpena and said so if I thought it was the only way we are going to get this information. And from the best information available to me, Mr. Doar is going to receive today or tomorrow, without condition, all of the things that he seeks with the exception of E and No. 2 on his list and I think that is all he is entitled to at this moment. The other things are too indefinite and the other things will take hours upon hours to even find and unless there is some other reason why we should have the subpena, second, it is going to be done, as I understand, voluntarily, long before the return date of this subpena, so the subpena is needless at this time.

The CHAIRMAN. The time of the gentlemen has expired.

Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, I ask unanimous consent to yield my time to Mr. Dennis whenever he is recognized.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Doar, I would like to ask you a qusetion. I do not know whether you can speak for Mr. Jenner or not. Maybe I can ask Mr. Garrison, too. Based on your screening of the Senate Watergate materials and the materials of the bulging briefcase, are you recommending to this committee today that we subpena not just the four items? Are you recommending that we subpena all of those things that we requested, or is it possible for you to recommend that we hold off, assuming that the White House will present the first four items, and then we can work something out with the other two? What is your recommendation?

Mr. DOAR. My recommendation is that the committee issue the subpena for all six items today.

Mr. RAILSBACK. Do you know from your own conversations with Mr. Jenner, is that his view as well or can you speak for him?

Mr. DOAR. I believe that that is his view as well.

Mr. GARRISON. If I might add, I have not had the opportunity to speak with Mr. Jenner since the communication with Mr. St. Clair this morning, and because of the possibility that that development might be viewed as altering the judgment which may have been reached prior thereto, I would not hazard a statement.

Mr. RAILSBACK. Let me just say——

The CHAIRMAN. The time of the gentleman has expired.

Mr. Conyers.

Mr. CONYERS. No.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I thank the chairman, and I think I am recognized for about 4 minutes, if I understand the situation.

In the first place, Mr. Chairman, I cannot let the moment pass without commenting on the fact that we are heading into a truly historic, constitutional confrontation here with a partisan limitation of debate of 30 minutes. And I do not feel that that reflects credit on his committee or its procedures.

Second, I want to thank my colleagues on both sides of the aisle who were good enough to yield me their time. I do have an amendment which I will offer, and which I think is before the members. And I will spell it out again at that time. But, what it does, very briefly, is propose to strike from the subpena the last two items which are the general items rather than the specific items, the first four being very specific. The last two are all conversations between the President and Mr. Haldeman, and the President and Mr. Ehrlichman during the 4-day period April 14 through April 17 inclusive; and all conversations between the President and Mr. Kleindienst and the President and Mr. Petersen during the 3-day period, April 15 through 18 inclusive.

Now, the reason for that is this, if the committee please, and I hope that my colleagues will give this some attention because I do not regard this as partisan or anything of the kind. I think if we are going to issue a subpena here, we want to issue one on which we can be successful. Now, if we issue a subpena for irrelevant material, the President can take us to court, move to quash and beat us on it. And I think we will look pretty foolish if we do that.

Now, it seems to me that the first four items are certainly specific, and in all probability relevant, because if they were not, it would be the simplest thing in the world for counsel for the President to tell us why they were not, because he can really pinpoint those. But, on the last two items, we call for all conversations during this period.

Now, Mr. Doar has submitted to us this morning for the first time, and I have not had an opportunity to read it all, some supporting information as to why those conversations might, or some of them might be relevant. But, I point out to you again that we are calling for all conversations between certain individuals during quite an extended period of time, and these individuals undoubtedly talked about a lot of things, presumably including the things we are interested in. But, almost certainly including other matters completely irrelevant to our inquiry.

Now, I feel we are making a serious mistake to issue the kind of a blanket subpena, and maybe get slapped down on the latter, and that is the point of my amendment which I will offer. And it seems to me we have just been told we can get the first four without a subpena at all, but I am willing to subpena him nevertheless, which my amendment would do. But, why in the world don't we do that, and then see whether we can work out something on the last two?

Mr. Wiggins has submitted some proposals here about editing the last two by our chairman and ranking member, Mr. Doar and Mr. Jenner, and the President's counsel, which I think makes very good sense. I may say that I have had some indication myself that that might be acceptable downtown, and we could get down to the things that are relevant.

The CHAIRMAN. The gentleman's time has expired.

Mr. DENNIS. That is my amendment and the points of my arguments against the motion and what is at stake here.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I support the motion of Mr. Donohue, and it strikes me that we ought to understand that the tactic that St. Clair and the White House have used in this case, which is to delay the matter for roughly 45 days, and then at the moment they are about to fall over the parapet, to come up with some suggestion of compromise is not a new tactic.

It has been used throughout the entire proceedings before the grand jury, before the Special Prosecutor, before Judge Sirica. And if we permit them to do that to this committee, they will do that from now on. They have the right not to turn over anything they desire. But, we have the right to seek the evidence we require to perform our constitutional duty by the only manner available to us. I think in the future we ought not to tolerate negotiation in the hopes that have been thwarted in every instance in the past that there will be cooperation forthcoming in the White House. There will not be. We ought to perform our responsibilities with no consideration as to the hope for cooperation, and conclude these hearings and this inquiry.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FISH. Mr. Chairman, over these past several weeks, I have appreciated your position which has been bent over backward to avoid confrontation with the White House. But, in the light of this totally unresponsive letter that Mr. St. Clair delivered on Tuesday, I came to this meeting prepared to vote for a subpena. I think that the dilatory tactics by Mr. St. Clair have been outrageous and an insult to the House and making the process very difficult for minority members. This morning, due to developments, however, that a partial direct reply to our letter, which said advise if you are going to make delivery, would appear that our question here is whether the subpena will really be productive, whether we receive the material voluntarily, the 12th or the 13th of April as distinguished from involuntarily the 26th after the subpena.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Flowers.

Mr. FLOWERS. No.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman.

I was certainly not satisfied with Mr. St. Clair's letter of April 9, and was prepared to vote for a subpena on the first four items this morning, if we did not receive much more specific assurances as to early delivery of these four items. As I understand it, these four items are the only ones in which there has been a strong indication of relevance, unless there may be some further indication in the materials which were just placed on our desks this morning. Now that we have received assurances in the statement made by Mr. Doar that Mr. St. Clair has assured that these first four items will be delivered to the committee within the next 2 days, it seems to me that we have a different situation, and that we should not provoke a confrontation ourselves. And let there be no mistake about it, it will be the com-

mittee, not the White House counsel who will be provoking the confrontation of a subpena, because they have largely met our demands.

Those who want a confrontation can go ahead and follow the subpena route, but I think we should realize that is what we are doing, and it is a travesty for us not to have more than 1 minute apiece to consider this historic and drastic step.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Mann.

Mr. MANN. Thank you, Mr. Chairman.

I am somewhat astonished that the resolve of this committee to get on with its work can be so easily diluted. When it became apparent that this committee was not going to be further deterred in its work, then a so-called compromise offer came forth, and to permit that to cause this committee to again defer positive action, to again defer expeditious action when the business-like professional effect of a subpena is to permit and, as I visualize it, in this case, to permit the respondent to produce the evidence, or to give reasons why evidence should not be produced. And I find it rather interesting that there are those here who would prejudge the relevancy of the material that we have requested.

Now, if you have information that I do not have, I would like to have it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Hogan.

Mr. HOGAN. Mr. Chairman, I think that what we do in this committee is very, very important and we ought to do it in such a way that the American people have a feeling that it is being done fairly and objectively.

I am astonished that we have 1 minute each to debate one of the most important constitutional and historic questions ever to face the Congress of the United States. The American people I do not think can have much confidence that this is being done fairly. I have a 12-page memorandum in front of me which is justification for the subpena which I have not had time to read. To listen to the debate, read this and have an opportunity to ask questions, I think is important. Why are we in such haste? Because we want to go on Easter recess? No wonder the Congress is in such low repute with the American people. Why could we not have met at 8 or 9 a.m.? The House is going to adjourn this afternoon at 2 or 2:30 p.m. Why do we not come back then? Why could we not work tonight or tomorrow as we did in the Jerry Ford hearings? I just think it is terrible that we are doing this in such haste.

I deplore the dilatory tactics of the White House as much as anybody on this committee. I have publicly and privately criticized them for this. But, I do think the importance of this warrants a more judicious analysis of it so we know what the heck we are doing, so that we can do it properly and defend what we do to the American people and in the courts.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

Mr. Chairman, I believe this committee has shown an extraordinary and commendable degree of patience in this matter. The initial letter

was sent to Mr. St. Clair on February 25, so it is now more than 6 weeks in terms of dealing with the response. Now, there have been references to the historic and unique nature of the subpena. I only want to point out that the Watergate Special Prosecutor has found it necessary in a number of instances, in order to obtain relevant evidence from the White House, to issue a subpena to the White House.

Now, it is very clear that until the committee indicated its resolve to forward, there was no responsive action on the part of Mr. St. Clair. I still do not know that there has been responsive action. If Mr. St. Clair really wanted to respond, he could have had a letter in the hands of every member of this committee this morning saying the following items are being dispatched to you immediately, other items are being reviewed and prepared and with respect to certain matters, we believe they are not pertinent to your inquiry and are prepared to state to appropriate representatives of the committee our reasons for thinking so.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SARBANES. He has not done that, and I think we should proceed.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, I cannot endorse the systematic fallback procedures that the White House has adopted during the course of these proceedings. But, I do want to register my protest that despite the assurances of counsel on Monday that I would have well in advance of this meeting, the information was delivered to me some 45 minutes before this meeting with some 30 pages of material. I protest that we did not have an opportunity to review it, and I hope that when the chairman has time of his own, that he will explain why that was delayed.

My intention is to vote for whatever form of subpena the majority of this committee deems appropriate. But, I would prefer that the record show that we have a more full and complete debate. And I suspect that full debate took place within the secrecy of the confines of the Democratic caucus on this matter, and that it will shame us not to have public debate on the same issues.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I must confess astonishment that in all of the 6 weeks that we have been waiting for a response and a compliance by Mr. St. Clair, I have heard no statements on either side of the aisle criticizing the six categories of documents and tapes requested. And now all of a sudden because Mr. St. Clair says he will give us four of those, we find that some members here are dancing to his tune. In these 6 weeks we have been met with nothing but lawyer-like tactics on the part of Mr. St. Clair and promises of cooperation from the President, alternating with insults from his staff, like Mr. Ziegler.

It seems to me, gentlemen, that it is time we sent a message that the playing of games is over, and that this committee means business. And that is why I support this motion.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. I would like to commend Mr. Butler for his statement and associate myself with his remarks. Mr. Doar, is there any difference in your opinion between the letter

of February 25 and your letter of April 4 which Mr. St. Clair says goes a long way toward clarifying the issues which are so vague and ambiguous? Is there any difference in substance?

Mr. DOAR. Well, there is not, in my opinion. There is no difference in substance. We do set forth specifically the basis for the six items, although I think it is clear from the context and from the public record.

Mr. COHEN. In your opinion, is there any useful purpose in continuing negotiations about the other two items, the ones that Mr. St. Clair is not prepared to turn over?

Mr. DOAR. No, I think in my opinion that there is no useful purpose. I think that as your counsel I would have to say that when you have any doubt about the production of items that you believe to be necessary, and I think that Mr. St. Clair's letters leaves the matter in considerable doubt, that the business-like, professional way to proceed is to issue a subpena.

Mr. COHEN. And that no further useful purpose is served by trying to negotiate for these?

The CHAIRMAN. The time of the gentleman has expired.

Father Drinan.

Mr. DRINAN. Mr. Chairman, I have only two reservations about the resolution. I would have preferred a return date of Tuesday, April 16. April 25 was chosen to go the final mile, 3 days beyond what the President suggested, and to give him 60 full days in which to comply.

My second reservation is that Mr. St. Clair may delay further by bringing this matter to the courts, and further by refusing all further requests. The President is entitled to due process, and he will receive it from this committee, and from this Congress. But, the people of America are also entitled to due process, and the people have been denied due process by the President for 45 days and 45 nights. And this subpena is the only way to vindicate the constitutional rights of Congress on the country.

The CHAIRMAN. Mr. Lott.

Mr. LOTT. Mr. Chairman, I think that there are a couple of very basic points that are being overlooked here, and I would like to emphasize them. Some of them have been touched on.

First of all, it has been mentioned that we have just got this memorandum on what is included in these six blocks of material that are requested. We, contrary to what the American people apparently think, the committee members, have not been moving forward with this investigation. The staff has. We have never yet been told why these six blocks of material were requested and on what basis, whether it was because Mr. Jaworski was not able to get this material, or was it because or based on information they had at their disposal, that it was requested or why?

Just this morning were we given any explanation, and I dare say there are members of this committee right now that do not know what is included in these six blocks of material, and they do not know why it has been requested.

Secondly, I do not understand why we must have a confrontation at this time on this particular point. It is not as if we did not have material. We have volumes of it over there in the Congressional Hotel right

now. This material, or four portions or sections of it will be turned over. What is really going to be accomplished by this subpena?

There is a real and strong indication in the letter of Mr. St. Clair—and by the way, I do not agree with that letter either—that we could get this before the 22d, and I do not understand the basis for this confrontation at this time.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I request unanimous consent to yield my time to Mr. Railsback so that he can pursue his questions that he had of counsel.

Mr. RAILSBACK. Mr. Doar, I think some of us on this side might be willing to support a full subpena, but I think we are concerned about the fact that in the last two items, they are pretty general, although I think you have made a pretty good case, when I read your memorandum concerning those requested conversations. Now, personally—and, Mr. Chairman, I would like to have you involved in this, too—would you personally be willing to let Mr. St. Clair sit in on the screening of those last two items if he did not have the power to object to the relevance, but could make suggestions as to national security concerns, and the possibility of nonrelevant items.

Mr. DOAR. Yes, if that was the committee's wish, I would think I would be willing to do that.

Mr. RAILSBACK. Mr. Chairman, let me just say in the interest of fairness, and from our previous meetings, I kind of got the idea that we might be able to agree to that, I would hope if we could give you full power of subpena, that we may be willing to go that extra step to let Mr. St. Clair sit in to just offer suggestions as to what he thinks may be of national security concern or nonrelevant.

The CHAIRMAN. I would like to advise the gentleman that Mr. St. Clair initially has that right. He will deliver to us what I suppose he will want to deliver to us.

Mr. RAILSBACK. Well, I do not approve of that, frankly.

The CHAIRMAN. Well, under the circumstances, however, the committee will ultimately make its decision. But, if there are matters of national security, if there are matters unrelated to our inquiry, it has been stated time and again to Mr. St. Clair that we are not interested in those matters. We have laid the predicate in the request for those matters that we are seeking because there are logs and other, other intimations that they relate to the inquiry.

Mr. RAILSBACK. Then he would, do I understand it, we are kind of in agreement here that he would be permitted to at least sit in on the screening of those particular items?

Mr. DOAR. Well, if the committee, if it were the committee's will that rather than have the committee as a whole screen these, these six items, that it would be done through counsel and Mr. St. Clair, that I would think would be a very workable way to do it, or with the chairman and the ranking minority member.

Mr. RAILSBACK. I would think so, too, and I would hope we could agree to that.

The CHAIRMAN. I have personally no objection, as I have stated time and again, because there are matters that Mr. St. Clair might

point out that are national security matters, that are unrelated, and I would be willing, if that were the case, and we considered it initially, and then we presented it to the committee, I would be willing to go along with the judgment of the committee.

Mr. RAILSBACK. I think you are going to get some support then. I would hope, anyway.

The CHAIRMAN. Mr. Moorhead.

Mr. MOORHEAD. Yes, Mr. Chairman. I came here today with the idea that I would support a subpena because I believe it is necessary that we get all of the materials that are necessary.

I do feel, however, the manner in which we are doing this thing, and running this thing through without debate, in view of the offer of the President, to come up with most of the materials that we have specifically requested, and to discuss the details of the last two trivial items which are not specific in nature, is a mistake. I feel that we bring disrepute down on our committee when we engage in tactics that can be disputed by the other side, and which we very well may lose in court.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I am reminded at this time of the statement that the former Attorney General John Mitchell made, and that was that this administration ought to be judged not by its words but by its actions. And I am reminded that we are sitting here 45 days after our initial request was made, and we do not have a single tape or a single document before us. The American people and this committee are entitled to the facts, and this committee has a constitutional duty to obtain them.

I am also deeply disturbed by the implication in Mr. St. Clair's comment this morning that he would not turn over these four additional items if we issued a subpena. I do not think this committee can submit itself to this kind of threat. I think St. Clair has had the opportunity and the President has had the opportunity to issue the materials to this committee.

I also want to point out that in the 45 days that Mr. St. Clair has had our request under consideration——

The CHAIRMAN. The time of the gentlelady has expired.

Ms. HOLTZMAN. He has not indicated that the materials would not be relevant.

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Mr. Chairman, first I would like to say that I am amazed that we are permitted to discuss this very vital question for only 1 minute. I concur with Mr. Sandman that this action is probably one of the most historic actions taken in the history of this Nation.

I concur with the remarks of Mr. Dennis. We will receive a considerable amount of information voluntarily. It does not seem wise to me to invite a confrontation at this time, which I think will lead to a judicial confrontation, which will result in considerable delay. The subpena calls for delivery on April 25. And I am sure that we could get a great deal more sooner voluntarily. I do not think the subpena route is wise.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I think the reason that the subpena is necessary is because, to a great extent, the respect for this commit-

tee and for the House of Representatives is really at stake. And I think what we are seeing is, we are seeing that the people have demanded that we take action. And I think that we are saying that we should remove ourselves from the maze of dilatory tactics that we are finding in front of us. The President said 1 year of Watergate is enough. We are close to one-sixth of a year waiting for a response from our letter of February 25.

For that reason, I think the subpena is absolutely necessary.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman.

In view of the time limitation, I just want to reemphasize what has already been said about E and No. 2. Now, everybody on this committee, 38 members, are lawyers. If you ever saw a subpena drafted in any more general or any more inadequate terms, we have it here. I may say when we say all conversations between Mr. Haldeman and the President and Mr. Ehrlichman and the President during the period April 14 through April 17 inclusive, they do not say where they are supposed to have taken place, what time of day they were supposed to have taken place, what subjects they were supposed to be talking about during that time. It is an impossible situation. And No. 2, when they say all conversations between the President and Mr. Kleindienst and the President and Mr. Petersen during the period from April 15 through April 18, 1973 inclusive, we have the identical situation. They do not say whether they have taken place, what time of day they were supposed to have taken place, what subjects they were supposed to have covered and it seems to me if they really wanted to contest this matter, they would go into court and say that it is too indefinite to comply with, and there would be 38 members of this committee with red faces, including 38 or 40 members of the staff.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman?

Mr. FISH. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. FISH. Mr. Chairman, I know the committee has made no disposition, no determination of this position in the record of transcripts being kept of meetings such as this. And my inquiry is whether or not the members who have been limited today to only 1 minute can have the opportunity to revise and extend their remarks that will be included in the permanent record of these proceedings?

The CHAIRMAN. I am advised that this has not been the procedure. This is not the rule in the committee, that it is only the privilege that is extended in the House.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

The CHAIRMAN. The clerk will read the amendment.

Mr. DENNIS. I have an amendment at the desk.

The CLERK [reading]:

Amendment offered by Mr. Dennis of Indiana.

In the schedule attached to the draft subpena, strike out the following listed therein:

E. All conversations between the President and Mr. Haldeman and the President and Mr. Ehrlichman during the period April 14 through 17, 1973, inclusive.

2. All conversations between the President and Mr. Kleindienst, and the President and Mr. Peterson during the period from April 15 through 18, 1973, inclusive.

The CHAIRMAN. The gentleman is recognized for 5 minutes on his amendment.

Mr. DENNIS. Thank you, Mr. Chairman.

My colleagues, I submit to you that in connection with this amendment we are really deciding whether we want a confrontation or whether we want information for our inquiry. Now, I am perfectly prepared to believe, though you may not deem, but I am prepared to believe that there may be people in the White House who would prefer a confrontation. And although I hope not, there may be members of this committee who would likewise prefer a confrontation.

There may be others who being irritated, not without cause, by the conduct of the White House, are possibly even falling into a White House trap. I think that is a distinct possibility. Every single member of this committee knows that there is really no effective way to enforce a subpena against the President of the United States and that is why we have been patient. Every single member knows that you cannot enforce a subpena against anybody unless it is relevant to your inquiry.

Now, under this amendment, we do not have to rely on Mr. St. Clair, although he has promised to produce. Under this amendment, we will get everything which we obviously are entitled to, which is specifically requested, which is clearly revelant, and we will get that. And I will be happy to vote for that kind of a subpena if this amendment is adopted.

Later we can discuss the other matters, as has been suggested here. And in my opinion, in the end, maybe with some more footdragging, but in the end, we will get all of the other two items too to which we, by any theory, could reasonably be entitled to as relevant to our inquiry.

Mr. CONYERS. Would the gentleman yield for a question?

Mr. DENNIS. I would rather not just now, John. I might if I have a little time left.

Why don't we pursue the route of sanity here instead of the route of confrontation where none of us really know where we are going down that road or what we will get. I do not want a confrontation. I think it is completely nonproductive from our point of view, the White House point of view. I just offer this very clear, very simple amendment in the name of reason, and sanity and I urge my colleagues on both sides of the aisle to support it as such.

Mr. LATTA. Would the gentleman yield?

Mr. DENNIS. I will yield to the gentleman from Ohio.

Mr. LATTA. In view of the fact the gentleman has offered this amendment, let me ask this question.

I pointed out earlier whether or not No. 1 he knows what subjects are covered by the E and 2 that he wishes to strike out, No. 2 or whether or not he knows when these conversations were supposed to have taken place during the day, and where they were supposed to have taken place?

Mr. DENNIS. Well, obviously, I do not, Mr. Latta. There are 8 days here. Every single conversation between these individuals, I do not care if it is on South Vietnam, European affairs, anything is covered by this subpena. And I am telling you it is a foolish thing to do. And we do not need to.

Mr. McCrory. Would the gentleman yield?

Mr. Dennis. I yield to the gentleman.

Mr. McCrory If at a later time we had further specific designation as to times and places and subjects, then I assume that we could review this again. As I understand, this part of this, if there were some conversations within this period which would produce evidence favorable to the President insofar as his actions are concerned, that we are considering here, then it is certainly an obligation on our part to bring out the exculpatory as well as the damaging evidence so that both types you would want to have included if we specify, is that correct?

Mr. Dennis. I agree, of course. I think we ought to get everything that is relevant, good or bad. I am for that. I agree with the gentleman. I just cannot say it more strongly, but I say again there is no reason for the blanket-type subpena at this stage unless you are just so mad——

The Chairman. The time of the gentleman has expired.

Mr. Dennis. Or you do not care and you want a confrontation.

The Chairman. The time of the gentleman has expired.

Mr. Dennis. Mr. Chairman, may I ask for a rollcall when we vote on the amendment?

The Chairman. The Chair would like to state that if the members are so inclined, the Chair is prepared to continue this meeting after the House adjourns, if it feels that this matter has not been amply debated. It would seem to me, however, that after 45 days of discussing this matter and having an acute awareness as to what this inquiry is all about, and having had specified in the initial letter that was sent to Mr. St. Clair, particularizing as a result of logs that are within the knowledge and information of the committee, that those logs certainly indicate the necessity of receiving this information for the purpose of this committee's inquiry to conduct a fair inquiry of materials that may be not only inculpatory, if they are, but exculpatory, and later on having addressed ourselves with even more specificity for Mr. St. Clair, that I would think that this committee, as stated time and again, that it wants to get on with this business, that it wants to do a proper job and a reasonable job, would recognize that the only reason that we are moving in this direction is because we believe that we have a responsibility under the Constitution and to the people to pursue this inquiry fully and completely, and not to leave it for a determination by Mr. St. Clair, or indeed, the President of the United States to state when and where we make that determination.

It was only this morning at about a few minutes of 10 o'clock that Mr. Doar received this telephone call from Mr. St. Clair, without specificity, but again merely indicating a suggestion that if the committee were not to do thus and so, the White House might within a day or two make a delivery.

Mr. McClory. Would the gentleman yield?

The Chairman. Now, it would seem to me—please let me make my statement.

Mr. McClory. Well, if you have accurately stated it, it is all right. But, I do not understand from Mr. Doar, our counsel, Mr. Chairman, that there is any condition attached, or that he might or anything like that. As I understood, he said he would within the next day or two

deliver these items, and if he would, it seems to me that is something we should consider very carefully because we do not know how we are going to enforce a subpena if we issue it.

The CHAIRMAN. Well, I would ask Mr. Doar whether or not that was it? I was present at the time the conversation was held.

Mr. DOAR. Congressman, it was only if the committee did not issue the subpena that he would produce the items within a day or so.

Mr. MCCLORY. Not that he might, but he would?

Mr. DOAR. He would, if you did not issue a subpena. But, if a subpena was issued, then he would prefer to make compliance at one time.

The CHAIRMAN. It would seem to me——

Mr. MCCLORY. Or noncompliance.

Mr. DOAR. He said he would prefer to make compliance at one time. I told him the return date on the subpena would be the 25th, and he said, "Well, under those circumstances, I would prefer to make compliance at one time."

Mr. MCCLORY. Would the chairman yield?

Do you interpret that to mean that he would comply with the subpena, that we should issue a subpena and then he would comply with it, or he would prefer to have compliance with the subpena, or he would prefer to have compliance without a subpena, or partial compliance, or what?

Mr. DOAR. I do not know that Mr. St. Clair was inviting a subpena. I could not say that. But, I can just report to you that he said that he would deliver the four items if a subpena was not issued. If a subpena was issued, then he would comply with the subpena at one time.

Mr. DENNIS. Might I ask the counsel a question?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. As I understand you, Mr. Doar, from your previous remarks, by this word "compliance," you did not understand that he necessarily indicated that he would obey the subpena, but merely that he would make some kind of a return, is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. Thank you.

The CHAIRMAN. The Chair would like to complete his statement. I think the Chair has a couple of minutes, too.

It would seem to me that after having waited all of this period of time, it would seem to me that the committee would want to, respecting the institutions of government, and respecting the Constitution, which I believe we have sought to comply with in every respect, and respecting the mandate of the people, that I believe are waiting to hear whether or not we can fully discharge our responsibility, unless we get cooperation, it would seem to me that this committee would want to move ahead and that every member of this committee does know that these requests were made by counsel, by counsel and minority counsel, that the material requested is necessary. Now, why try to disguise by stating that we do not have time or that we did not have time to debate? We have been debating this for a long period of time and it would seem to me that the committee, if it has any dignity, if the House of Representatives has any dignity, if it respects the institution of government, if it respects the Constitution will proceed in this only orderly and responsible fashion and move on ahead. And if Mr. St. Clair and

the President comply, and regard the subpena as a direction, then I am sure that there will be no confrontation. I am not seeking a confrontation. I am seeking evidence to make a determination that is fair and honest to the President, and most important, to the American people.

Mr. HOGAN. Mr. Chairman?

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I would like to address myself very briefly to two important points. One is the assertion which has been made that item 1E and item 2 in some way or not pertinent or important to this inquiry. Now, that is limited to a few days, it involves certain conversations between the President and his principal aides.

The President has publicly stated that it was on April 14 that Mr. Ehrlichman reported to him the results of the inquiry of the Watergate matter, which the President ordered him to conduct. It was on April 15 that Mr. Kleindienst and Mr. Petersen directly brought to the attention of the President the information which was being conveyed to the prosecutors by Mr. Dean and Mr. Magruder. Now, there are a whole series of conversations over those few days that one obviously can reasonably assume involved these matters. These were issues that were present. I do not know what is in those conversations, in response to Mr. Latta.

Perhaps he does. I do not see any way for any member of this committee to know what is in the conversations.

But, it seems to me, given the public record by the President in terms of what was being reported to him at that time, that it is perfectly reasonable to seek these conversations. They are clearly relevant to this inquiry.

Now, the second point I want to address myself to is the assertions that have been made that somehow Mr. St. Clair has offered this or offered that. Now, perhaps others on this committee have been in conversation with Mr. St. Clair. I have not had any such conversations. And I think if Mr. St. Clair wanted to communicate with the committee, I repeat that he could have sent to us a letter indicating what steps they were prepared to take immediately in order to respond, and how they would follow up on that. That has not been done and it seems to me we should move ahead with the subpena.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I would appreciate it if counsel would respond to the questions with reference to the specific statements required in a subpena. I am concerned about the generality of the statement and the items in question with the amendment, and specifically I would like to know, counsel, we have listed in the memorandum you have supplied us with this morning a good deal more specific designation of the conversations we want. Why did you not in the subpena that you drafted and the schedule that you drafted set out these conversations specifically, and secondly, has Mr. St. Clair to this point been advised specifically of these conversations to which we refer in the memorandum?

Mr. DOAR. Yes. Mr. St. Clair has been advised of these conversations. He is familiar with these specific conversations.

Mr. BUTLER. Excuse me?

Mr. DOAR. He is familiar with these specific conversations.

Mr. BUTLER. All right.

My second question was why did you not, in drafting the subpena, set them out specifically in this in the order in which you set them out in the memorandum? Is there some reservation in your mind about the relevancy of all of these conversations?

Mr. DOAR. Well, there is no reservation in my mind with respect to that they are necessary information for this committee, and that in preparing the subpena, that the proper and appropriate professional way to do it is to ask for the material. If there is a question about relevance, you deal with that at the time of compliance with the subpena. But, you preserve for the committee the final decision with respect to the question of relevance. This is the only way that, in my judgment, it is appropriate to do. Although we do have listed the specific conversations, Mr. St. Clair knows these, he has the logs from which we drew these conversations.

Mr. BUTLER. Well, then, do you not anticipate that he would in his return of the subpena, he would challenge those portions of it on the grounds that they were not specific enough?

Mr. DOAR. No. I do not anticipate he would do that.

Mr. BUTLER. And it is further that you anticipate that any exchange between the counsel and the return by counsel for the White House, that it is yet another round and that when he replies to this, it is your responsibility then to come back to the committee for whatever further instructions we might have with reference to his response to this subpena?

Mr. DOAR. The committee makes the decisions with respect to this.

Mr. BUTLER. Your recommendation will be that the full committee be convened in a business session if the St. Clair response falls short of a full compliance, as you interpret it?

Mr. DOAR. Yes, that would be my recommendation.

Mr. BUTLER. Thank you.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. I am amazed that Mr. Latta and Mr. Dennis have not done their homework. On pages 5 through 10 of the memo that we received this morning, there are specific detailed reasons why the conversations that would be deleted by the Dennis amendment are absolutely urgently required, and those who vote for the Dennis amendment will be unconsciously voting to cover up the cover up.

Mr. CONYERS. I move the previous question.

The CHAIRMAN. Mr. Fish.

Mr. FISH. Mr. Chairman, I would say to the gentleman from Massachusetts, I have always been an admirer of his, and he obviously is a very fast reader, because he knows that all of this material was delivered to us at the time when you came into the committee meeting.

Mr. Chairman, my questions are to the counsel. Is it not true, Mr. Doar, that Mr. St. Clair has raised the issue of relevancy with regard to 1E and 2?

Mr. DOAR. No, he has not.

Mr. FISH. He has not raised the issue of relevancy of this material to you?

Mr. DOAR. No, because I do not believe he has listened to the conversations.

Mr. FISH. You have had conversations, have you not, in the past 45 days with Mr. St. Clair about this material and about the production of it?

Mr. DOAR. Yes. He asked us to be as specific as we could with respect to why we wanted the material, and we told him that.

Mr. FISH. And he has not, he as not come back and challenged in any way, I mean he has not differentiated between 1E and 2 and the first four categories?

Mr. DOAR. No, he has not, not since we sent him the letter.

Mr. FISH. And do you think that the suggestion by the gentleman from Illinois, Mr. Railsback, that a group such as yourself and Mr. Jenner, and the chairman and the ranking Republican member, as well as Mr. St. Clair screening this material would hopefully be a step towards resolving any problem that they have in the production of 1E and 2?

Mr. DOAR. Yes, I think it would.

Mr. SMITH. Would the gentleman yield?

Mr. FISH. I yield to the gentleman from New York.

Mr. SMITH. Mr. Doar, did you say as far as you knew, Mr. St. Clair had not listened to these conversations?

Mr. DOAR. That is right.

Mr. GARRISON. Mr. Chairman, could I comment on that point?

The CHAIRMAN. Mr. Garrison.

Mr. GARRISON. Congressman, I would only make one observation not arising out of conversations which have taken place, which I was not a party to, but I would cite to you, Mr. St. Clair's letter of April 9 in which in the first and second sentence as he refers to the original request from the committee of February 25 as principally a blanket demand for tapes and related materials of discussions between the President and his aides between specified dates. Part of the items on this schedule are items described only by reference to the dates. It would appear that the second sentence of Mr. St. Clair's letter which says obviously these conversations would have covered a variety of subjects does explicitly raise the question of possible irrelevancy of some of the conversations within the specified dates and it seems to me that if you read Mr. Doar's letter of April 4, in which the rationale for these requests is set forth, in conjunction with the memorandum distributed this morning, it would be very clear that all of the materials on the schedule are, in fact, necessary to the conduct of this inquiry.

The only question that arises is whether the formulation on the subpena schedule is on its face overbroad, not whether it is in reality overbroad and the overbreadth question would only arise in some appropriate judicial form.

The CHAIRMAN. I would like to point out for the benefit of the committee that just as Mr. Garrison has stated, that in reference to House Resolution 803 under which we are operating, that on page 2 one finds it clearly stated that for the purpose of making such investigation, the committee is authorized to require, by subpena or otherwise, the attendance and testimony of any person, including the taking

of a deposition by counsel for the committee, and the production of such things, and by interrogatory the furnishing of such information as it deems necessary to such investigation.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Does anyone else want to be recognized on the amendment? I think we have debated this.

Mr. Seiberling.

Mr. SEIBERLING. Well, Mr. Chairman. I would like to ask you or Mr. Doar whether or not in discussing compliance with the subpena that has been drafted by the staff, assuming it were adopted without the Dennis amendment, that Mr. St. Clair would be informed that compliance with 1E and 2 would be, that in complying with it he could take into consideration the memorandum to the committee that we received today, including the explanations as to the reason why we consider these particular items necessary so that he would have some more detailed guideline as to what was intended by the language of the subpena?

Mr. COHEN. Mr. Chairman?

Mr. LATTA. Mr. Chairman?

Mr. SEIBERLING. I would like an answer if the chairman desires.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Yes, Mr. Chairman. Mr. St. Clair could take that into consideration, but again, the committee would make the final decision with respect to compliance.

Mr. SEIBERLING. Well, it seems to me that in the light of this record here today, and it is amply clear what is intended by 1E and 2, that any court would take into consideration the record established here today, including the memorandum to the committee and that there is not any doubt in Mr. St. Clair's mind what we are getting at, and he is the one in the first instance who is going to come up with the documents to respond to the subpena. So, it seems to me that Mr. Dennis's amendment is not necessary, and that there is no defect in the form of the subpena, in fact.

Ms. JORDAN. I move the question.

Mr. BROOKS. Question, Mr. Chairman.

The CHAIRMAN. I recognize Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Doar, is there any legal objection, in your opinion, to simply attaching a copy of your memorandum outlining the specific items to the subpena just to remove any doubt about this?

Mr. DOAR. I do not think, Mr. Congressman, that we should attach that memorandum to the subpena. I think it is perfectly appropriate to send it to Mr. St. Clair, that memorandum.

Mr. COHEN. At the same time?

Mr. DOAR. Sure.

Mr. BROOKS. Question, Mr. Chairman.

The CHAIRMAN. The question has been asked for.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The question is on the amendment——

Mr. HOGAN. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. HOGAN. Under the rules, does not each member have the right to 5 minutes pro or con on the Dennis amendment?

The CHAIRMAN. No. The question has been moved and when the question is moved, the Chair will act.

Mr. HOGAN. There were a number of us who were seeking recognition before the question was moved.

The CHAIRMAN. I recognized the gentleman who moved the question.

Mr. DENNIS. Mr. Chairman, I asked for a rolecall.

The CHAIRMAN. The question occurs on the amendment of the gentleman from Indiana, and the clerk will call the role.

The CLERK. Mr. Donohue.

Mr. HOGAN. Parliamentary inquiry? Is this on the previous question?

The CHAIRMAN. This is on the amendment offered by the gentleman.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye. No.

The CLERK. Mr. Donohue votes no; Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

[No response.]

The CLERK. Mr. Danielson.

The CHAIRMAN. Mr. Danielson, no, proxy.

The CLERK. Mr.Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. HUTCHINSON. Aye by proxy.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOOREHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No.
The CLERK. Nays, 22, ayes. 16.
The CHAIRMAN. The amendment is not agreed to.
Mr. HOGAN. Parliamentary inquiry, Mr. Chairman?
Could the stenographer tell us who moved the question on that Dennis amendment?
The CHAIRMAN. Mr. Brooks moved the question.
Mr. HOGAN. Is that on the record?
Mr. BROOKS. There were several other members.
The CHAIRMAN. The Chair has stated that Mr. Brooks moved the amendment. The Chair recognized Mr. Brooks, and I hope the stenographer has that.
Mr. HOGAN. I would like to say, Mr. Chairman, that I resent the way the debate was cut off from the Dennis amendment.
The CHAIRMAN. The Chair recognized the gentleman for parliamentary inquiry, and not for one of his harangues.

Ms. Holtzman.

Ms. HOLTZMAN. I have a parliamentary inquiry. Before we vote on the motion of Mr. Donohue, did you tell us when it is anticipated that this subpena would actually be served?

Is that within the motion?

Mr. DOAR. The subpena would be served forthwith.

Ms. HOLTZMAN. I thank the chairman.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta, for what purpose——

Mr. LATTA. I would like to move at this time that we amend this subpena to make 1–E and 2–E specific and spell it out specifically.

The CHAIRMAN. Has the gentleman an amendment? The gentleman has no amendment on the desk. The gentleman has no amendment at the desk.

Mr. LATTA. We will be glad to prepare it.

The CHAIRMAN. Well, I am sorry. The amendment comes too late.

Mr. BUTLER. Parliamentary inquiry, Mr. Chairman.

Mr. LATTA. Mr. Chairman, I think this is too important to be facetious about. I do not think we ought to impose gag rules at this time. I move we now adjourn and come back after the session.

The CHAIRMAN. I am merely following the rules of the House, Mr. Latta, and there is no amendment at the desk, and I am sure that the——

Mr. LATTA. Mr. Chairman, I now move that we adjourn and come back after the House adjourns today.

Mr. BUTLER. I second the motion.

The CHAIRMAN. The motion to adjourn is in order. All those—is that to adjourn?

Mr. LATTA. We return after the session today.

The CHAIRMAN. The question is on the motion of the gentleman that the committee return, adjourn at this time or recess at this time and come back after the proceedings of the House.

Mr. HUNGATE. Parliamentary inquiry, Mr. Chairman. I want to be sure I understand on what I am voting, that we would recess, not that we are adjourning, that we would recess until after the adjournment of the House, at which time we would reconvene, I take it?

Mr. LATTA. And the purpose of my request is so that I can draft the amendment that will be acceptable to the chairman and I think that we ought to have that right, because I would like to vote to get the information that this committee wants, whether it is by subpena or otherwise. But, to vote blindly on 1–E and 2–E as proposed here, I cannot do it.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. The Chair has already indicated that we would come back, we would reconvene if we had not completed the business of the day after the House had completed its business. And if you are so inclined, why we will state a time certain as well.

Mr. RANGEL. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. RANGEL. Mr. Chairman——

The CHAIRMAN. Parliamentary inquiry? Is this a parliamentary inquiry?

Mr. RANGEL. Yes. Does the motion to recess carry the same privileges as the motion originally made to adjourn?

The CHAIRMAN. Unless it is for a motion to adjourn to a time certain. But, a motion to recess does not carry the same privilege.

Mr. RANGEL. Well, I understood the motion was to adjourn.

The CHAIRMAN. It is merely a recess. Now, I put the motion to the committee. All those in favor of the motion offered by the gentleman from Ohio please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The Chair feels that the ayes have it. And the ayes have it and the Chair will state that the committee will reconvene at 1:30.

[Whereupon, at 12:05 p.m., the committee was recessed to reconvene at 1:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. And in keeping with what the Chair had already agreed to, the committee was disposed to recognize Mr. Latta for the purpose of offering an amendment.

Mr. LATTA. Thank you, Mr. Chairman. I move that the more detailed schedule of four pages specifying the time, the conversations, the text of which is at the desk, and copies of which are before the members, be substituted for the schedule originally attached to the form of the subpena under consideration. It is my understanding that all members have copies of this document.

The CHAIRMAN. I would like to ask does the gentleman want to be recognized on his amendment?

Mr. LATTA. Yes. I think, Mr. Chairman, that my amendment will spell out specifically what the committee wants and it will alert the White House as to what the committee wants and as I said this morning, I thought that the way item 1E and 2 were drafted, they were too general and it would be very difficult for anyone to answer that subpena. And I think what we have done here, we have spelled out specifically what is wanted, and they can answer this subpena the way it is. Otherwise, I do not think they could properly answer it.

The CHAIRMAN. I would like to reply to the gentleman and state that the amendment is agreeable to the Chair, and I would hope that the amendment would be adopted.

Mr. DENNIS. Mr. Chairman, may I ask counsel when you are through a question, before we vote on the matter? Whenever you are through?

The CHAIRMAN. I feel that the amendment does specify the times of conversation and is in keeping with the spirit of what we have been attempting to do. And I would hope that the amendment would be agreed to.

Mr. SEIBERLING. Parliamentary inquiry?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. May I inquire of counsel briefly, I would like to ask Mr. Doar, this will attach when adopted, the particular occasion specified in the memorandum you gave us this morning, which I think is a good idea. But, I want to go back to your letter of April 4 where you expressed in numbered paragraphs 1, 2, and 3 on pages 2 and 3 of that letter your reasons for relevance on the subject matter rather than the date in which you are interested. And I ask you whether your view as to the subject matter which we should acquire under this subpena remains the same as expressed in your letter of April 4 in the subparagraphs referred to?

Mr. DOAR. It does, Mr. Dennis.

Mr. DENNIS. And extends only to that subject matter, is that correct?

Mr. DOAR. It does, with the understanding that the committee makes the determination of whether or not the particular conversation is relevant.

Mr. DENNIS. I understand that the committee always has the final decision, but as to whether something is relevant or falls within these categories, what we are asking for now under the subpena and under the subpena as amended, if Mr. Latta's motion is adopted, will still be confined to the subject matter in which you stated our interest lay in these paragraphs of your letter of April 4, 1974, to Mr. St. Clair?

Mr. DOAR. No. That is not correct. It is not correct.

Mr. DENNIS. That is not correct?

Mr. DOAR. That is not correct. The subpena is not limited by the paragraphs in my letter of April 4. The subpena speaks to particular conversations on particular dates.

Mr. DENNIS. Well, I understand——

Mr. DOAR. And it is one thing to put that kind of subject matter reference and specificity in a letter, but in my professional opinion, you cannot do that in a subpena and for that reason I would say that Mr. St. Clair, the President and Mr. St. Clair would be bound to furnish to the committee these particular conversations, whether or not they relate to the matters in paragraph 1, 2, or 3 for the committee's determination as to relevancy.

Mr. DENNIS. Well, then, your statement is that they must furnish under the subpena, as you interpret it, each of these specific conversations listed in your memorandum of today, even if they do not bear on the subject matter that you inquired about and gave as your specification in your letter of April 4, is that correct?

Mr. DOAR. Well, they are required to do that. But, in the matter of compliance, if Mr. St. Clair brought to the attention of the chairman the ranking minority member, or the committee, that a particular conversation was not relevant, and the committee considered it and decided it did not want it produced, then the committee would not have to require its production. But, that is a matter of compliance. But, in initial instance, with respect to the command of the subpena, under this subpena, the President or his subordinate officer is commanded to bring these particular conversations to the committee.

Mr. DENNIS. All right. They must bring everything listed here, whatever the subject matter might be?

Mr. DOAR. That is right.

Mr. DENNIS. All right.

Now, is it your thought, however, that when this committee—they must bring it here, right?

Mr. DOAR. Right.

Mr. DENNIS. But, is it not your thought, however, that when the committee then passes on the matter, that the committee should be guided by the subject matter limitations expressed in your letter of April 4?

Mr. DOAR. It is.

The CHAIRMAN. May I express to you at this time that I am sure the gentleman is aware of the fact that we do have rules of confidentiality. If Mr. St. Clair or the President were to state in the first instance that matters are unrelated, that they deal with national security, Mr. Hutchinson and myself have the initial responsibility to look at that, and then we would make a determination ourselves along with them. And I am sure that if these were matters that were sensitive, if these were matters of national security, and we were so advised, I am sure that we would so regard and make that kind of a recommendation to the committee.

Mr. DENNIS. Would the gentleman yield a moment to me, the chairman?

The CHAIRMAN. I yield to the gentleman further.

Mr. DENNIS. Well, thank you for yielding. I am sure that you and the ranking member, whenever you have duties to perform, will certainly attempt to perform them to the best of your ability. I am confident of that in both cases. But, what I am concerned about here, in Mr. Doar's letter of April 4, in answer to Mr. St. Clair's request for the basis of our inquiries. Mr. Doar was quite specific as to the type of subject matter, and I thought quite properly so. Now, under the subpena, the subena is broader, according to Mr. Doar, and even though matters covered by the subpena fall outside of the parameters of his letter of April 4, it must be produced here for the committee's ultimate decision as to whether it does or does not fall within these parameters and it seems to me in the subpena we are going somewhat beyond the basis that counsel expressed in his letter of the 4th of April.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. In reference to your statement just a moment ago, I personally feel that counsel has adequately answered Mr. Dennis' question. But, I have a question. Under our rules of procedure for handling the impeachment inquiry material, which I think is pretty important, I favor this kind of a screening process that we had agreed to, and I understood that you and Mr. Hutchinson, and Mr. Doar and Mr. Jenner will be permitted to initially screen, and you have agreed, I guess, to have—that is my understanding—to have Mr. St. Clair there as well. Now, normally the order of sequence would be that you would make your presentation to us, and at that point, we would be given an index of all of the materials and the statement of facts, and then under our existing rules, any member would be able to go over and look at any evidence that you have screened. And it seems to me in this case that it would be desirable if maybe we could alter that

mechanism to let you have the initial and final say as to any national security items.

The CHAIRMAN. I believe that would be a matter we would consider when we consider the rules of procedure.

Mr. RAILSBACK. But do you see what I mean? It is a touchy thing, because as I understand it, we are really not protecting from any member seeing these things that may involve national security, and it seems to me that I, for one, would be willing to take your recommendation as to what may in this particular instance constitute national security materials.

Ms. HOLTZMAN. Mr. Chairman?

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling was asking for recognition.

Mr. SEIBERLING. Well, Mr. Chairman, could I also comment on Mr. Railsback's statement?

The CHAIRMAN. You have the floor.

Mr. SEIBERLING. It seems to me that it is quite obvious that the Chair, the chairman and Mr. Hutchinson would rule on whether this was or was not within the scope of the investigation. If they ruled it was not, I assume that the matter would not be taken by the committee. It would be returned to the White House.

Now, if they rule that it was, then I think any member will probably——

Mr. DENNIS. Would the gentleman yield?

Ms. HOLTZMAN. Would the gentleman yield?

Mr. SEIBERLING. Have the right—I would prefer not to yield at this point because I just want to raise one matter of information, and then if someone else wants to raise a point, they may.

My question is, Mr. Chairman, whether or not this, and perhaps Mr. Latta can answer this or Mr. Doar, whether or not this schedule that has been offered by Mr. Latta is the same, covers all of the same meetings, or rather conversations that are covered in the memorandum that was submitted to the committee this morning by Mr. Doar listing the conversations?

Ms. HOLTZMAN. Would the gentleman yield on that point?

Mr. SEIBERLING. Well, I would prefer to get an answer first, if I may.

Mr. DOAR. The amendment does cover all of the conversations covered in our memorandums submitted this morning.

Mr. SEIBERLING. Thank you. I yield to the gentlelady.

Ms. HOLTZMAN. I thank the gentleman for yielding. I have just compared the schedule that was produced by Mr. Latta with the pages of Mr. Doar's memorandum, and I mean in just my comparison I have noticed at least five conversations that are missing. Now, perhaps somebody else can compare them, and maybe there was not any intent to leave anything out.

Mr. DOAR. I think they have been rearranged, Ms. Holtzman. But, I do not believe that there are five conversations omitted.

Mr. SEIBERLING. I yield back the balance of my time.

Mr. MCCLORY. Mr. Chairman, may I make a comment?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I want to make a very brief comment, Mr. Chairman. This morning I indicated that if there was a commitment from Mr.

St. Clair to deliver voluntarily four of the six items, that I would prefer that over the subpena. I have, during the recess, I have endeavored to get some such commitment in writing from Mr. St. Clair, unsuccessfully, and I think that the offer is entirely too equivocal—too conditional upon which to base a vote against the issuance of the subpena. And unless there is some other evidence of voluntary compliance, I would not want to rely on that kind of voluntary judgment.

You have not received any, Mr. Doar, you have not received any commitment in writing, have you?

Mr. DOAR. No; I have not.

Mr. BROOKS. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is on the motion offered by the gentleman from Ohio, Mr. Latta.

All those in favor of the motion say aye.

[Chorus of "ayes."]

The CHAIRMAN. All opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and the motion is agreed to.

There being no other amendments before the Chair, the question is on the——

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. On the adoption of the motion as amended. All those in favor of the—

Mr. DENNIS. Mr. Chairman, I would like to be heard on the motion.

The CHAIRMAN. I will give you the 1 minute.

Mr. DENNIS. All right, I really have a question, and I do not care who answers it, or is authoritative enough to do it. But, when I talked to Mr. Doar a moment ago, as I understood him, everything must be produced in answer to this subpena which is called for whether or not it is bound with the bounds of his letter of April 4, and then the committee decides the matter.

My friend, Mr. Seiberling, says that the chairman and the ranking member and the counsel decide the matter, which is quite OK with me. But, it is not the same thing. And I do not see where anything says that that is what happens instead of what Mr. Doar said happens. And I would like to know which way it is and on what basis? If you are to do it, where is the authority? Counsel says we all do it.

The CHAIRMAN. The question is a question as to the rules of confidentiality that we will adhere to and make a recommendation to the committee which I hope the committee would then comply with. And I think that that is the way it would go.

Now, the question is on the adoption of the motion as amended by the gentleman from Ohio. All those in favor——

Mr. BROOKS. Rollcall vote is demanded.

Mr. KASTENMEIER. Record vote.

The CHAIRMAN. A record vote is demanded and the clerk will call the roll.

Those in favor say aye and those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. Aye.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
The CHAIRMAN. Proxy. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
[No response.]
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. HUTCHINSON. Proxy. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.

The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
[No response.]
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The CLERK. Mr. Chairman——
The CHAIRMAN. The clerk will announce the vote.
The CLERK. Ayes, 33; nays, 3.
The CHAIRMAN. The motion is agreed to. And I recognize Mr. Mann.

Mr. MANN. Mr. Chairman, it seems to me that it would be appropriate for you as chairman to—well, in the first instance I recall that the chairman wrote a letter to the President concerning our request for evidence and the counsel wrote a letter to the President's counsel concerning the request for evidence.

Now, that we have issued this subpena, it seems to me it would be appropriate for the President to be advised that negotiations with counsel have not been satisfactory with reference to the production of evidence, and the committee has found it necessary, pursuant to its constitutional duty to issue a subpena. And I make that suggestion for the additional reason that the letters of Mr. St. Clair and certain other statements are full of implications that this is all that the committee needs or this is all that the committee is going to get. And I think that we need to reserve to ourselves at this point unequivocally the right to request or subpena such additional evidence from the White House as this committee may deem necessary in accordance with our understanding of that term. I just feel that it needs to be done, and I can think of no better vehicle or way to do it other than your writing such a letter. And I make that suggestion to you. I do not know that you need any direction from the committee to do it, but if you do, I ask unanimous consent that you be authorized to write such a letter.

The CHAIRMAN. Is there objection?

No objection being heard, the Chair will direct such a letter.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. To the President.

Mr. EDWARDS. Mr. Chairman, I would like to call the attention of the committee to your opening remarks wherein you stated your personal views and I am sure that these are the views of most of the

members of this committee if not all of them with regard to representation by the President. And I commend you for those remarks. And I hope that they will be included in the rules that we draw up down the road.

But, I would also point out that your opening remarks should certainly allay the fears once and for all of those who have for one moment thought that this committee is not going to give to the President of the United States every possible benefit of due process and Constitutional rights.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I was one of the those that I think maybe got a little bit hot under the collar when the question as to the right of the President to have counsel present, and the right for that counsel to cross-examine, when we earlier had a rather heated discussion, and let me say from listening to your original statement, I also think that you are to be commended for that, and I think honestly that you and Mr. Hutchinson, both of you have done a good job as far as trying to conduct this in a judicious manner.

Let me just say that I still feel that all of us are going to be judged on how we conduct ourselves, ourselves, and I tell you that it is not just the Judiciary Committee, it is the Congress as an institution. And I sincerely hope that as we get to the more difficult hearing stages, or they may be more difficult, that we can conduct ourselves in the same kind of a way that I think we have displayed here this morning.

The CHAIRMAN. Before we conclude——

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. May I announce the schedule and then I will recognize further members?

As the members are aware, the House will be in recess beginning today for the Easter holiday and we will reconvene on Monday, April 22. The Chair, however, will remain in close touch with the committee, and especially with the ranking minority member during the next week and the inquiry will go forward without interruption. Although it is not the present intent of the Chair to call the committee into session during this period, our resolution from the House permits meetings during the recess and I shall be prepared to give immediate notice to the members if any contingency arises calling for the exercise of the committee's responsibility.

After the recess on Tuesday, April 23, there will be a full committee meeting for the purpose of considering legislation and it is expected that both public and private bills will be on the agenda at that time. It is further expected, and I shall call a meeting or meetings for much of the balance of that week after the Easter break to continue consideration of the scope of the impeachment inquiry, and to analyze and determine the areas for further investigation, or to narrow the investigation.

During the following week, the week of Tuesday, April 30, it is the hope of the Chair that the committee can consider its procedures for the next stage of our inquiry, and it is anticipated that the initial evidentiary presentations will begin on or about May 7. Again, I will be in close consultation with members during the recess.

Mr. SEIBERLING. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman. I will just be brief.

I would like to congratulate Mr. Latta, the newest member of our committee, for coming up with a workable compromise. It looks like on an issue that was before us today and I think that it is full evidence that this committee is basically together on the way we are going. And I am certainly happy that we were able to resolve this, what I consider to be a very small problem to date. And I think the gentleman from Illinois expressed it, that the harder decisions are going to be down the line somewhere. And I do not think the members of this committee, and I think that the audience and the press ought to realize that most of us do not view what we did today, most of us, anyway, as any really large undertaking. I think we did what was necessary and obvious for us to do. And if it is interpreted by the audience or the press as an obvious 36 to 3 vote against the President, they are, in my judgment, at least for this member, erroneously interpreting my vote. I voted for this committee to have the information that it deserves. It has a right to under the Constitution and our duties and that is all I did. And it is not going to govern what I do down the line. I am going to maintain my own independent judgment, to render it as the time arises in the future.

And I think we ought to recognize that this is not—I am a little disturbed because we lost half of our audience when the vote was announced—but this is not, in my judgment, a momentous occasion, as some have said it was. I think it was merely another step along the line of what we have got to do. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman. I am very gratified that we have now established the highly important principle that the President's counsel should participate in our proceedings when we reach the stage of presenting evidence. At the same time, I want to note that how important that may be depends on how we implement the principle, and there really is not very much that counsel can do unless we call live witnesses here and give him a chance to cross examine them.

There are a number of very important witnesses in this matter which I think almost any member here could readily name, some of whom have testified, none of whom have really been subjected to cross examination on the important points on which this committee is concerned and I hope very much that as we consider the rules of procedure, that we will at an early date so that we can resolve it well ahead of time and determine the matter of calling witnesses, what witnesses will be called, and the matter of the right of counsel on behalf of the President as well as counsel on behalf of the committee to examine and cross examine those witnesses.

The CHAIRMAN. We have not had an opportunity to fully discuss that, and we will meet for the consideration of those rules of procedure, the week after the recess.

Mr. DENNIS. I think we cannot proceed this ex-parte. It is entirely too important to do that.

I yield to the gentleman from Illinois.

Mr. MCCLORY. I would just like to make this comment. I think it is important for counsel for the President to be present even though

we do not have live witnesses to comment upon documentary and other types of evidence that we receive and to object to certain types of evidence and to explain, if possible, so that we do get the best possible concept of the evidence.

Mr. DENNIS. I agree to that, but it is his important function, and I yield to the gentleman from——

The CHAIRMAN. The gentleman's time has expired.

I recognize the gentleman from Missouri, Mr. Hungate.

Mr. HUNGATE. I commend Mr. Hutchinson and the chairman on their patience and I hope that they do not develop boils. So, I would like to move that we now adjourn.

The CHAIRMAN. The question is on a motion to adjourn. Those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. And the committee is now adjourned.

[Whereupon, at 2:10 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Impeachment Meeting

THURSDAY, APRIL 25, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice at 10:17 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order. And the photographers and others will clear the room.

The Chair would like to make a preliminary statement. It is the understanding of the Chair that some confusion existed regarding the timing of the afternoon session of the committee's April 11 meeting when it met to consider the issuance of the subpena upon the President. As members will recall, that meeting recessed at noon to convene again later in the day. Some confusion apparently ensued during the break as to whether the meeting was to commence again at 1:30 p.m. or at such time as the House completed its business and adjourned for the Easter recess. The uncertainty apparently was not clarified in time to permit our friend, Mr. Sandman, our colleague from New Jersey to make the 1:30 meeting, which is the sole reason his vote is not recorded on the issuance of the committee's subpena.

The Chair wishes to make clear, however, that Mr. Sandman's absence reflects only the scheduling uncertainty, and not any unreadiness on the part of Mr. Sandman to cast his vote. And I recognize Mr. Sandman.

Mr. SANDMAN. I thank the chairman for the statement. And what I have to say I have to say directly to the media as well as the chair-

man and other members of the committee. I am certain this did not happen because anyone intended to embarrass me.

But second, every member of the media was here when this did happen. We did adjourn at noontime. The first announcement was that the committee would resume after the House adjourned. I left the room and was interviewed by most of the TV media outside of the wall and, yes, the largest newspaper in the District of Columbia, for the first time, I think it was, had my name glaringly on the front page as the only member who missed the vote on this most important vote. This I think is not only unfair, this is dishonest reporting.

The CHAIRMAN. The chairman wishes to announce that on Monday of this week, Mr. James D. St. Clair, special counsel to the President, requested on behalf of President Nixon an extension of time on or before Tuesday, April 30, 1974, to respond to the subpena of the Committee on the Judiciary authorized, issued, and served on President Nixon on April 11, 1974.

Mr. St. Clair respresented to Mr. Doar that he was having difficulty assembling the material to be submitted to the committee, and that the President wanted to review all the material at one time prior to responding to the committee's subpena.

After consultation with Mr. Hutchinson, I authorized Mr. Doar to tell Mr. St. Clair that I would recommend to the committee at the meeting on Thursday, this Thursday, that it grant this 5-day extension of the time for the President to respond.

Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I want to join you in your statement. You did, indeed, consult with me as soon as the message was received from Mr. St. Clair on this matter, and you and I agree that if the President's counsel required a reasonable additional time that it should be granted.

I think that the situation is that we must recognize that the President's counsel is not only having to respond to this committee, but he has to respond to the Special Prosecutor and so on. And I think that under the circumstances that the committee should grant this extension of time, and I am happy to join you, Mr. Chairman, in that recommendation.

Mr. MCCLORY. Would you yield for a question?

The CHAIRMAN. Before Mr. Doar, would you kindly read the letter from Mr. St. Clair.

Mr. DOAR. This is dated April 23 [reading]:

DEAR MR. DOAR:

Further in respect to my letter to you this date will confirm that I requested on behalf of the President an extension of time within which to respond to the House subpena in order that the material to be submitted to the House could be finally reviewed by the President prior to submission to the Committee on the Judiciary.

Sincerely yours,

JAMES D. ST. CLAIR.

The CHAIRMAN. Thank you, Mr. Doar.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, in accord with the President's request of Tuesday, I move the adoption of the following resolution: Re-

solved that the Committee on the Judiciary extend the time for a response to its subpena of April 11, 1974, until 10 o'clock Tuesday, April 30, 1974.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, may I on the motion, may I ask this question of counsel, or you, Mr. Chairman, or whoever might have any information? I just wonder whether, have there been any conversations or any indications as to what kind of a response we are going to get? Is it going to be a favorable response, or a favorable response in part, or do we have any information along that line?

Mr. DOAR. Well, we had no indication that it was going to be no response at all.

Mr. St. Clair has just said that he is having difficulty assembling the materials and he wanted, the President wanted, the opportunity to review it all before he made the response. There was no indication that there was going to be any limitation with respect to compliance. Nor was there any statement that there would be full compliance, as we interpreted it.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I second the motion, with limited optimism.

Mr. SEIBERLING. Mr. Chairman?

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I am going to oppose the motion, as I have announced. I think the President has had 60 days and his counsel has had 60 days to get the material together and it does seem to me that all the President is doing, or all his counsel is doing is that which any defense counsel does, is seek to delay ultimate compliance with any of the proceedings of this committee.

If the commitment has been made by Mr. St. Clair on behalf of the President that at the end of the 5-day extension he would comply with the subpena, I would vote for it. Absent that commitment, I am persuaded, in fact, he will not comply, and that all we are doing is adding 5 days to a process that has been interminably delayed already, and that the end of this 5 days we will be precisely where we are today. We will be meeting to determine what we are going to do because of the failure to comply.

I think also, Mr. Chairman, that when the committee voted 33 to 3 to issue the subpena to the President to obtain the materials than had not voluntarily been supplied us as we had requested and negotiated for 45 days, we at that time exhibited a long overdue will on the part of this committee to confront the same sort of will the President was exhibiting. Our will was to procure evidence; his will was to withhold evidence.

It seems to me we are now backing down from that day, and I was pleased with the committee's response of the 33 to 3 vote. I think this is a retreat from that commitment, Mr. Chairman, and I will vote against the 5-day extension because it does not seem to me it is in the best interest of the committee to play that game with Mr. St. Clair without better promises from Mr. St. Clair or better evidences of cooperation than he has extended thus far.

If you review the performance on the part of the President through every single inquiry that has been conducted into this situation before anybody, the grand jury, the Special Prosecutor, Judge Sirica, and this committee, you will find no instance of cooperation.

The only time anything has been forthcoming from the White House has been under the compulsion of an order of a subpena, and it does not seem to me that we have any realistic reason to expect any different performance in this instance and I am troubled, Mr. Chairman, as to what this means in terms of the request of last Friday, where I understood we made a request for additional information. Do we then negotiate another 60 days for that request and at the end of that time issue a subpena or does failure to comply with this subpena and failure at the end of the 5-day extension, which most assuredly will be the case, mean that our patients will finally have been exhausted with the President?

The CHAIRMAN. I would like to respond to the gentleman by stating that this in no wise indicates that we are setting a precedent at this time that we would wait for response to the further requests we have made of the President.

I would believe, however, in keeping with the patience that we have demonstrated for this period of time, and in demonstrating as well quite clearly that we were interested and are interested to meet our responsibilities to make a determination based on the evidence that we feel is necessary to be before this committee, we are concerned and anxious for the receipt of this data which we believe is pertinent and relevant, and necessary, and we would hope that the President's request is premised on the fact that he intends to reply and to comply with the subpena.

Mr. SEIBERLING. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I am going to support this motion and I am going to do so on the premise that it is reasonable to infer from the request for an extension of time that the original position taken by Mr. St. Clair prior to the time we issued the subpena, namely, that he would make partial compliance with our request by the 22d of this month, and now indicating a desire to have more time indicates an intention to comply fully, and that the additional time is needed to obtain the additional evidence that he had previously planned to give us. And if we do not get full compliance, then I think this committee is entitled to take that into consideration in any future dealings with respect to additional material requested.

I am going to support this solely on that hope, and inference that we are going to get full compliance.

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Mr. Chairman, I appreciate your yielding to me. I would more or less identify myself with what the gentleman from Ohio has said. I cannot imagine that this does anything other than, if possible, place a stronger burden on the White House to comply with our reasonable request, and I do not want to be overly optimistic, but I certainly hope that this is their intention.

If they are dealing fairly with this committee, I would agree with the gentleman from Ohio, this is a reasonable inference from the

request to extend the time, and I hope that within the extended time frame we will have as full compliance as is physically possible to a subpena issued by this committee.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I would like to ask counsel a couple of questions in connection with this proposed resolution. The subpena which was issued called for 10 a.m. today as the return time and date for the materials subpenaed, as I understand it. Right?

Mr. DOAR. That is correct.

Mr. DANIELSON. If we should extend this time by means of this resolution, will we not have waived the failure of the President to comply with this subpena of April 11?

Mr. DOAR. No, we will not.

Mr. DANIELSON. Would the resolution as drafted be sufficient to, in fact, extend the time for compliance without waiving the compulsion of the subpena?

Mr. DOAR. Yes. In my opinion it would.

Mr. DANIELSON. You feel then that there would be no necessity to issue a new subpena at this time returnable on April 30?

Mr. DOAR. No, I do not.

Mr. DANIELSON. I then would make one suggestion, Mr. Chairman. And, in fact, I will so move at the appropriate time that the resolution be amended to read that:

The Committee on the Judiciary extend the time in which the President shall furnish the committee with the documents and things described in its subpena of April 11, 1974, until 10 a.m. on Tuesday, April 30, 1974.

This implicitly is demanding that there be a furnishing of the documents and things subpenaed rather than simply a response to the subpena.

The CHAIRMAN. Will the gentleman withhold that?

Mr. DANIELSON. I will. I simply wish to put this thought into the debate here, because I think it is essential to the resolution of the question.

The CHAIRMAN. I would like to respond to the gentleman by saying that since counsel has ceded unequivocably that there would be no weakening of the original subpena, that the subpena would have the same force and effect, except if the time element would be extended, it would seem to me that to add any other language, would, I think, probably color the original subpena. I would hope that the gentleman would reconsider his intention to offer such an amending motion.

Mr. DANIELSON. I do not offer it as a motion at this time, though at the moment it is my intention to do so at the appropriate time. Perhaps I will change my mind; perhaps I will not.

Thank you.

The CHAIRMAN. Thank you. Father Drinan? Mr. Rangel.

Mr. RANGEL. May I make an inquiry of counsel?

The CHAIRMAN. The gentleman will proceed.

Mr. RANGEL. Mr. Doar, I understand that it is not the President's counsel that is not prepared to turn over the information that we requested, but rather the President has not had the time to review that information. Is that correct?

Mr. Doar. No, it was that the—of course, it was the President that makes the decision with respect to responding to the subpena and Mr. St. Clair said that he had not had time to assemble all of the material, and that the President wanted, and he recommended to the President that the President wanted to review the response and the material that was going to be submitted at one time. I had asked him why it was not possible to make partial compliance today, and he said it was because the President wanted to review all of the material at one time.

Mr. Rangel. I still do not know whether that material has been compiled and we are now waiting for the President to review it all at one time, or whether the President, because of other activities, had not had the time to review what is compiled.

Mr. Doar. My impression was, Congressman, that all of the material had not been completely compiled by Monday, but it was almost compiled, but then it had to be reviewed by the President.

Mr. Rangel. Thank you.

Mr. Chairman, on the motion I will be voting against the motion. It seems as though the President of the United States has had a sufficient time to morally come forward with the information that the American people have asked. I have yielded to the Chair and the majority of the members of this committee in waiting for a response from our request, and obviously, there has been some problem with the lawyers in understanding what we were requesting. I thought earlier, in fairness to the President and the American people, that the issuance of the subpena much earlier would have joined the issues. I think it is safe to say that after the expiration of these 5 days that we will not even get substantial compliance from the Office of the President, that we will hear some additional exchanges between counsel as to the scope of the subpena and perhaps the President might take to the airwaves as to explain why he is not complying.

Sooner or later, we as lawyers and as Members of Congress and this committee will have to go to the mat as to just how far the President is going to go in not supplying the information which we have requested and now we have subpenaed.

I think that we have exercised patience, exercised fairness, and I think the record in the future will indicate that we are not going to get anything from the President because there are no tapes, because some erasures have been made on tapes, or because he would like to give his own summary as to what he meant rather than what is on the tapes.

I have yielded my personal feelings because I thought perhaps the strategy, as outlined by the majority of the members of this committee, might evidence some cooperation from the President's Office. We have waited a long time. I think we have reached that point in our patience where we should find out exactly what the President intends to do.

For those reasons, I will be compelled to vote against an extension of time.

Mr. Mezvinsky. Mr. Chairman?

The Chairman. Ms. Jordan?

Ms. Jordan. Mr. Chairman, I would make note at this point that I will vote in favor of the motion granting to the President this addi-

tional time to reply to the Committee on the Judiciary. It has been our practice since the beginning of this impeachment inquiry to give to the President not ordinary due process, but due process quadrupled and I am quite willing to quadruple the President's due process, if it is going to help us at some point make a resolution of the issue which confronts us, which is defensible and sensible. Now, this committee, if it votes for this extension, will demonstrate clearly, not only to the President, but to the rest of the world, that we are not out to kill the king or behead him, that all we want is to present a presentation of evidence to support whatever our conclusions are which can stand the test of time, the test of history, the test of logic and good judgment.

I would simply hope, Mr. Chairman, that in granting this additional time, we have made it absolutely clear that we fully expect the President to comply in every particular with the subpena, with the information that we have requested of him, and at the granting of this extension is no lessening of our resolve to get everything we need to carry this inquiry to a prompt and just conclusion.

And for that reason, Mr. Chairman, I feel that it would be a further demonstration of our good faith, whether it is met in kind or not, if we were to approve this motion.

The CHAIRMAN. Thank you.

Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman. I want to just briefly echo the reason why I will support the extension and say that I think notice should be given to Mr. St. Clair and the President that when we say full compliance, full compliance does not mean transcripts. Full compliance does not mean minus one of the items or two of the items. Full compliance means every item specifically stated, as pointed out in Representative Latta's statement, and no transcript.

Now, I have one question. We have seen reports that possibly some tapes may not be available, they may be lost, the machine may not have been working. Are we at all on notice, Mr. Doar, or Mr. Jenner, that, in fact, there is the possibility that some of our specific requests as to taped conversations may not be available, may be lost, and that the machine may not have been working specifically at the times that we laid out in our subpena?

Mr. DOAR. Well, it is a matter of public record, Congressman that on the 15th of April, the testimony in Judge Sircia's courtroom was that the machine, the tape had run out, and conversations on that date were not recorded. Only to that extent have we been notified that in any way there has been any missing tapes, or missing or unrecorded conversations.

Mr. MEZVINSKY. So that as far as our knowledge to date here this morning, outside of that point, we can fully, at least expect and hope to expect that the conversations requested are available and within the confines of the President and the White House which will be ultimately given to our committee in compliance with our subpena?

Mr. DOAR. Well, let me add one more thing.

Mr. MEZVINSKY. Is that a correct interpretation of at least what our understanding is here today as far as the committee is concerned.

Mr. DOAR. That is my understanding, although let me add one more thing, that at some time after we had made our request in our letter

of April 4, Mr. St. Clair called me and said that he was having difficulty locating the conversation that took place between the President and Mr. Haldeman on or about the 20th of February and he asked me if I could give him any further information with respect to the time of that conversation.

We went back through our records and gave him that. I called and gave him that infromation. We have not heard anything further from him.

Mr. MEZVINSKY. We have nothing specifically as to the March 27 or the March 30 conversations.

Mr. DOAR. No. There has been no indication at all about those conversations.

Mr. MEZVINSKY. OK. Thank you, Mr. Chairman.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you. Mr. Chairman.

I expect to support the motion. I think the record should point out that we did not make a small request. I think that we subpenaed something between 1,200 and 1,300 minutes of conversation. Is that correct, Mr. Doar?

Mr. DOAR. I think that is correct.

Mr. LATTA. Something like 20¾ hours at that time.

Mr. DOAR. Something in the order of 1,600 minutes.

Mr. LATTA. 1,600 rather than 1,200 or 1,300?

Mr. DOAR. But mindful of the fact that a good portion of those were on the 15th of April, which was on the day that the recording machine was not operative. So, it would be I suppose 1,200. Your estimate would be 1,200.

Mr. LATTA. 1,200 to 1,300. So, we did not ask for a small amount of information. And from a practical standpoint, it takes some time to get this material. So that for that reason, Mr. Chairman, I feel that the committee is using its better wisdom in extending this time.

The CHAIRMAN. Thank you.

Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

After searching my conscience for a substantial time with respect to the extension, I find that I will be unable to support the motion. And I do so with some reluctance because I respect the recommendation of my chairman. But, I also do so because I am troubled by three things.

I am troubled first by the offer that Mr. St. Clair made to us when we met on April 11 and voted for the subpena; namely, that within 4 days he would turn over four of the items called for if we did not issue a subpena. Now, we are informed that there cannot be any partial compliance until the President has reviewed all of the material. I think the question has to be raised before this committee as to the bona fideness of Mr. St. Clair's offer to us on April 11, in view of the subsequent events.

Second, the President has asked for this time, through his counsel, on the basis that he needs the time to review all of the tapes. Since February 25, the President has taken substantial time to make appearances explaining why he is not going to comply with our request.

He has spent substantial time in an appearance in Chicago; he traveled to Houston, he made a substantial trip out there and back to discuss why he would not comply. He made an appearance in Nashville and he campaigned in Michigan. He took a vacation in Key Biscayne. Today he is in Mississippi, to my understanding. I think the President, since February 25, has had more than ample time to make a direct review of the materials and in view of the time he has spent on political matters, it seems to me that the committee's insistence on compliance with this date is not unfair.

Thirdly, I am concerned about the delay that this extension may occasion to our inquiry. There may be materials in those tapes that will cause us to ask for other documents and other materials. And every day of delay, it seems to me, is going to hamper the expedition with which we conclude our efforts here.

And I think, too, just simply, that we have given the President substantial time. We have leaned over so far backwards that I am afraid some of us have fallen over, and I would suggest that we insist on compliance with the subpena in full on this date.

Thank you.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, I am going to support the motion generally for the reasons advanced by our colleague from Texas, Ms. Jordan, and at the same time expressing no disagreement with any of the statements that have been made by the previous members of the committee.

However, I would like to ask counsel a question. As of right now, as of 10 o'clock this morning, our subpena has been resisted, has been refused, is that not correct?

Mr. DOAR. I did not understand.

Mr. EDWARDS. The demand of the subpena has been refused as of 10 o'clock this morning?

Mr. DOAR. Well, it has not been refused. It has not been complied with.

Mr. EDWARDS. It has not been complied with. Is that not correct?

Mr. DOAR. Yes. That is right. But, I will say that when counsel called me and I called him back, I advised him that the chairman would request of the committee, after consultation with the ranking minority member, approval for the extension of time.

Mr. EDWARDS. Would counsel also agree that there could be here in this noncompliance, as of right now, with the subpena, that there is a possible violation of title II, United States Code 192 that provides that refusal to produce evidence as required by this subpena is a Federal misdemeanor subject to a fine of up to $1,000 and imprisonment up to 1 year?

Mr. DOAR. No, I would not believe I could agree to that, Congressman. I think that in my discussions with Mr. St. Clair that I indicated to him that the extension, on the instructions of the chairman, that the committee, this would be presented to the committee on Thursday, and that the chairman and Mr. Hutchinson would recommend it. And I do not believe under those circumstances that you could, that you could charge Mr. St. Clair with any kind, or the President, with any kind of a willful defiance of the subpena.

As a practical matter, the committee was not together, and the request was made and that was the way it was handled. And so, I do not believe that it would be, I could advise you professionally that there has been any defiance of the subpena by the President.

Mr. EDWARDS. Thank you.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

Mr. Doar, did I understand you to say that Mr. St. Clair indicated that he could not make partial compliance by 10 o'clock this morning because the President wanted to review all of the materials, all of them before they were submitted to us?

Mr. DOAR. That is right.

Mr. OWENS. But there is no indication to what degree they would comply?

Mr. DOAR. There was no indication of that.

Mr. OWENS. We are not I assume taking, they would not be supplying the only copies of the documents, the tapes? The President would still have access to those tapes, would he not?

Mr. DOAR. Yes. They would. The system is that the White House, under Mr. Buzhardt, makes copies of the conversations and furnishes us a copy of the tape.

Mr. OWENS. So is there not implicit in that, in that reply, the President's desire to review the tapes that conceivably he would hear something that he did not want to turn over to this committee.

Mr. DOAR. Well, I do not think—I would not want to make a judgment on that, Congressman. I think it is a reasonable request that the person who is going to respond to the subpena have before him all of the material to review before he responds. I think that is, rather than have his attorney give it to him piecemeal, I think that this is—the President obviously feels that he has an important position here, and as your attorney, I am confident that the committee has an important, and it is a constitutional position to protect here. And, therefore, I see no reason why we should not permit the President the opportunity to proceed carefully and with the committee being aware that the President makes his decision, he does make it with all of the facts before him.

Mr. OWENS. Do you have any information as to whether, in fact, as reported, there has only been one attorney and one secretary working on those tapes? Did they give you any information about how hard they were working in preparing those materials?

Mr. DOAR. No. I do not have any information on that.

Mr. St. Clair indicated that he had been working over the weekends, and that he was just having, he said they were having a difficult time getting it all together. And I can not tell you, I can not tell you whether or not the recordings were easily transcribable or difficult to transcribe. Our experience with the tapes that we have are that some are very easy to transcribe, some are very clear, and some are very difficult.

Mr. OWENS. And they offered no explanation other than what you have told us this morning?

Mr. DOAR. That is all.

Mr. OWENS. Mr. Chairman, I reluctantly support the motion, although I do so in a sense in a grudging way, and simply because of

my respect for the chairman and the ranking Republican member, and the fact that they have, in essence, given this assurance to the President's counsel. But, I will not vote to extend it any further. And I am under the distinct impression the President simply will not comply until, and whether he will do it then is an open question, he is faced with a contempt citation. I recall the first Watergate grand jury subpena, and it was after, as I recall, only 4½ days of being in contempt of that citation, although not having been cited for contempt by the court, that the President finally, finally complied at least partially with that subpena. And I regret that we are asked to extend this time without any assurances whatever that the President will comply with the tapes or whatever, or to what extent that he will comply.

But, I will support this because the time has now expired and because the chairman and the ranking Republican have given that assurance. But, I will hope that the President will comply, and I agree with my colleagues that this imposes, I hope, will impose upon him a greater obligation and feeling that he has a greater obligation to comply.

The CHAIRMAN. Thank you.

Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, if there is no further debate, I would like to move the question. I will withhold it if anybody has anything more.

The CHAIRMAN. The Chair would like to make a statement before the question is put to the committee.

The Chair would like to state that on recommending this extension to the committee, the Chair is primarily concerned with meeting the responsibility of this committee under the Constitution and under the resolution that was adopted by the House of Representatives by vote of 410 to 4 directing this committee to inquire as to whether or not evidence does exist upon which to base grounds of impeachment. I think that we will not be diverted from that course. I think we should not be diverted from that course.

Whatever is in the mind of the President, I cannot read. I would only hope that having made the statement that he did, in his address, on the state of the Union, that he meant what he said when he stated that he recognized the special responsibility of this committee to conduct this inquiry, to conduct it completely and fairly. And this is all that the Chair has in mind.

If there is any other interpretation that is in the mind of the President or the White House, or those that are directing this strategy, I would hope they are alerted to the fact that this committee is doing what it is doing with tremendous restraint only because it feels that it owes an obligation and a primary responsibility to the American people to try to assemble the evidence that is necessary, that is relevant to make a judgment that will be fair, that will be comprehensive and that will be complete. And only in this spirit do I recommend this extension to the committee, not only in the hope but expressing, I believe, the desire of the American people, that the President come forth with this evidence, with this data, so that once and for always this committee may be able to, based on the evidence, come forward

with the judgment as to whether or not the President, in the conduct of his office, has committed impeachable offenses.

And having said that, I do say that I recognize that the members on the majority side who are going along and going along with reluctance, I want to commend them for their restraint, and I recognize, too, the inability of some of them at this point to go beyond today in having the response, a full response to this committee's subpena.

And now I put the question to you.

Mr. WALDIE. Rollcall, Mr. Chairman.

The CHAIRMAN. The question is on the motion and the call of the roll is ordered. The clerk will call the roll.

All those in favor of the motion please say aye and those opposed, no.

The CLERK. Mr. Donohue.
Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The CLERK. Thirty-four having voted aye, four voting nay.
The CHAIRMAN. And the motion is agreed to.
Mr. WIGGINS. Mr. Rodino? Mr. Chairman?
The CHAIRMAN. Before recognizing Mr. Wiggins, the Chair would like to state that the Chair is prepared to recognize Mr. Wiggins after a discussion with Mr. Wiggins as to a motion that he would like to present, which has to do with a matter that I believe is of importance in the conduct of the inquiry of this committee. However, it is my understanding that the motion may be, will be offered, but that any vote on the motion will be deferred until a further date?
Mr. WIGGINS. Yes.
The CHAIRMAN. Is that correct?
Mr. WIGGINS. That is correct, Mr. Chairman.
The CHAIRMAN. Mr. Wiggins.

Mr. BROOKS. Mr. Chairman, parliamentary inquiry. Is such a motion in order today? Is it on the agenda? I just asked that question. I do not know.

The CHAIRMAN. The Chair will rule that since the agenda provides for the consideration of areas within the scope of the impeachment inquiry, I believe that the motion, as the gentleman has expressed it to me, which relates to the material that may be presented to this committee or may be forthcoming, or may be demanded, that I believe it is in order.

Mr. WIGGINS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. The Chairman is correct that it is my intention to move the adoption of the resolution which I have circulated to all of the members, but then to ask unanimous consent that further consideration of that resolution be deferred until our next regular meeting.

My reason for doing so is that I want all of the members to have ample opportunity to study the resolution in advance of their vote and to have staff also to have an opportunity to comment upon the proposed resolution.

I will say at this time, in advance of moving the adoption of the resolution, however, that the resolution is intended to be constructive and it is intended to deal with four areas only.

Mr. HUNGATE. Would the gentleman yield?

Mr. WIGGINS. Of course.

Mr. HUNGATE. Is the gentleman, in effect, moving, asking unanimous consent that his motion be considered today but not voted today?

Mr. WIGGINS. Well, it is not my intention that it be debated today either. That is my personal intention. I would simply like to move the adoption, and then defer any further consideration until the members have had a more thorough opportunity to consider it.

But, to aid your consideration I will just take less than 1 minute to say that it is intended to deal with objections which may be raised by the President to request for information from him. It is anticipated that the only objections which the President might make are to the relevancy of the data requested. He may make an objection based upon a claim of privilege with respect to the information requested. It is conceivable that the President may make an objection based upon the grounds that the evidence requested deals with national security matters, or some overriding national interest.

The motion which I shall make is intended to establish a procedure for dealing with those objections. And the gentlemen, after studying the resolution, will be assured that in all cases the final resolution of those questions is vested with the committee and not with the President.

And finally, at the end we may as well confront the question of the possibility of transcripts being tendered in lieu of tapes themselves and it is intended to offer a mechanism for resolving that question.

Now, I will be happy, of course, to answer the questions, but it would be my wish that we not get into this matter in detail, but that the members study it carefully over the weekend so we will have an opportunity to discuss it intelligently.

Mr. DENNIS. Would the gentleman yield to me?

Mr. WIGGINS. Of course.

Mr. DENNIS. I would say that I have had an opportunity to look at the gentleman's motion, which does address itself to very important questions which are going to be before us. And generally speaking, I think it addresses itself very well to those questions, and I would anticipate that I would be in basic support of the motion at the proper time.

I would like to take this opportunity to commend the gentleman for deferring its detailed consideration until we have all had a chance to consider it. And in that connection, Mr. Chairman, I would like to voice a concern which I do have in that that procedure be followed in general.

Now, next week, as I understand it, at some point we are going to have a meeting on adopting procedures. Probably Mr. Wiggins' motion would be one of the procedures. I assume there will be others. I understand the staff will be preparing some suggested procedures. Now, I think it is exceedingly important to every member of the committee that that staff preparation be given us a reasonable number of days before the meeting so that we can consider it, and caucus on it if we want to, and offer amendments and have them ready. And now last week we had a very fine, I think very adequate justification for our subpenas, but because of the circumstances, which I do not have any quarrel with, but the fact is, we never saw the justification until we just had to vote on it, without reading it, and I do not think that ought to happen again.

Now, not only the procedures next week, we are also going to have that matter up about the extra or additional requests that have been made, as I understand it. I think we ought to have that letter so that we will know what we have asked for. And certainly we ought to have the justification so that we would not be in the situation we were last week.

So, I want to commend the gentleman from California, and I want to very strongly request that our procedural proposals, and these other matters I have mentioned, be given the members of the committee long enough ahead of time so we can consider them and prepare anything we may want before we have to take action.

The CHAIRMAN. The gentleman is assured that the committee will be provided with the draft rules of procedure so that the committee will have ample time to consider them before taking those rules up.

Mr. SEIBERLING. Would the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from Ohio.

Mr. CONYERS. Mr. Chairman, I raise a question of parliamentary inquiry, because I hope we do not get into the business of this unilateral pedalling of motions in advance. Now, my friend from California does not want us to debate the motion. We have had him speak in favor of it. We have had another member speak in favor of it. I think we should observe more regular order in the presentation of motions. There are going to be a number of them coming up from a lot of members, and we do not want people speaking to their motion and then several days later they will be willing to engage in a little debate.

Mr. WIGGINS. I am attempting to accommodate the chairman. I will say to the gentleman. I am perfectly willing to proceed.

Mr. CONYERS. I am willing to yield to the gentleman on another technical rule, if you will. I object, Mr. Chairman, I say this strongly,

to having people who have motions present them, to speak to them, and then to suggest that they are accommodating the chairman. I do not think they are accommodating regular procedure.

Mr. SEIBERLING. Would the gentleman yield?

Mr. WIGGINS. Speaking of regular procedure, Mr. Chairman, I believe I have the time, do I not?

The CHAIRMAN. The gentleman from California has the time. I would hope that having——

Mr. WIGGINS. I yield to the gentleman from Ohio.

Mr. CONYERS. Point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from California was recognized for the purpose of offering a motion, and assured me that it would take 2 or 3 minutes. Now the gentleman is now yielding. I would hope that the gentleman having stated what the motion was all about, would now be in a position to ask unanimous consent that the motion be considered, only next week, for the purposes of debate.

Mr. WIGGINS. Well, I am prepared to do that, Mr. Chairman.

And accordingly, Mr. Chairman, I move the adoption of the resolution which I have distributed, and ask unanimous consent that further consideration of that motion be deferred.

Mr. CONYERS. Objection.

Mr. DRINAN. I object.

The CHAIRMAN. Objection is heard.

Mr. WIGGINS. I have previously moved the adoption of the resolution. Now, Mr. Chairman, I move that further consideration of the motion be deferred until the next regular meeting next week.

Mr. SEIBERLING. Mr. Charman?

Mr. COHEN. Parliamentary inquiry.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. What is the effect of moving the adoption of the resolution?

The CHAIRMAN. Well, the gentleman has the right to move the adoption of the resolution.

Mr. MCCLORY. Mr. Chairman, may I speak just briefly on this because it is something in which I am interested and others are interested as well, I know. What this motion does, the motion which has been put together very ably by the gentleman from California, Mr. Wiggins, is to develop a means by which our counsel, and counsel for the President may jointly act in reviewing or screening taped materials which we expect are going to be forthcoming from the White House for the benefit of this committee. And it seems that we do have to, it seems to me we do have to adopt an orderly procedure, and I think that it is fair, it is a fair and equitable way in which the interest of the President can be protected, and at the same time that this committee can be accommodated and there must be some mechanism at some time by which we can act on this.

So, I am hopeful that this matter may be reviewed carefully, and thoughtfully, and impartially and objectively by this committee, and then we can take action on this mechanism which I think is a logical one.

Mr. SEIBERLING. Would the gentleman yield?

Mr. FLOWERS. Mr. Chairman? Mr. Chairman?

Mr. SEIBERLING. Will the gentleman yield?

Mr. DENNIS. Would the gentleman yield?

Mr. MCCLORY. I am happy to yield to the gentleman from Indiana.

Mr. DENNIS. I thank the gentleman from Illinois.

It seems to me that I do not understand my friend from Michigan here.

The CHAIRMAN. The Chair would——

Mr. DENNIS. The gentleman yielded to me, but I will stop if the chairman thinks I ought to.

The CHAIRMAN. I think so.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. If the gentleman from California will withdraw his motion, the Chair will assure the gentleman from California that since it is a matter that relates to the obtaining of materials necessary for the impeachment inquiry and in accordance with the stated agenda of the Chair that this would come within the framework of adoption of rules of procedure, that this would be one of the motions that we would consider.

Mr. WIGGINS. Well, that is the only assurance I really want, Mr. Chairman. And I certainly do not wish to provoke a controversy and with that assurance, I will be happy to withdraw all of my motions.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Members of the committee, Mr. Jenner and I would like to report to you this morning on the present status of the work of the impeachment inquiry staff. All of the members have before them a memorandum [1] dated April 24, as well as the memorandum dated March 1, 1974. And if I might suggest, it may be useful for the committee members to look at those two reports together. The reason for that is that in the introduction of the April 24 report we indicate to the committee where our priorities have been with respect to our investigation, what work we have been doing, what materials we have been analyzing and then say that the body of this report summarizes certain areas and categories of, but not all of them, and that in the areas and categories not specifically mentioned, our investigation is continuing, and we regard those areas as priority matters where we are giving them detailed attention.

Now, then, turning to the next page of the report, the first letter there on page 3 refers to the letter D. The reason for that, members of the committee, is that the allegations in the March 1 report with respect to allegations concerning domestic surveillance activities conducted by or at the direction of the White House, which was divided into six items, are still under investigation.

The allegations under B concerning intelligence activities conducted by or at the direction of the White House for the purpose of the Presidential election of 1972, consisting of four items, are still under investigation, and the C allegations concerning the Watergate break-in and related activities, including alleged efforts by persons in the White House and others to cover up such activities, including 13 items, are under investigation.

And, of course, as the committee knows, the material that we have received from the White House, the material we have received from the grand jury relates in large part to these particular areas of our

[1] See "Appendix V—Status Report as of April 24, 1974", in book III "Impeachment Inquiry".

inquiry. And what we have been doing is digesting and analyzing and organizing that material for part of the initial presentation.

Now, area D dealt with the personal finances of the President, and what this report attempts to do is to briefly summarize the findings of the Joint Committee on Taxation with respect to the President's 1969, 1970, 1971, and 1972 income tax returns. And particularly with respect to items of unreported or underreporting of income, or deductions that were disallowed in the staff report of the Joint Committee.

At the conclusion of that report, the Joint Committee indicated that it was making no investigation whether or not there was any basis for criminal tax fraud allegations against the President for which the President might be responsible.

It has been reported, and I have verified that the Attorney General Saxbe has made a formal delegation to the Special Prosecutor of authority to investigate possible tax fraud in connection with the question of the pre-Presidential papers. We assume, that is Mr. Jenner and I assume that whatever investigation the Special Prosecutor conducts, it is likely to be prolonged, and that the result will not be available to the committee under the committee's contemplated timetable.

Now, in connection with the gift of the pre-Presidential papers, the Joint Committee sent to the President on March 22 certain questions, and they are found at the page beginning at page A, appendix 770 of the Joint Committee report. And we have under consideration, the staff has under consideration these interrogatories which were not answered, there was no response by the President, whether or not that is a matter that the committee might wish to consider in connection with the investigation and its inquiry into the personal finances of the President.

There has also been——

Mr. WALDIE. Mr. Chairman, may we interrupt at a time when we do not understand a particular point?

The CHAIRMAN. The gentleman may.

Mr. WALDIE. What was the date of the interrogatories that were submitted for response to which none has been received?

Mr. DOAR. March 22.

Mr. WALDIE. Is that referred to in your memo?

Mr. DOAR. The date of the reports referred to. It is on page 9 of the report.

Mr. WALDIE. I thank you.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Doar, in regard to this, I went through this and I just have one question as far as the tax matter. There was a previous question at a meeting as to the cooperation from the IRS. Have we received from the IRS, from the Internal Revenue Service the report that was compiled that laid out the tax deficiency for the President and the reasons for that deficiency?

Have you and the staff received the complete work product by the Internal Revenue Service?

Mr. DOAR. No, we have not. As a matter of fact, we have not yet, we have not requested that report for the reason that we were continuing our discussions with the staff of the Joint Committee with respect to that report before requesting it. So, we have not requested it, nor received it.

Mr. MEZVINSKY. Do we plan to request that?

Mr. DOAR. Yes.

Mr. MEZVINSKY. When?

Mr. DOAR. Congressman, there are a number of matters that the chairman and the ranking minority member and Mr. Jenner and I would like to discuss with Congressman Mills of the Joint Committee. And I would like to defer responding to that, defer my recommendations on that until we have had that meeting.

Mr. MEZVINSKY. You mean to say that there is a possibility that we may not request the IRS report?

Mr. DOAR. No; I do not mean to say that at all.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I have two questions regarding this. I have asked you the question, I think it was at least 3 weeks ago, as to whether or not you were going to request the IRS report, and you assured me in this meeting, public meeting, that you were going to request it.

Mr. DOAR. That is true. That is true.

Ms. HOLTZMAN. Can you tell us when that is going to be done?

Mr. DOAR. Well, what we are anxious to do——

Ms. HOLTZMAN. This is not a 60-day process either, is it?

Mr. DOAR. No. But, what we are anxious to do is to secure the information and we are working with the Joint Committee staff to be sure that the legal basis for securing this information is set forth carefully and as responsibly as we can before we submit a request.

Ms. HOLTZMAN. But the request will be submitted shortly?

Mr. DOAR. Yes; it will be.

Ms. HOLTZMAN. Also, you said that you had satisfied yourself that the Special Prosecutor is reviewing tax fraud in connection with the President's taxes.

Mr. DOAR. No; I did not say that.

Ms. HOLTZMAN. I was unclear as to what exactly you were saying with respect to that.

Mr. DOAR. And I said, and I verified this specifically and it is set forth on page 9, that under the authority and delegation between Attorney General Saxbe and the Special Prosecutor, the Attorney General has the authority to delegate certain matters to the Special Prosecutor for investigation. And specifically, Attorney General Saxbe made a formal delegation to the Special Prosecutor of authority to investigate possible tax fraud in connection with the question of the pre-Presidential papers.

Ms. HOLTZMAN. But we have no information one way or the other as to whether or not Mr. Jaworski is, in fact, investigating the President in connection with the allegations of tax fraud?

Mr. DOAR. Well, they are investigating the matter. That is, as far as—that is the only statement that has been made.

Ms. HOLTZMAN. Thank you.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Well, just to follow up on that, Mr. Chairman, I am quite disappointed that we have not moved forward, because actually we have known for weeks, if not months that the Joint Com-

mittee would not make a determination of any tax fraud, or make any assessment of the President's activities other than to assess an amount that might be due. Correspondingly, we knew that if there was to be such a determination, or such an investigation, it would largely have to come through our own efforts, I would have thought, and I am very disappointed that we have not initiated such independent investigation of this point.

Mr. DOAR. Well, Congressman, let me say this. The investigation of tax fraud is a complicated matter, and it seemed to me wise that we have the benefit of the expertise of the Joint Committee staff in connection with that investigation. Now, we have had people working on this, and working along with the Joint Committee all of the time that the Joint Committee has been working and we are very familiar with the results of the Joint Committee's investigation. And we do know where and what steps to take to further the investigation.

The point that we are making this morning is that in order to complete the investigation we are going to have to now go ahead and conduct interviews, and it may be necessary for the committee to subpena witnesses and hear testimony from people about this matter. Now, because there is no other body that is now investigating, that is doing this, and I think that all of the—there would have been really no feasible way.

Your staff did not have the capability of developing the factual material that is contained in this report with respect to the gift of papers, but now that that development has been made, that basis has been made, and we have had the benefit of frequent conferences and consultations on that, we are ready to move forward and are moving forward with the inquiry.

Mr. KASTENMEIER. Well, I as one member of this committee would urge that you do so, and with all possible speed. But, the language in your status report suggests that this is in the future. It will be necessary for the committee to conduct its own investigation, if it is to pursue the subject and that is the language you use, and this is what suggests that there may be a great deal more, that we will have to do, and has not in fact, been done in the past.

Mr. DOAR. Well, I am afraid that is true, that the questions of investigation of criminal tax fraud are not easy questions, and I can just say to you that whatever investigation the Special Prosecutor may be making is such that there is no way, feasible way under this committee's timetable that we can wait for that, and we are moving forward now in connection with this area and there are certain investigations that we are now conducting, interviews we are now conducting.

But, we may have a problem of unwilling witnesses. We may have to ask the committee to subpena witnesses and proceed in that fashion. And that is a little different, that is a little different than the kind of investigation we have been conducting to date in other areas.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Sandman.

Mr. SANDMAN. I will not take all of my time, but I would like to direct just a few questions to counsel.

Up to this point, it has been my understanding that there has been no finding of intent to defraud. Now, reading the report submitted by

the staff, it is clearly stated here that no investigation had been made of any kind into whether or not there was any intent to defraud. Now, the question is, if you look into all of these facts and these claims, disclaim all of these deductions as taken by the President, how can they disclaim those without making a close investigation as to whether or not they were done legally or fraudulently, intended to be done wrong? How would you expand on your investigation in all those areas? How would your investigation be any different from what the Joint Committee on taxation has already done?

Mr. DOAR. Well, the investigation would involve a questioning of those persons that have prepared or assisted or directed the preparation of the President's 1969 income tax return with respect to the gift of the pre-Presidential papers, and would be also, it may well be that the questions that were propounded to the President on March 22 would be relevant to that inquiry.

Mr. SANDMAN. Now, would this be limited to a gift of the pre-Presidential papers, or would it go into all of these disallowed deductions?

Mr. DOAR. No; it would be limited to the gift of the pre-Presidential papers in this area?

Mr. SANDMAN. Oh, I see. Well, then, that would not be a prolonged investigation, would it?

Mr. DOAR. Well, any——

Mr. SANDMAN. The only thing that you would have to determine is whether that was done with the intent to defraud.

Mr. DOAR. Yes. Well, there is also the question, there is one other area, and that is the question with respect to the matter of, with respect to the work done on the San Clemente and Key Biscayne. We are still conducting some investigation to round that out. But, with respect to the income tax return, the only question is the pre-Presidential papers. That is right.

Mr. SANDMAN. But, here again, if you are looking into what was spent at San Clemente or Key Biscayne, the Joint Committee on Taxation disallowed those two deductions. Now, how would your investigation into that same matter be conducted any differently than the way the Joint Committee on Taxation did it?

Mr. DOAR. Well, it might be conducted in no different way. We might get information with respect to certain of these disallowances.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Brooks.

Mr. BROOKS. I would say to my distinguished chairman and to our counsel, I note on page 2 of this document that it says in each area and category noted in the March 1 report, but not specifically mentioned in the memorandum, the investigation is continuing. Now, does that mean that those items specifically mentioned in this memorandum are not going to be continued open files available to the members if they want to take a look at them, available to additional information should be turned up? I just want to make clear—I better not use that phrase—I want to make it obvious that I do not believe that this committee wants to draw up any single charge and say we are not going to include San Clemente or Key Biscayne expenditures there or any other facet of the myriad of different allegations and investigative areas that we have taken a look at.

The CHAIRMAN. Would the gentleman yield?

Mr. BROOKS. I would be delighted, Mr. Chairman.

The CHAIRMAN. I would first, in order that we be precise about what we are saying and what we are doing, I would like to state unequivocally that there are no charges being leveled. These are allegations that are being looked into. And it is an inquiry. And I believe that we can state, and I know emphatically that no phase of the investigation is concluded or discontinued as such, especially in light of the fact that there may be material that may be relevant that certainly could shed some further light. I think that what counsel is doing and what we have got to recognize as to this committee, that with the resources and the capability of staff, that they are trying to allocate the resources in order to meet certain priorities. And this is what is now being done. But, I want to give them my assurance that in no way will we speak or can we understand or at least it is not my impression, that there is a determination or a tearing off or conclusion, or a writing fini to the allegations that have been made. I think this is part of the total inquiry.

Mr. BROOKS. Is that the clear understanding of counsel?

Mr. DOAR. That is correct. That is my understanding.

Mr. BROOKS. Thank you very much.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. I am reassured by the chairman's statement because I join my friend from Wisconsin, Mr. Kastenmeier, in expressing some amazement that this committee, for all of its responsibility is taking so long to get to perfectly anticipatable questions. Now, the question of fraud was clearly not going to be ruled on and its impeachability, or its being an offense within the context within which this committee is working was clearly not going to be considered, and so with all due respect to my good friends, Mr. Doar and Mr. Jenner, I must ask you and the chairman, do you have sufficient staff to move as expeditiously as everybody keeps asking this committee to move, and is it arranged or organized in a way that is fully satisfactory to you at this point?

Mr. DOAR. Well, the honest answer to that is "No."

Mr. CONYERS. I am glad to hear that.

Mr. DOAR. But I do not know that any step could possibly be organized to meet the expeditious requirements that everybody sometimes places on us, including the spokesman for the White House. We are trying to do our best we can. We are trying to organize in a way that we run down all of the areas that the committee has indicated as part of this inquiry, and we are trying to do it with as much speed as we can, and still do it carefully and responsibly. And we do have the manpower to continue this investigation that you are referring to here.

Mr. CONYERS. Well, the simple question is, do you have enough lawyers to get into all of these areas at once? We are moving toward evidentiary hearings. That means that in approximately 50 some odd different areas, we are going to be moving our information forward through a process of hearings and it seems to me that, as Mr. Kastenmeier pointed out, if it takes us 3 weeks to get a report; for example, I do not know what the legal problem is in getting, in getting the IRS report on this and we knew that we were going to have to investigate

for the fraud and if we are that far behind on these obvious matters, where are we on some of the more difficult and closer questions in terms of getting the evidence together? It is a little bit disturbing to me, Mr. Chairman.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I wonder if we could not have the counsel complete the presentation of this status report? I know there are a number of other items in here, and I know we do want to get through with it. And I was interested in having him point out those items on which there appears to be a little evidence, or inadequate evidence and that sort of thing so that I think we could possibly learn a great deal from this presentation.

Mr. RANGEL. On that question, Mr. Chairman——

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I appreciate the chairman clearing up earlier with counsel that there is no arbitrary decision being made as to what is going to be eliminated from this inquiry and I was not prepared to speak until my colleague, Mr. McClory, raised a question about who is going to determine, Mr. Doar, what evidence, little evidence, or no evidence in any manner?

Do I understand the Chair correctly in saying that in that matter what it is that you are prepared to give us is a written report, and as Mr. Brooks pointed out, that we will have the obligation and the opportunity to then look at the information that you base that report on?

Mr. DOAR. That is correct.

Mr. RANGEL. So that this dispels any rumors in the media that we are going to eliminate. We are merely going to make an assessment as to the priority of staff and this committee's time?

Mr. DOAR. Well, that is correct. I would say to you that in some areas we have investigated and found that there was no basis for the allegations.

Mr. RANGEL. Well, why can we not have a report?

Mr. DOAR. You will get a report on that.

Mr. RANGEL. So what we are doing now is just preliminary, without any decisions?

Mr. DOAR. That is right. That is right. It is a summary of where we are.

Mr. RANGEL. And this committee will determine whether or not there is evidence or not?

Mr. DOAR. That is my understanding.

Mr. RANGEL. Thank you.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, Mr. Rangel elicited the information that I was seeking. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Just one very quick question with respect to this tax fraud issue. Does the committee have on its staff or as a consultant any experts on the subject of tax fraud, which is a very specialized field?

Mr. DOAR. Yes; we do.

Mr. SEIBERLING. Thank you.

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Doar, I just wanted to clear up the question, the problem propounded by Mr. Conyers. I recall in a briefing some 3 or 4 weeks ago directing in essence that same question to you and receiving, as I recall, your almost unequivocable reassurance that you had adequate staff resources to pursue all substantive leads. May we have your indication of whether you are going to request additional staff or request additional resources, or what is the appropriate way in which we might be better assured that we are going to follow the leads in this different area and get to the bottom of this evidence, which is what all of us have been promising the public we are doing?

Mr. DOAR. Well, we have no intention of asking for additional staff, and we are proceeding as rapidly and as effectively as we can in all of these areas. But, Congressman, we cannot get it all done at once. For example, by the time we make our initial presentation, we are not going to be able to be finished in all of the areas.

Mr. OWENS. I am troubled that there are several places in your memo here, and several places in your testimony today where you refer to limited resources. And I understood you on page 14, for example, recognizing that time and resources did not permit an exhaustive and conclusive investigation of the allegation in each category. I was troubled when I read that, and I was much more troubled today as I listened to you respond to the question of Mr. Convers, and as you made other comments. From what you say, from the fact that we have not pursued this very obvious IRS information, preparing a legal basis on which to ask for it, I am concerned whether there is adequate resources to meet this in some tolerable period of time.

Mr. DOAR. Well, when you take the allegations listed in E with respect to 26 allegations involving a number of department actions of a number of departments of the executive branch, and a number of independent agencies, any investigative step has to make a preliminary investigation, and then has to make some distinctions with respect to priorities. And to some extent, in looking preliminarily at these things, we had to make some judgments.

Now, we say this, as we have said it, because we want to make it clear to the committee that we are not closing any inquiry, but that our recommendations or our status is based on preliminary examination. And I think that that is quite appropriate.

Mr. OWENS. I am not challenging counsel, for whom I have the greatest respect for his capabilities and his judgment. I am not challenging him on the question of whether he is allocating his resources that he has adequately. I am concerned that there appears to be a significant problem which is not being pursued, and if we need another 20 lawyers, then I assume that the House, or lawyer investigators, I assume we can get the money to do that so that we can feel that the conclusions at the point in time when we consider the evidence at the time when we draw some conclusions, that we have, in effect pursued each of these to their reasonable end. And I am concerned that the language that you are using both in this report and today that we are not getting to the end of it.

Simply putting these matters over until the end, is, while we are not tabling it, we are leaving open that possibility of pursuing it, we know

the pressures we are starting to feel now and we will feel in May and in June and in July, and we know that we cannot, in essence, reopen complete new areas in July, or June. At least it looks infeasible to me at this point. I just feel like if we need more lawyers we ought to get them. And I think we all have an obligation to say that in good faith to the people who are going to be holding us accountable this fall, if not before, that we pursued every reasonable lead.

The CHAIRMAN. Might I say that if we are going to get on so that when the House convenes at 12 o'clock we will have had the opportunity of availing ourselves of the presentation that is attempted to be made by Mr. Doar, and then we can evaluate it, and I think it would serve our committee. I am wondering if we cannot go forward.

Mr. Doar.

Mr. DOAR. Well, in the area of E, which is efforts by the White House to use agencies of the executive branch for political purposes, and alleged White House involvement in the election campaign contributions, there were 26 areas that we were investigating.

Briefly, a number of those we have looked at and concluded that on the basis that no, presently no further investigation is warranted, and we are ready to report to the committee on each one of those so that the committee would be able to decide. I think there are some 10 or 11 of those. And in the area of campaign contributions specifically, which is a large area, we are examining four contributions. One, the—this is found on page 15—the Howard Hughes $100,000 contribution, the contribution by Robert Vesco, the contribution by representatives of the dairy industry, and finally, the pledge by a subsidiary of ITT relating to the 1972 Republican National Convention.

Just to finish the report, with respect to the allegations involving other misconduct, Presidential misconduct which relates to the matters involving Cambodia, and the reporting about Cambodia to the Senate of the United States; impoundment of funds by the President; and the dismantling of the Office of Economic Opportunity, let me only say this, that with respect to the matters involving Cambodia, the Senate Armed Services Committee, they have conducted hearings, some in executive session with respect to that bombing, and falsification of bombing reports, and false reporting of the operations to the Senate. We are awaiting the release of that report so that we may be able to report to the committee.

On the question of impoundment of funds, and the dismantling of OEO, let me say that we have looked at about 50 of these cases in the area——

Mr. WALDIE. Mr. Chairman?

Mr. DOAR. It is our feeling that the legal questions are complicated and the actions were generally taken in the court and the positions that were asserted by the executive branch, they were respectable positions. And on the practice of impoundment——

Mr. DONOHUE [presiding]. If you could pause there a minute, I understand Mr. Waldie has a question that he would like to propound.

Mr. WALDIE. Yes. I wanted to know when you were expecting the report from the Senate committee on the Cambodia matter?

Mr. DOAR. Mr. Jenner has been in touch with that committee.

Mr. JENNER. Congressman Waldie, as soon as the chairman of the committee, the distinguished Mr. Rodino, and the ranking member,

the distinguished Mr. Hutchinson, are able to arrange a courtesy meeting with Senator Stennis, who is chairman of that committee, early next week, then we are advised that the galley proofs of the staff report will be made available immediately to the staff. And there is no reluctance that I have detected up to the moment whatsoever about that being made available to us. And when that courtesy visit is made, the staff will have the report.

Mr. DRINAN. Mr. Chairman?

Mr. WALDIE. Thank you.

Mr. DRINAN. Mr. Chairman?

Mr. DONOHUE. Congressman Drinan.

Mr. DRINAN. I want to make it clear as I understand it that the Cambodian bombing is by no means set aside and that I would hope that not merely are you pursuing Senator Hughes' documentation, but also your own initiative.

I raise a question, Mr. Chairman, however, with regard to the impoundment, and it seems to me that the last sentence on page 22 is open to some serious question.

"Under all the circumstances, no one of which is determinative, the staff is not presently conducting further investigation with respect to these categories." And I take it that that is the dismantling of the OEO and impoundment. In the statements on impoundment, I find serious errors, or at least statements that are open to question, and it seems to me that a decision has been made by the staff, contrary to what was said here previously a few moments ago that the committee ultimately will make all of the decisions, that the decision to stop further investigation is a decision, and I wonder if Mr. Doar and Mr. Jenner would elaborate upon my comments?

Mr. DOAR. Well, Congressman Drinan, when we say we have stopped further investigation, that is that we have considered the matter, which is examined the suits, and examined the position of the administration, examined the findings of the court, the decisions by the court and are prepared on the basis of that to report to the committee on the question of the impoundment and the dismantling of the Office of Economic Opportunity. We do suggest in this memorandum that it is our professional opinion that the complexity of the constitutional question and the fact that the action that was taken was done openly, the fact that when the matters were contested, when the question of authority and power between the Congress and the President was raised, it was taken into the courts, and the courts seemed to have been able to resolve these matters under the circumstances are matters that would indicate, matters that we feel the committee would want us to call to its attention.

Mr. RAILSBACK. Mr. Chairman?

Mr. DRINAN. Does that include the moratorium on housing?

Mr. DOAR. Yes; that does.

Mr. DRINAN. Which still continues, therefore, the report is wrong when it says that the administration appears to have complied with those court determinations. That is not so in housing.

Well, Mr. Doar, the other point on Cambodia, would you give your comments on that?

Mr. DOAR. Well, the judgment of, the professional judgment of the staff was, Mr. Jenner and myself, and after staff members had talked

to the staff of the Senate Armed Services Committee, that it would be an inappropriate obligation of our manpower, if we did conduct any detailed investigation until we saw or had the benefit of that report.

Mr. DRINAN. Do you expect to subpena or request any tapes in which the President personally talks with shall we say the Joint Chiefs of Staff about these secret, clandestine bombing?

Mr. DOAR. We have no present intentions to do that.

Mr. DRINAN. Why not?

Mr. DOAR. Because we have not reached that point in the investigation.

Mr. RAILSBACK. Mr. Chairman?

Mr. DONOHUE. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, it seems to me that the report, it seems to me that the report speaks for itself. But, it is my understanding that we are not going to be asked to adopt the report, at least at this meeting, and that it is more or less kind of in the nature of the progress report.

I personally want to commend, want to commend counsel for fulfilling what I thought was their responsibility. In other words, am I correct that there actually were investigations of all of the various areas that are included in here? In other words, where there were people assigned?

Mr. DOAR. Yes.

Mr. RAILSBACK. To seeing whether there was Presidential involvement?

Mr. DOAR. Well, yes, there were, and, of course, in some cases, such as in the matters involving Cambodia, the matter involving impoundment and the dismantling of OEO, there is not any question about the fact that there was Presidential involvement.

Mr. RAILSBACK. I just want to say that I am sure that there are different items in here that may not be, may not be agreed upon by some of the individual members. But, I want the staff to know that I would guess there probably is substantial support as far as many of your recommendations. I do not want you just to think that all of us are harping about this report, because I think it makes a great deal of sense to do in this particular inquiry what we do in any other kind of an inquiry. Sometimes there is evidence, sometimes there is not evidence, and there are sometimes many, many allegations that are, as I understand it, are under an even more vigorous investigation than otherwise would have been possible had we not had to allocate priorities. In other words, what you are doing is, I assume, anyway, you are now able to assign some people that were on some of these other matters to pursuing some of the matters that you believe are more relevant?

Mr. FLOWERS. Would the gentleman yield?

Mr. RAILSBACK. Yes.

Mr. FLOWERS. I would like to identify myself with your remarks and put some perspective on this thing.

I commend the staff for the inquiry in this way, and it ought not to be something that we have to vote on. Commonsense dictates that there are some things that have been broadscaled, that ought to be kind of put on the backburner now while we deliberate on the issues that are relevant, that are possible impeachable offenses. And I think this is a good way to pursue it. I commend the staff.

Mr. SARBANES. Would the gentleman yield?

Mr. RAILSBACK. I will be glad to yield.

Mr. DONOHUE. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I think we are getting into an extremely critical area in which I am not sure if the staff has the authority to discontinue the investigation of any area that raise allegations of impeachable conduct, No. 1.

I specifically take exception to that, and will resist that kind of report writing, especially in view of the fact that we have just been advised that we are short of staff, that we are many weeks, if not months behind in some various obvious areas. Now, this member went over to the offices of the impeachment staff the day before yesterday to inquire with reference to the Cambodia file, and I was handed by the gentleman to Mr. Doar's left two memorandums written by two different lawyers on the staff that consisted of the file on Cambodia. And I was assured that it was not complete, that we were still awaiting obviously Senator Hughes' report.

The President's involvement is clear from newspaper clippings and White House announcements, and for us to even suggest that no further investigation is warranted at this point is to me an incredible act. If I am not correct on this, would you please attempt to set the record straight on this point, and I yield to Mr. Jenner.

Mr. JENNER. Thank you, Congressman Conyers, and also you, Father Drinan. I do not want to leave the burden on Mr. Doar. These areas have been my responsibility.

The two reports that Mr. Woods exhibited to you, sir, when you were over there were draft reports which we were considering in connection with making this report. That was not the file. These three items have been under investigation under my supervision for several months, in depth, and the so-called—well, I will not say so-called—the file is a bulky file, and I regret that you interpret it, I think, about four sheets of paper you received, if I recall it, because I kept saying to the men who were working on it to cut it down, cut it down, because all we were going to do was to use it in the status report to the committee. And there has been a thorough investigation.

Mr. CONYERS. Of course, that does not constitute any change of the impression that I have received, that the staff is not presently further conducting investigation with respect to those categories. Does that apply to Cambodia?

Mr. JENNER. Might I say as to Cambodia, as I think Mr. Doar now and I have tried to indicate to all of you ladies and gentlemen, that we are going to pursue that as soon as we have the courtesy call on Senator Stennis and the Senate Armed Services Committee report, and not only that which is galley proofs, but that the committee is undertaking to screen out some things that may affect national defense and we expect to be permitted to examine that even though it is not publicly published.

Mr. CONYERS. Now, finally before I yield——

Mr. DONOHUE. Would the gentleman yield?

Mr. CONYERS. Yes, Mr. Chairman.

Mr. DONOHUE. I would like to point out that the Chair is presently making every effort, and I think will succeed in arranging an appoint-

ment with Senator Stennis and his staff in order to get into this matter.

Mr. CONYERS. I am glad to hear that.

Now, with reference to this matter of advocacy briefs that were raised at one time by I remember Mr. Dennis specifically, and maybe others, that practice has not been discontinued, has it?

Mr. DOAR. There has been no further brief.

Mr. CONYERS. Right. I yield to Mr. Seiberling.

Mr. SEIBERLING. Well, I just would like to follow up with one further question here, and that is as to the contemplated procedure by which we will finally determine whether or not we pursue a particular line of inquiry. And I think that is really the terminology that is most apt. At some point, is it your plan that this, or is it perhaps the chairman's plan that this committee will have a statement made to use with respect to each line of inquiry, and that we will have the opportunity at that time as individual members, to raise questions as to the extent to which that line of inquiry has been pursued, the evidence that is available, and to make suggestions as to whether or not further investigation should be made before the committee drops it or not?

Mr. DOAR. Yes, yes.

Mr. SEIBERLING. So that these are all still open lines of inquiry which the committee may finally decide to dispose of one way or another.

Mr. DOAR. That is right. But, this report does attempt to indicate the areas where we have been necessarily concentrating our priorities.

Mr. SEIBERLING. And what you are doing is a matter of working arrangements within the staff focussing on certain things without ruling out the possibility of going into other lines of inquiry that are dormant as to any particular time?

Mr. DOAR. Well, we have gone in preliminarily to all of the areas except those areas where other committees of Congress are making an exhaustive study.

Mr. SEIBERLING. Thank you.

Mr. DONOHUE. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

I, just in the few minutes remaining, want to ask counsel if I can recap and see if I understand the presentation here. The April 24 report referring to the numbered paragraphs in the March 1 status report, am I correct that A, B, C, and D are still in?

Mr. DOAR. Right.

Mr. FISH. In their toto, completely, and that in the set of allegations numbered E, that 13 of those 26, it is the staff recommendation that no further work be done at this time?

Mr. DOAR. That is right. I believe that is correct.

Mr. FISH. And under F, which has three parts, with the caveat about the Senate report on Cambodia, the staff recommendation is that the three matters under F also be discounted at this time?

Mr. DOAR. No, not that the three matters be discontinued but that we are not carrying on any further investigation. We are ready to make a report to the committee on those as soon as we can pull together all of the material that we have already assembled.

Mr. FISH. Fine. Thank you, Mr. Chairman.

Mr. DONOHUE. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman. I really had two trivial questions. One with respect to the language on page 22 where it says that the legal arguments presented on the impoundment cases were respectable. Does that mean the staff is saying that the administration's position, the President's position on impoundment was proper?

Mr. DOAR. Not proper but respectable.

Ms. HOLTZMAN. Well, whether or not impoundment is an impeachable offense, it seems to me that the question of the propriety of the action is really inappropriate in terms of the staff to draw a conclusion with respect to and I would hope——

Mr. DOAR. What I mean——

Ms. HOLTZMAN. I would hope this does not mean that you are condoning or saying that it was a proper course of action to take. It seems to me the committee can make that judgment.

Mr. DOAR. Not at all. I was just saying that the arguments, in our opinion, were not frivolous. That is what I was saying.

Ms. HOLTZMAN. Well, I have a second question. I am very pleased to see that you say that the judgments you made with regard to 13 allegations are based on a preliminary investigation. I think there have been some questions raised to me by the press and constituents and the like that the failure to pursue these charges means that we have exonerated the President on these charges. Has the investigation been pursued in each one of these areas to make that judgment, or are you just simply saying that we have done a preliminary investigation, and we do not feel that the staff time is warranted in going further on them?

Mr. DOAR. Well, there is some of each. There are some matters that we have looked into sufficiently to make a judgment that there are no bases for the charges. And——

Ms. HOLTZMAN. Well, Mr. Doar, that is what disturbed me because I reviewed the nature of the investigation, and I would be happy to find the President innocent on charges. But, I do not know how you can make a conclusion with respect to anything if all you have done is let us say, on item No. 20, is to review the agency files and speak with the staff member. I mean, with regard to the Price Commission the nature of the investigation was simply to review files and talk to a staff member. No member of the Price Commission was interviewed and the President was not asked to supply any materials that he may have with respect to this, and it negates the existence of any materials. And I do not know how you can draw a conclusion with respect to that one way or another. It seems to me that the investigation is so preliminary that the drawing of conclusions with regard to that is improper, and I would say that with respect to the other charges and I would appreciate your comment on that, because that concerned me very much.

Mr. DOAR. Well, Ms. Holtzman, I would like to defer referring to that until I could familiarize myself completely with the specifics of item 20 and give you some answer in writing on that.

Ms. HOLTZMAN. I think if you will review all of the rest of the items, they simply indicate that agency files were examined and that the agency files failed to show anything improper. But, I am not sure that on the basis of reviewing agency files that you can make a judg-

ment or a conclusion. I mean, you have not, I do not think, in any instance, have the parties themselves, or the heads of the agencies, been interviewed. You are just talking about the files themselves, and I do not know whether they have been cleansed or whether they are complete.

Mr. DOAR. I think you are correct. We have only made a preliminary investigation in these matters by looking at files and talking to some people that were familiar with the files about them. We have not made a full investigation. But, it is a matter, as I say, of priorities.

Ms. HOLTZMAN. I would not disagree with that. That is wise. But, to draw conclusions on the basis——

Mr. DONOHUE. Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman. I wanted to address some questions to Mr. Doar about your statement that the staff is planning to continue to investigate the contributions to the President's campaign by the milk producer cooperatives. Now, does this, Mr. Doar, involve the President's decision to raise the milk support level to 85 percent of parity, which was announced by Secretary Hardin on March 25, 1971?

Mr. DOAR. Yes, it does.

Mr. MAYNE. And is the thrust of this allegation for impeachment purposes that the President accepted a bribe for this in the nature of a campaign contribution to his campaign committee?

Mr. DOAR. Well, the allegation is that the President, in response to contributions from the dairy industry, changed the decision of the Secretary of Agriculture with respect to price supports.

Mr. MAYNE. Well, now, I want to ask Mr. Doar if the staff, in connection with this investigation, is also going to investigate the very numerous contributions, some of them very large, which were made to Members of the House and Senate, both before and after this contribution to the President's campaign by the milk producers associations?

Mr. DOAR. Well, we had no present intention to do that. This investigation involves the action of the President with respect to a change in the price support level, as well as the contributions.

Mr. MAYNE. Well, are you aware, Mr. Doar, has the staff investigated sufficiently to know, for example, that TAPE ADEPT SPACE contributed more than $500,000 to candidates for the House alone in 1969 and 1970 as shown on reports on file with the Clerk of the House?

Mr. SEIBERLING. Point of order, Mr. Chairman. This investigation is not an investigation into the actions of the Members of Congress. It is an investigation into the President, and I think this is a scurrilous effort to introduce totally extraneous matters.

Mr. MAYNE. Well, Mr. Chairman, I would like to ask counsel as to whether or not he thinks it is relevant for Members of the House to consider as an impeachable item against the President things which they themselves have done. And for which they have received——

Mr. SEIBERLING. Point of order, Mr. Chairman.

Mr. MAYNE. They have received contributions from the same identical source.

Mr. DONOHUE. The Chair rules that your line of inquiry is out of order at this point.

Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. I would like to clarify one matter with counsel with respect——

Mr. MAYNE. Do I still have the time, Mr. Chairman?

Mr. DONOHUE. No, your time has expired.

Mr. SARBANES. Mr. Chairman, thank you. I would like to clarify one matter with counsel with respect to the status report. It is my understanding——

Mr. MAYNE. I object to the ruling of the Chair that my time has expired. I believe I do have some time left. I object to the ruling of the Chair. I think I have only used about 2 minutes.

Mr. DONOHUE. Well, I have been advised that you had used 5 minutes and that is why I made the decision.

Mr. MAYNE. I protest the ruling of the Chair, and I appeal to the committee to be able to complete the allotted 5 minutes.

I have had no time until now and I think this is a very important matter in which I am entitled to question counsel.

Mr. CONYERS. Unanimous consent.

Mr. DONOHUE. Mr. Sarbanes, have you completed?

Mr. SARBANES. Mr. Chairman, I will yield to the gentleman from Iowa to ask a further question.

Mr. MAYNE. I thank the gentleman from Maryland. I want to ask Mr. Doar if he does not intend as a part of this inquiry as to the milk matter to look into the fact that 125 Members of the House and 25 Members of the Senate sponsored bills which would have forced the President to do precisely what he did when he raised the support price to 85 percent of parity and that that was done at about the same time, between March 16, and 25, 1971.

Mr. CONYERS. Parliamentary inquiry, Mr. Chairman.

Has that not been ruled out as objected to and precluded from further inquiry, Mr. Chairman. Has that not been ruled out and objected to and precluded from further discussion?

Mr. DONOHUE. Yes. The Chair has ruled that that line of inquiry is out of order.

Mr. MAYNE. Mr. Chairman, that has to do with the bills that were filed by Members of the House and Senate to force this action.

Mr. SARBANES. Mr. Chairman? Mr. Chairman?

Mr. MAYNE. They not only made contributions, but on the acts which were urged upon the President——

Mr. SARBANES. If the gentleman persists in pursuing a line of questioning that is outside of the proper framework, I must cease to yield to him and proceed on my own time.

Mr. DONOHUE. You may proceed, Mr. Sarbanes.

Mr. SARBANES. And I yielded on the assumption that the gentleman was going to proceed within the framework——

Mr. MAYNE. Mr. Chairman, point of order. Mr. Chairman.

Mr. SARBANES. Do I understand that with this——

Mr. DONOHUE. The gentleman from Maryland has the floor.

Mr. SARBANES. That this constitutes in effect a status report as to the nature of the factual investigations and the indications as to where the staff is going to direct its energies and attention, but with respect to matters which you say you have examined and you have not

found facts, and there are other matters, as I understand, where you feel you have assembled all of the facts that are pertinent for the judgment of those matters subsequently by members of this committee, and we are going to at that point, at some point making a major judgment about them, if in fact, you have not thoroughly done the factual investigation that ought to back up and do it before the end of the inquiry, and then you will have to stand responsible for it at that time.

Is that correct?

Mr. Doar. That is correct.

Mr. Sarbanes. So, there is no, there is no judgment or conclusion being reached on that substance?

What is being reached is that indication as to where the factual inquiry has gone, what needs or does not need to be done with respect to the factual inquiry in these various areas, and how you intend to channel your attention and resources in the period just ahead of us, is that correct?

Mr. Doar. That is true, and what issues in certain instances that are the issues.

Mr. Maraziti. Mr. Chairman?

Mr. McClory. Mr. Chairman?

Mr. Latta. Mr. Chairman?

Mr. Donohue. Mr. Latta.

Mr. Sandman. Will the gentleman yield?

Mr. Latta. Mr. Chairman, so that there is no dispute on time, I notice that the clock says 11 minutes after, so apparently under the rules of this committee where we have 5 minutes that will be 16 minutes after. Is that correct?

Thank you.

I yield to the gentleman from Iowa.

Mr. Mayne. Mr. Doar, I would like to pursue with you further the relevance of this matter and ask you if you do not consider that it is relevant on the question as to whether or not the President committed a crime in connection with the milk contributions that the records of the Congressional Quarterly show that from April 7, 1972, to December 31, 1972, TAPE paid some $906,000 plus to Members of the House and Senate; ADEPT over $324,000——

Mr. Conyers. I object to this.

Mr. Mayne. And SPACE over $254,000, and many of these payments going to Members of the House and Senate who had either introduced bills to force the 85 percent of parity payments or who had urged the White House and the Department of Agriculture to take the action which the President did take on May 25, 1971? Now, do you feel that that would be relevant, Mr. Doar, to the President's conduct and the standard by which he is to be judged by the Congress, first on the question as to whether or not Members of the House will consider that an impeachable offense; and second, as to whether members of the Senate should sit in judgment after having done substantially the same thing by permitting such contributions to be accepted by their campaign committees?

Mr. Donohue. I think he should be permitted to answer the question. Are you prepared to answer the question?

Mr. Doar. Well, I think I am. I think that the fact that there was congressional activity with respect to the increase of the milk support

price is relevant to this inquiry, and in explaining or tending to possibly explain the President's decision and I think the question of the amount of contributions that any particular Congressman may have received from any dairy group would not be relevant to the inquiry. And I do not think that that does have a bearing on the question that we are examining with respect to Presidential conduct, with respect to receipt of or alleged receipt of a substantial contribution in exchange for the increase in the milk support price.

Mr. MAYNE. Well, Mr. Chairman, I respectfully submit that the staff should be instructed to investigate fully the payments received by Members of the House and Senate, or by their campaign committees from TAPE, from ADEPT, and SPACE, being the political arms of the milk producer cooperatives in 1970, 1971, and 1972. And also to determine which of them urged the price support to be raised either by filing bills requiring at least 85 percent, and some filed bills requiring a mandatory 90 percent of parity support. And also to determine which of them urged the Department of Agriculture and administration to take the action in March 1971 which is the basis of this area of inquiry by the committee. It seems to me that under the statement made by Mr. Doar, and in any concept of fairplay, this should be deemed relevant to our investigation.

Thank you.

Mr. LATTA. Thank you.

I have one question.

The CHAIRMAN. The gentleman has 30 seconds remaining.

Mr. LATTA. Thank you, Mr. Chairman.

I just want to join those who have commended the staff for their work. I think everybody must understand that this committee gave you absolutely no direction, or certainly none since I came on this committee as to other areas that you should have gone into. And I agree with the apparent agreement between Mr. Hutchinson and the chairman that we are not going to vote on these things, because I think it would be improper for us to vote to take them out when we did not vote to put them in. I just want to commend you. I think that there comes a time when we have to either fish or cut bait, and I think that this is the time.

The CHAIRMAN. In the light of the fact that there is a quorum call, the Chair will state that the committee stands adjourned.

[Whereupon, at 12:17 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Impeachment Inquiry Procedures

WEDNESDAY, MAY 1, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:50 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Robert M. Kastenmeier (chairman) presiding.

Present: Representatives Kastenmeier, Danielson, Drinan, Mezvinsky, Railsback, Smith, and Cohen.

Impeachment inquiry staff present: Joseph A. Woods, Jr., senior associate special counsel; Samuel Garrison III, deputy minority counsel; John B. Davidson, counsel; John R. Labovitz, counsel; and Hillary D. Rodhan, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; William P. Dixon, counsel; and Franklin G. Polk, minority counsel.

Mr. KASTENMEIER. The subcommittee will come to order.

The Subcommittee on Courts, Civil Liberties and the Administration of Justice is meeting this morning to consider and make recommendations to the full Judiciary Committee regarding certain procedures to be followed in conducting its impeachment inquiry. Each member of the subcommittee has received a draft of the procedures which has been prepared by the staff. Now, each of us had a very short period of time in which at the outset to review these proposals, so really, in a formal sense, they are being discussed here in detail for the first time.

At the outset, we have two early formations of the proposals relating to the areas which I think can best be described as the general impeachment inquiry proceedings relating to the initial presentation to the full committee, and another draft relating to or dealing with the calling of witnesses and the hearing of oral testimony. These are joined together this morning.

We are also authorized to consider other proposals, including that of Congressman Wiggins, and any other proposal relating to procedures, relating to the inquiry and to witnesses that would be relevant.

This morning we will start with the draft proposal some 4 pages long which each member should have at his desk. And in addition, we hope that there are copies available for the working press. If there are not

presently copies available, we will make them available as soon as the machine grinds them out for you.

In any event, I will ask our staff, including the senior associate counsel, Joseph Woods, and he is accompanied there, and I would ask Mr. Woods in addition to Mr. Samuel Garrison to identify the other counsel present for the reporter and for the committee, following which I would ask you to start reading the draft to the committee.

Mr. Woods.

Mr. Woods. Thank you, Mr. Chairman. On my left is Hillary Rodham and John Labovitz; on the far right John Davidson of the inquiry staff.

The following is the draft of procedures to which the Chairman referred.

Mr. Kastenmeier. It is captioned "Impeachment Inquiry Procedures," is that correct?

Mr. Woods. That is correct, sir.

The document referred to is herein titled "Impeachment Inquiry Procedures."

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to House Resolution 803, subject to modification by the committee as it deems proper as the presentation proceeds. [Reading:]

A. The committee will receive from committee counsel at a hearing an initial presentation consisting of (i) a written proposed statement of fact that details in paragraph form the facts believed by the staff to be pertinent to the inquiry, (ii) a general description of the scope and manner of the proposed presentation of evidence, and (iii) a detailed presentation of the evidentiary material, other than the testimony of witnesses.

1. Each member of the committee will receive a copy of (i) the statement of fact, (ii) the related documents and other evidentiary material, and (iii) an index of all testimony, papers, and things that have been obtained by the committee, whether or not relied upon in the statement of fact.

2. Each paragraph of the statement of fact will be annotated to related evidentiary material—that is, documents, recordings and transcripts thereof, transcripts of grand jury or congressional testimony, or affiadvits. Where applicable, the annotations will identify witnesses believed by the staff to be sources of additional information important to the committee's understanding of the subject matter of the paragraph in question.

3. Each member of the committee will be given access to and the opportunity to examine all testimony, papers, and things that have been obtained by the inquiry staff, whether or not relied upon in the statement of fact.

4. The President's counsel will be furnished a copy of the statement of fact and related documents and other evidentiary material at the time that those materials are furnished to the members and will be invited to attend and observe the presentation.

B. Following that presentation the committee will determine whether it desires additional evidence.

1. Any committee member may bring additional evidence to the committee's attention.

2. The President's counsel will be invited to respond to the presentation, orally or in writing as shall be determined by the committee.

3. Should the President's counsel wish the committee to receive additional testimony or other evidence, he will be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the committee will determine whether the suggested evidence is necessary to a full and fair record in the inquiry, and if so, whether the summaries will be accepted as part of the record or additional testimony or evidence in some other form will be received.

C. If and when witnesses are to be called, the following additional procedures will be applicable to hearings held for that purpose:

1. The President and his counsel will be invited to attend all hearings, including any held in executive session.

2. Objections to the procedures of the committee relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a member of the committee, committee counsel or the President's counsel and will be ruled upon by the chairman or presiding member. Such rulings will be final, unless overruled by a vote of a majority of the members present. In the case of a tie vote, the ruling of the Chair will prevail.

3. Committee counsel will commence the questioning of each witness and may also be permitted by the chairman or presiding member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the committee, subject to instructions from the chairman or presiding member respecting the time, scope, and duration of the examination.

D. The committee will determine, pursuant to the rules of the House, whether and to what extent the evidence to be presented will be received in executive session.

E. The chairman will make public announcement of the date, time, place, and subject matter of any committee hearing as soon as practicable and in no event less than 24 hours before the commencement of the hearing.

F. The chairman is authorized to promulgate additional procedures as he deems necessary for the efficient conduct of committee hearings held pursuant to H. Res. 803, provided that the additional procedures are not inconsistent with these procedures, the rules of the committee, and the rules of the House. Such procedures will govern the conduct of the hearings, unless overruled by a vote of a majority of the members present.

That concludes the reading of the procedures.

Mr. KASTENMEIER. Thank you, Mr. Woods.

I take it that this represents, among other things, the views of the staff of the impeachment staff and that there are not other formulations other than that presented to us this morning with respect to the subject matter; is that correct?

Mr. WOODS. That is correct, Mr. Chairman. This is the result of a considerable study and joint effort by all members of the staff, including minority counsel.

Mr. KASTENMEIER. May I say what I propose to do this morning is to just ask one or two questions of you and then I propose to yield for questions or colloquy to members on each side, following which we will read paragraph by paragraph for adoption that which is before us.

I take it that this reflects the statement of the chairman of the committee, Mr. Rodino, when at a committee meeting about 2 weeks ago he stated certain general principles with respect to the privileges to be afforded the President's counsel? That is generally reflected in this draft, is it not?

Mr. WOODS. That is correct. The effort was to take those major points as they were outlined by Chairman Rodino and simply render them here in more explicit detail.

Mr. KASTENMEIER. In paragraph A the first line reads: "The committee will receive from committee counsel at a hearing initial presentation." When you say at a hearing, that is to say that the initial presentation will, for purposes of the rules of the House, or rules of the committee, be treated as a hearing; is that correct?

Mr. WOODS. That is what is contemplated by the draft, yes, sir.

Mr. KASTENMEIER. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I want to thank the chairman for yielding. I have several questions, and I wonder, to begin with, in paragraph A, if it would not be better to have the words "at a hearing" at the end of the paragraph?

Mr. KASTENMEIER. You are saying it would appear that "The committee will receive from the committee counsel," and then seven lines down, "testimony of witnesses or not, but testimony of witnesses, strike the period, at the hearing?

Mr. RAILSBACK. Yes. Right, Mr. Chairman.

May I just explain that if we have at a hearing following or where it presently is as read, it might be construed as requiring that the proposed statement of facts also be presented at a hearing, which I understand, you know, may not be the case. In other words, it could be hand distributed, not that it makes—I am just wondering what your feeling is about that.

Mr. WOODS. It was my understanding in drafting this, and what was intended by the draft, was that the words, "at a hearing" would be applicable to each of the three subdivisions of the paragraph. Now, we may have misunderstood the desired intent, but that is what was written.

Mr. RAILSBACK. I see. In other words—well, do you think by putting it at the end——

Mr. GARRISON. Could I interject, Congressman? I think that the matter included in roman (i) would be construed as an opening statement, but very much part of the presentation which is called the initial presentation.

Mr. RAILSBACK. Yes. I am not going to belabor that. But, maybe I would want to come back to it.

I think you omitted what may be a desirable change in paragraph D. As I read, I here read language as I checked my copy, you have language in there "before each session" and it seems to me that it might be the desire of the subcommittee to renew that language "before each session."

Mr. WOODS. In reading it, I did eliminate that, Congressman.

Mr. RAILSBACK. You did? It is in our draft.

Mr. WOODS. I realize that it was. It was a clerical error, and in reading it I attempted to—I did correct that, and also in certain instances, read the word "will" where the word "shall" appears in what is before you.

Mr. RAILSBACK. Yes, you did.

Mr. WOODS. To conform to the style of the remainder of the document.

Mr. KASTENMEIER. Following up on what Congressman Railsback is referring to, in other words, how should D. read, should it read "the committee shall determine?"

Mr. WOODS. The committee will determine pursuant to the rules of the House, whether and to what extent the evidence to be presented will be received in executive session.

Mr. RAILSBACK. Mr. Chairman, I have one other question. I call attention to C. 1., "the President and his counsel." The way the draft reads is "shall be invited to attend all hearings." The way I heard you read it it sounds like again you said "will" and it seems to me in

that case, maybe "shall" because it appears to be more mandatory, would be better language.

Mr. Woods. The reason for changing in my reading these various "shalls" to "wills" was that if you will recall, we combined two documents to create this document. One of these documents had adopted consistently the use of the word, "will" and the other had adopted consistently the use of the word "shall" in comparable situations. And I simply conform the second one to the first. There are a number of other situations I think in which your comment would be equally applicable.

Mr. Railsback. Yes. I was an English major, but to tell you the truth, I need help. Is not "shall" in that particular case, would that not be stronger language, "The President and his counsel shall be invited to attend all hearings," or do you not think it makes any difference?

Mr. Woods. It certainly would be in a more mandatory form. There are other places in the draft where if one were making the change that you have indicated one would similarly substitute the word "shall" for "will."

Mr. Railsback. Why don't we make it "shall" everywhere?

Mr. Woods. That is fine with me.

Mr. Railsback. I mean, making it a little bit more directive and mandatory, and these are rules. I respectfully suggest that maybe it would be better to have "shall".

Mr. Kastenmeier. Let me put it this way, if the gentleman will yield, why do you not at the appropriate time, I think we will need a motion both in terms of section D for David and in terms of "wills" and "shalls", and that is, I think essentially a clerical change, a change for style and consistency, and both of those will be in order.

Mr. Woods. Mr. Chairman, if I could also point out in the second line of C on page 3 after the word "additional procedures" there was a clerical omission which I supplied in reading, and the line reads, "additional procedures will be or shall be applicable to hearings." The two words "will be" were left out.

Mr. Railsback. Mr. Chairman, I know my time has expired, and I want to commend the staff for doing what I think is a fine job of preparing these proposed rules which I think are very fair, myself, and I hope very acceptable to the other members of the minority.

Mr. Kastenmeier. I thank the gentleman from Illinois. I would like now to yield to the gentleman from California, Mr. Danielson.

Mr. Danielson. I want to caution first of all that we not get hung up on the "shall" and "will" too much. In the context of which the gentleman from Illinois referred, I think that "will" would be mandatory, and I, in my opinion, think "shall" is a better word, and I would not want it to become jurisdictional to be made some kind of an error if we forget to send out an embossed invitation.

In paragraph sub 2. of paragraph C, I shall, at the appropriate time, recommend that we strike the language in line 5 which would permit the President's Counsel to object to procedure unless counsel's answer here will clear something up for me. Is it contemplated by this language, counsel, that the role of President's Counsel will be the same as provided under sub 2 here as it is under paragraph B, subs 2 and 3 on page 2?

Mr. Woods. I think, Mr. Danielson, that in drafting this we contemplated more a contemporaneous role for him.

Mr. Danielson. In other words, that he would be, under "C" for "Charlie," 2 in line 5, you are contemplating that the President's counsel would be authorized to object to questions, for example, on grounds of materiality, relevancy, or whatever it may be, competency, or even to procedures that the committee might be following as they are taking place?

Mr. Woods. As they are taking place in the context of the hearing at which live testimony is being received, and in having in mind that at all times all aspects of the role of the President's counsel will be under the control of the chairman and of the committee, because his presence here is as a matter of grace of the committee.

Mr. Danielson. It is my understanding of this type of proceeding that the appearance of the respondent's counsel or respondent is a matter of courtesy rather than right, and if I understand this correctly, after we have had our colloquy, you are going to be open to motions, is that correct?

Mr. Kastenmeier. Yes. The gentleman is correct.

Mr. Danielson. I will simply state that I will, at the appropriate time, move to strike "or the President's counsel" and make appropriate editorial changes in that section. I yield back my time.

Mr. Kastenmeier. The gentleman from New York, Mr. Smith.

Mr. Smith. Mr. Chairman, I too want to commend counsel for a good job of editing and compacting and getting together these proposed rules of procedure under our impeachment inquiry. It was not an easy job, and I think counsel has well gathered the thoughts of the committee as expressed in informal hearings. I shall probably support the motion of the gentleman from Illinois, if he makes it, to change the language from preparatory to mandatory because these are rules that we are proposing.

I yield back, Mr. Chairman.

Mr. Kastenmeier. The gentleman from Massachusetts, Mr. Drinan.

Mr. Drinan. Thank you, Mr. Chairman.

Mr. Counsel, would you say that Mr. St. Clair can never be excluded from any session including executive sessions under the rules?

Mr. Woods. That is what the draft provides for, Father Drinan, subject always to the power of the committee at any time as the procedure goes forward, to make a appropriate changes in its rules.

Mr. Drinan. I wonder if the——

Mr. Kastenmeier. May I?

Mr. Drinan. Yes.

Mr. Kastenmeier. Follow up on that. I do not read it to be so. The attendance section, C1, says the President and his counsel shall or will be invited to attend all hearings, including any held in executive session. This would not seem to pertain to executive sesisons for meetings for other purposes of the committee, even though related to the impeachment inquiry.

Mr. Drinan. The chairman has made the point very well. I wanted to clarify that you can have executive meetings where the committee meets without the President's counsel.

Mr. Woods. That is correct. I am sorry. I misunderstood the question.

Mr. DRINAN. All right. Thank you.

Now, I wonder if the staff had thought of giving some guidelines as to the duration of the time permitted to the President's counsel. On page 4, No. 4, it says, "The President's counsel may question any witness called before the committee, subject to instructions from the chairman respecting the time, scope, and duration of the examination." I do not think that it is a partisan suggestion to indicate that the President has engaged in dilatory tactics, and that the President's counsel may continue those. I wonder if the counsel has thought of putting down some simple guidelines as to the duration of the examination. One simple one would be that the President's counsel would have, under no circumstances, any more time than the other side would have had?

Mr. WOODS. We did not consider that for the reason that we felt it was somewhere between difficult and impossible to project what the situation would be with respect to a given witness and the possible need or lack of apparent need of the President's counsel to examine that particular witness. And we felt that that was the sort of thing that the chairman and the committee could best deal with and control as the situation might arise.

Mr. DRINAN. It places a burden on the chairman, and I am not opposed to this, but I'm just wondering if at a moment in time you did go through and you did try to propose rules that would equalize without maximizing his opportunity.

Well, on another point, I am not certain that this subcommittee has to devise guidelines for the TV but we have followed, as I understand it, and correct me if I am wrong, that the draft before us does not change the House rules about the admissibility of the TV in any way?

Mr. WOODS. The draft does not address itself to the question of television coverage.

Mr. DRINAN. All right.

Mr. WOODS. And, therefore, the normal rules applicable under the standing rules of the House prevail.

Mr. DRINAN. Except that do I understand that at every moment—for example, on page 1 under A, at a hearing, that means that at a hearing television may be permitted unless by a majority vote of the committee it is excluded?

Mr. WOODS. This is a hearing, and that is the standing rules of the House applicable to electronic media coverage at hearings which are applicable to the presentation, yes, sir.

Mr. DRINAN. And every presentation by the staff will be a hearing?

Mr. WOODS. That is what is contemplated by this draft.

Mr. DRINAN. Fine. Thank you. That was my understanding. Thank you very much. I yield back the time.

Mr. KASTENMEIER. I thank the gentleman from Massachusetts, and the Chair would observe that that was the purpose of my question at the outset.

In designating the presentation to be a hearing, it enables that, as well as all subsequent proceedings in which testimony of witnesses is produced to be considered hearings, and as such would be eligible for electronic media in accordance with the rules of the House. If the hearings are, in fact, otherwise opened and not closed for any special reason which could be invoked by the committee, is that correct?

Mr. Woods. That is correct.

Mr. Kastenmeier. I would like to yield to the gentleman from Maine, Mr. Cohen.

Mr. Cohen. Thank you, Mr. Chairman.

I would just take this opportunity to commend Mr. Woods and the members of the staff for their efforts in putting together this recommendation, this proposal. I would also commend the gentleman from Illinois, Mr. Railsback, who possesses a sharp and unerring eye as an English major, which is news to most of us. And if he will make the motion, I, like my fellow colleague from New York, shall support his effort.

I would like to ask you, Mr. Woods, this may be an unfair question, and perhaps you have not been working in this particular field, but with respect to the rules of evidence before a congressional hearing, what would be the basis for objections? Would they be on the basis of irrelevancy, immateriality before the committee itself? For example, there is some concern which has been exhibited by Mr. Danielson that this might turn into an adversary proceeding whereby counsel for each of the witnesses, for perhaps the President might object on the basis of a question being irrelevant. As I understand it, the State of the law is there is no judicial review of the proceedings before this House or even before the Senate, and if it should reach that stage, would relevancy and materiality be viable objections on the part of counsel? I think this is addressed to the concern of having it turn into a judicial proceeding with many, many objections being made.

Now, I am not sure there is any basis for that fear.

Mr. Woods. As I understand it, from our examination of the precedence of the House, the committee has the power, the right and the continuing responsibility to pass upon the usefulness of evidence that is offered to it. And it does this in terms of whether it is pertinent to the matter of the inquiry, and whether the commitee deems that evidence to be reliable evidence. And the technical objections that we encounter in courts are simply not appropriate here because the committee is not bound by any such rules. It is bound by its own judgment as to the usefulness to the committee of the particular piece of evidence.

Mr. Cohen. In other words, if the committee members were to pose a question to a witness, counsel would not really be in position to object on the grounds that that question is irrelevant on the part of the committee member?

Mr. Woods. I should think it would be both fruitless and unwise if he did so.

Mr. Cohen. And really not well anchored in precedent?

Mr. Woods. That is correct.

Mr. Cohen. So there would be opportunities, for example, to object on the basis of incriminating evidence under the rules of the House, defamatory statements, things of that sort, but not really a series of objections on the basis of relevancy, immateriality and that sort of thing?

Mr. Woods. The technical rules of evidence simply are inappropriate, and the chairman and the committee would have the power to deal with any asserted objections on the committee's own terms.

Mr. COHEN. And, therefore, the allowing of Mr. St. Clair to participate on those grounds really would in no way legitimately interfere with the conduct or presentation of the witnesses under those ground rules?

Mr. WOODS. Well, I suppose that one could consider the possibility that in any proceeding counsel who is permitted to voice objections may become unduly enthusiastic in doing so. However, that is I should think, a theoretical fear.

Mr. COHEN. Well, the only point I am trying to make is in the course of congressional hearings, as I understand it, counsel for witnesses do not and have not been permitted to do so in the past, to object on the basis of technical irrelevancy, or materiality, questions or objections that might be voiced in a court of law, that that simply is not done? They may advise a witness to invoke the fifth amendment or object on the basis of defamatory statements, but generally speaking, it is not the same as in a court of law and, therefore, there would be limited amounts of objections. I think one would reasonably anticipate that and I think that what Congressman Railsback is suggesting is we ought to afford to President's counsel the same rights as counsel to other witnesses, but no more, simply the same rights would be applied to everybody?

Mr. WOODS. With, I suppose, the further qualification that this right would be afforded to him with respect to all witnesses, whereas in the normal situation before a committee, counsel is simply permitted to advise his client and not to deal in any way with the testimony of persons other than his client.

Mr. COHEN. Thank you.

Mr. KASTENMEIER. The gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I would like to say at least at the outset that I think these rules, as laid out, and I want to commend the staff and the member that have worked on these, that it is clear that in all of our problems and deliberations concerning due process for the President and for his counsel, I think these rules clearly establish that this committee, at least the draft of which I will support, entitles the counsel and the President to due process and I think that is very significant. And I am pleased that we were able to resolve this and what appears to be a rather harmonious kind of conclusion.

I might also say that I am pleased, too, that we have classified these as hearings during the presentation stage as well as during any possible subsequent hearings as to witnesses so that we can allow and have the opportunity, if we so decide, to have as complete coverage as possible so that the public can also have the opportunity to understand that our actions are open, and that nothing will be held behind closed doors.

Now, I have one specific question as to the draft and that is on page 2, No. 3. I have been very concerned as to the fact as to when members of this committee will have the opportunity to go through the information and the files in order to be privy to the information that we can base our decisions on. I am concerned still by the language of No. 3, and I raise the point as to at the presentation stage, if we break it down into areas, will the members of the committee have

the opportunity prior to the commencement of a hearing, to look at the material that may, in fact, be presented at a particular hearing? For example, if at a particular time we know that the hearing will relate to personal finances and the President's tax returns, will the members have the opportunity prior to that presentation to at least go over the material so that we will be prepared and have some idea in mind prior to the presentation?

The reason I raise the question is because if there is some doubt in my mind, I may suggest language that would say that prior to the commencement of the hearing, each member would be given access, so with that question in mind, would you care to comment, Mr. Woods, whether I as a member or any member of this committee prior to the hearings on a particular allegation would have the opportunity to look at the material so that we have at least the question in mind during the presentation in case we want to add or include any additional material?

Mr. Woods. Mr. Mezvinsky, it was contemplated by this draft that all of the material in the possession of the staff would be made available to the members of the committee at the time the presentation commences. That is, at the time the first part of the presentation commence. And this would mean then that as to that segment of the case first presented, there would be a contemporaneous access to the materials; that as respects all subsequent segments of the case, there would be prior access. You would get access all at one time, at the time that the presentation commences.

Mr. Mezvinsky. So then at the beginning, at the first day of the presentation we will walk in basically cold, and then from that point on the members will be able to go into the files, or review with the staff as to any particular material that may be brought up at any subsequent hearings from the beginning day? Is that a proper procedure? In other words, I am concerned, and I think some members have expressed that we walk into the presentation with as much background and information so that we may raise some questions, Mr. Chairman, and consequently will be able to have a clear insight. So, is it clear that the first day we walk in cold? From that point on we will then have the opportunity to look at each allegation prior to that time and go in and talk with the staff? Is that the lay of the land as far as we see it?

Mr. Woods. That is correct. And the qualification that is stated there with respect to the first day is simply a practical one of the ability of the staff to prepare for the presentation. It is not intended to be in any sense a delay of access. It is simply a practical requirement on the resources of the staff to prepare for a presentation which would be following very shortly.

Mr. Mezvinsky. Would the staff indicate then after the first day and every subsequent hearing thereafter the subject matter that will be considered by the committee so that the members know what subject matter will be presented, and we can have the opportunity to look at that particular material prior to that time?

Mr. Woods. I feel sure that the fullest possible information will be given to the members, having in mind that at some time the order in which things would be received might be subject to change because of some practical presentation problems. Yes, sir.

Mr. MEZVINSKY. Mr. Chairman, I will defer any further comments.

Mr. KASTENMEIER. I thank the gentleman from Iowa. He has raised an important area in what we understand, and I think this is new and vital information, which is that at the outset of the presentation of the statement of facts, at that time, if it is 10 o'clock on a Tuesday morning, at that very time all of the evidence will be available to members in terms of the annex, going over to the annex and having access to appropriate evidence. Is that not the case?

Mr. WOODS. That is correct. Yes, sir.

Mr. KASTENMEIER. That concludes the line of questioning.

The Chair would like to entertain motions or amendments.

Mr. RAILSBACK. Mr. Chairman?

Mr. KASTENMEIER. I will recognize the gentleman from Illinois, Mr. Railsback. And I think, may I, before I yield to him, I would like to say that hereinafter, again, Mr. Woods, I will have you read each paragraph and at the end of each paragraph as it appears to be a paragraph, if there are amendments to that paragraph, I will recognize members for such amendments.

I yield to the gentleman from Illinois.

Mr. RAILSBACK. Well, Mr. Chairman, in the light of what you have said, I wonder if kind of a general conforming amendment is in order at this time or should I hold up?

Mr. KASTENMEIER. Yes; I would say it would be at the outset.

Mr. RAILSBACK. All right. Before I offer it, I would just like to ask Mr. Woods one other thing that it is important that it be on the record, and that is, and I will ask it kind of in an almost rhetorical way, because I think I know your answer, but I want to make it crystal clear on the record, that the statement of fact is going to be just that, it is going to contain the actual facts that you believe have been divulged by your investigation, and will not draw any conclusions at all? And in the cases where there would be controverted facts, both of the sets of facts will be stated? In other words, no conclusions will be drawn in the statement of facts?

Mr. WOODS. That is correct.

Mr. RAILSBACK. OK.

Having said that, Mr. Chairman, I would like to move that the procedures that we are considering be amended, wherever applicable, to use the word "shall" where the staff thinks that the committee desires to use mandatory language. In other words, to conform in those places, wherever "shall" is properly to be used. For instance, wherever we are obviously trying to direct or mandate the committee to do something or an individual involved in the impeachment inquiry procedures.

Mr. KASTENMEIER. The gentleman from Illinois has offered an amendment.

Mr. SMITH. Mr. Chairman?

Mr. KASTENMEIER. Yes.

Mr. SMITH. May I comment?

Mr. KASTENMEIER. The gentleman from Illinois has offered an amendment, and I will recognize the gentleman now.

The gentleman from Illinois has offered an amendment directing the staff to conform the use of the word "shall" and "will" within the document consistent with their meaning as he so stated.

I will yield to the gentleman from New York.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman and Mr. Railsback, I would think that since these are procedural rules that we are offering, that the use of the term "shall" should be used all the way through instead of "will" rather than leaving it to the discretion of the committee. I believe that in procedural rules you can use the term "shall" all the way.

Mr. DANIELSON. Would the gentleman yield?

Mr. SMITH. Be happy to yield.

Mr. DANIELSON. I would prefer to follow Mr. Railsback's suggestion which I think has great merit. I have just run through this. There are 27 instances in which "shall" or "will" are used, including a couple in which it is "may", and in some instances, they are definitely mandatory and in other instances, they are simply referring to a future act and I would think Mr. Railsback's proposed amendment would be probably more in keeping with good draftsmanship. And I would support Mr. Railsback's amendment as made.

Mr. RAILSBACK. Would you yield, Henry?

Mr. SMITH. Be happy to yield.

Mr. RAILSBACK. I thank you for yielding. And I think the gentleman makes a point. There is a distinction between using the word "shall," which is directive, and mandating something, and using the word "will" which does refer to a future act. And I think that distinction may be proper and can be left to the staff under those directions, our directions.

Mr. KASTENMEIER. Are you ready for the question? The question is on the amendment offered by the gentleman from Illinois. All in favor say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed, nay.

[No response.]

Mr. KASTENMEIER. The amendment is carried.

I will now ask counsel again to read the draft paragraph by paragraph, pausing at the end of each paragraph to see whether there are any amendments offered to the paragraph. Mr. Woods.

Mr. WOODS [reading]:

Impeachment Inquiry Procedures.

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 803, subject to modification by the committee as it deems proper as the presentation proceeds.

Mr. KASTENMEIER. Are there any amendments to the first paragraph?

Hearing none, I will ask you to read paragraph A up to A1.

Mr. WOODS. I might say, Mr. Chairman, in reading this I will still be in the "will" mode [reading]:

The committee will receive from committee counsel at a hearing an initial presentation consisting of (i) a written proposed statement of fact that details in paragraph form the facts believed by the staff to be pertinent to the inquiry, (ii) a general description of the scope and manner of the proposed presentation of evidence, and (iii) a detailed presentation of the evidentiary material, other than the testimony of witnesses.

Mr. KASTENMEIER. On that point, I yield to the gentleman from California, Mr. Danielson.

Mr. DANIELSON. I wish to raise a question as to the word "proposed" at the end of the second line and again at the end of the fifth line, "a written proposed statement of facts" and "the proposed presentation of evidence." Does this imply, it could imply that the statement of fact is only a proposed or a preliminary statement and would require some action by the committee before it became formally accepted as a statement of fact. If that is the intent of the drafters, I would like to know that. If not the intent, then I would probably offer an amendment to strike it.

Mr. WOODS. I believe that the purpose of the word "proposed" was to express the staff's deference to direction from the committee at that point, that it did not wish to proceed in the manner advanced by the staff, and it serves, as I see it, no function other than that, And, therefore, if it is the desire of the committee to delete it, it represents no problem whatever to the staff.

Mr. DANIELSON. I would like then, Mr. Chairman, to move that we strike the word "proposed" only because—may I speak to the motion?

Mr. KASTENMEIER. Yes. You are recognized.

Mr. DANIELSON. Speaking to the motion, I think that the word being present could give rise to some controversy down the line, that this has not been officially adopted, or words to that effect. And since it serves no functional purpose, I urge that it be stricken.

Mr. KASTENMEIER. The gentleman from Illinois.

Mr. RAILSBACK. I move the question on the amendment.

Mr. KASTENMEIER. Does anyone else wish to speak further on the amendment?

The amendment is proposed by the gentleman or suggested by the gentleman from California that in section A, the second line and the fifth line there of the word "proposed" be stricken. All in favor of the amendment please say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed, nay?

[No response.]

Mr. KASTENMEIER. The amendment is adopted.

Now, read A1.

Mr. WOODS [reading]:

1. Each member of the committee will receive a copy of (i) the statement of fact, (ii) the related documents and other evidentiary material, and (iii) an index of all testimony, papers, and things that have been obtained by the committee, whether or not relied upon in the statement of fact.

Mr. KASTENMEIER. Are there any amendments?

If there are none——

Mr. DRINAN. Mr. Chairman, a point of information.

Mr. KASTENMEIER. The gentleman is recognized.

Mr. DRINAN. In the rules adopted by the committee on February 22, of this year, it is stated under 3 in the following words:

The special counsel and counsel to the minority, after discussion with the chairman and the ranking minority member, shall initially recommend to the committee the testimony, papers, and things to be presented.

I wondered if counsel would tell us, is that rule of February 22 applicable to A1 so that we as members of the committee will receive only those things which the special counsel and the counsel to the minority

have in fact, discussed with the chairman and the ranking minority member?

Mr. Woods. I am sorry, Father, I am not in a position to answer the question as to the precise degree of participation of the chairman and the ranking minority member in each and every paragraph of the presentation which will be before you. It will be a matter of virtually hundreds of pages, and I think that the only fair answer I could give you is that in general outline, the answer to the question would be yes, but that in precise detail I suspect the answer would be no.

Mr. Drinan. Well, I am sure that you understand what I am driving at, that some members will say that have certain materials been screened out because after discussing this with the ranking minority member, he feels that it should not be presented?

Mr. Railsback. Would the gentleman yield?

Mr. Drinan. Therefore, are we getting material which has been prescreened?

Mr. Railsback. Would the gentleman yield?

Mr. Drinan. Yes.

Mr. Railsback. My recollection, and I thank you for yielding, my recollection is that we go through the initial screening procedure, and then, as is stated in this, in these proposed rules, we are given an index of all the materials whether they are used or not, and we are in a position, even if something has been screened out by this screening process, we are still in a position to go over and ask to see any materials that were not used.

Is that correct, Counsel?

Mr. Woods. That is correct. And that is the basic reason for the distribution of the index, is to enable the committee at all times to be in a position to examine the——

Mr. Railsback. Any of the materials that were part of the inquiry?

Mr. Woods. The completeness, yes, sir, and to pass judgment upon the adequacy of the presentation that is proposed to be made by the staff.

And later on in these procedures that are before you this morning, in paragraph B1, it makes clear that each member is privileged to bring to the committee additional information. And, of course, that is not limited to information that the member might secure by examination of those files, but it certainly includes that examination.

Mr. Mezvinsky. Will the gentleman yield? I think your apprehension, I certainly can understand it, and that is the reason why I thought it was very vital that under the following provision, that No. 3, that each member does have access and can have access after the beginning day to the files and to the information. So that whether it relates to the grand jury report or whatever, each member will have the opportunity to take a look at that so that we can be briefed to some extent before the statement of fact. So, I can understand the apprehension, but I think with the check of each member having the opportunity that we are basically covering that point.

Mr. Drinan. Well, Mr. Chairman, I will just leave it at this, that there is an ambiguity in that in the rules of February 22, I think that there is a gloss on the right of the member, and I would not repeat it, but it is a limitation and a qualification which still obtains because we have not superseded the rules of February 22. Perhaps it would have

been better if we had, but the rules now to be adopted on May 1 seem to be apparently inconsistent on this one point with the rules of February 22.

I yield back the balance of my time.

Mr. KASTENMEIER. Would you read A2, please?

Mr. WOODS [reading]:

2. Each paragraph of the statement of fact will be annotated to related evidentiary material (e.g., documents, recordings and transcripts thereof, transcripts of grand jury or congressional testimony, or affidavits). Where applicable, the annotations will identify witnesses believed by the staff to be sources of additional information important to the committee's understanding of the subject matter of the paragraph in question.

Mr. KASTENMEIER. Are there any amendments to section A2?

If not, would you read section A3?

Mr. WOODS [reading]:

3. Each member of the committee will be given access to and the opportunity to examine all testimony, papers and things that have been obtained by the inquiry staff, whether or not relied upon in the statement of fact.

Mr. MEZVINSKY. Mr. Chairman?

Mr. KASTENMEIER. The gentleman from Iowa.

Mr. MEZVINSKY. Mr. Chairman, I would submit an amendment whereby we would add at the beginning, prior to the word, "each" the words "on the commencement of the hearing each member of the committee will be given access," so it is specifically stated that at the beginning or the commencement of the hearing each member would have access to the testimony, papers, and things. So, I would so move that language "on the commencement of the hearing."

Mr. WOODS. Mr. Chairman, if that is to be done, it might conform to the style of the document more easily if it reads "on the commencement of the presentation."

Mr. KASTENMEIER. I would agree. I think that the term "the hearing" does not have any precise meaning in this document.

Mr. MEZVINSKY. OK. That is fine. I shall change it to "on the commencement of the presentation.

Mr. KASTENMEIER. Is there any discussion?

Mr. Woods, would you find any difficulty with that amendment?

Mr. WOODS. No, sir.

Mr. KASTENMEIER. Is there any further discussion?

You have heard the amendment of the gentleman from Iowa. All those in favor of the amendment say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed, nay.

[No response.]

Mr. KASTENMEIER. The amendment is carried.

If there are no further amendments to section A3, would you read section A4?

Mr. WOODS [reading:]

4. The President's counsel will be furnished a copy of the statement of fact and related documents and other evidentiary material at the time that those materials are furnished to the members and will be invited to attend and observe the presentation.

Mr. COHEN. Mr. Chairman?

Mr. KASTENMEIER. The gentleman from Maine.

Mr. COHEN. Could we state for the record, to make it clear, that under this section 4, that it is not contemplated that the President's counsel is furnished an index to the information that will be furnished to the members. Is that correct?

Mr. WOODS. That is correct.

Mr. KASTENMEIER. Are there any amendments to section A4?

If not, proceed to section B.

Mr. WOODS [reading:]

B. Following that presentation the committee will determine whether it desires additional evidence.

1. Any committee member may bring additional evidence to the committee's attention.

Mr. KASTENMEIER. Section B2?

Mr. WOODS [reading:]

2. The President's counsel will be invited to respond to the presentation, orally or in writing as shall be determined by the committee.

Mr. KASTENMEIER. Section B3.

Mr. WOODS [reading]:

3. Should the President's counsel wish the Committee to receive additional testimony or other evidence, he will be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the committee will determine whether the suggested evidence is necessary to a full and fair record in the inquiry, and, if so, whether the summaries will be accepted as part of the record or additional testimony or evidence in some other form will be received.

Mr. KASTENMEIER. If there are no amendments, section C.

Mr. WOODS [reading]:

C. If and when witnesses are to be called, the following additional procedures will be applicable to hearings held for that purpose:

1. The President and his counsel will be invited to attend all hearings, including any held in executive session.

Mr. KASTENMEIER. It will not be necessary and I take it it was a clerical omission only that the words "will be" or "shall be" applicable are included, is that correct? The final draft as adopted by the committee in section 3 will read "additional procedures will or shall be"?

Mr. WOODS. Shall be, I should think.

Mr. KASTENMEIER. Shall be.

Mr. DRINAN. Mr. Chairman, I am wondering if——

Mr. KASTENMEIER. The gentleman from Massachussetts.

Mr. DRINAN. If counsel suggests any difference in the language here? We have the President and his counsel shall be invited, whereas previously it was simply the President's counsel. Is that a happenstance, or is it by design that we say the President himself shall be invited to attend all hearings, including any held in executive session?

Mr. WOODS. I think it is a happenstance.

Mr. DRINAN. I move that the President's counsel, as much as we would love to have the President here, I think we should be consistent and have the President's counsel.

Mr. DANIELSON. Will the gentleman yield?

Mr. DRINAN. Yes.

Mr. DANIELSON. Why do we not just extend the courtesy to the President and say the President and his counsel?

Mr. DRINAN. Well, throughout the document it has been the President's counsel, and I do not see any reason, and counsel has indicated there is no reason for changing that parlance, and I just suggest in C1 it be "the President's counsel."

Mr. GARRISON. If I might comment, Mr. Chairman?

Mr. KASTENMEIER. Mr. Garrison, would you desire to comment on that observation?

Mr. GARRISON. Mr. Chairman, I think that in terms of a choice as to which way to conform the two provisions, that it should be pointed out that it has been customary in prior impeachment inquiries to accord the respondent personally the right to be present.

Mr. RAILSBACK. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

Mr. KASTENMEIER. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I was just about to mention that in reading some of the precedents, I think counsel is absolutely right, normally they have, it is my understanding, always invited the respondent himself and the counsel to be present.

Mr. MEZVINSKY. Mr. Chairman?

Mr. KASTENMEIER. Mr. Mezvinsky.

Mr. MEZVINSKY. I would say that to me it seems obvious that if we allow the counsel in, we should have the President in, or at least invite the President. We should not get ourselves caught in the situation where the counsel is invited but the President is not. So, for that reason, it seems logical that we would broaden it and say the President and his counsel and not get in the untenable position of having the counsel invited but not the President.

Mr. KASTENMEIER. The gentleman from California.

Mr. DANIELSON. I agree with Mr. Mezvinsky, and whoever else has asked to have the President as well as his counsel invited. It is up to them whether they want to attend. I only wish to make the record clear that the respondent has not normally attended impeachment hearings. He has from time to time.

Mr. KASTENMEIER. Does the gentleman from Massachusetts desire——

Mr. DRINAN. I would be delighted to invite the President and his counsel and change the language in all of the rules to invite the President.

Mr. KASTENMEIER. As I understand it, there may be reasons in other sections why the President is not also named in addition to the counsel. So, I think, I gather matters will be left as they are in terms of the draft.

Mr. WOODS. Mr. Chairman, the place that it does come up I think in relatively comparable context is in paragraph A4 on page 2. It has to do with the invitations to attend, and it is correct that there is an anomaly here in the language.

Mr. KASTENMEIER. Is it your view that on page 2, paragraph A4 that it should read, "the President and his counsel will be furnished a copy," et cetera?

Mr. WOODS. Yes, sir.

Mr. DANIELSON. Mr. Chairman, that requires two sets, and I only got one set of these transcripts, and I did not know why they need more than one set down there.

Mr. SMITH. Mr. Chairman, I think——

Mr. KASTENMEIER. And will be invited to attend to observe the presentation is a continuation of that paragraph, and unless you care to have it read "the President's counsel will be furnished a copy of the statement of fact in related documents and other evidentiary material at the time those materials are furnished to the members, and the President and his counsel will be invited to attend and observe the presentation." Is that an appropriate formulation?

Mr. WOODS. Yes, sir.

Mr. GARRISON. Yes, sir.

Mr. KASTENMEIER. I offer it then as an amendment.

Any further discussion? If not, all in favor of the amendment please say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed, nay.

[No response.]

Mr. KASTENMEIER. The amendment is adopted.

Counsel, you may proceed, Mr. Wood, at C2, please.

Mr. WOODS [reading]:

Objections to the procedures of the committee relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a member of the committee, committee counsel or the President's counsel and will be ruled upon by the chairman or presiding member. Such rulings will be final, unless overruled by a vote of a majority of the members present. In the case of a tie vote, the ruling of the Chair will prevail.

Mr. DANIELSON. Mr. Chairman?

Mr. KASTENMEIER. The gentleman from California.

Mr. DANIELSON. I propose an amendment to C 2 in line 5 to strike the words "or the President's counsel" and to make such appropriate editorial changes are needed in the context. I would like to speak to my motion.

Mr. KASTENMEIER. The gentleman is recognized for 5 minutes.

Mr. DANIELSON. I feel that this language as presently in the rules goes too far towards encouraging the perception of this inquiry as being an adversary proceeding. I would like to point out that in lines 1 and 2 of subsection 2 this would permit objections to procedures of the committee as well as objections to the admissibility of testimony. This is not an adversary proceeding. It is the grand inquest of the Nation, and as counsel has pointed out, the committee is not bound by ordinary rules of evidence.

A study of the historical precedent which was completed by counsel and furnished to us some 2 months ago reveals that throughout the entire history of impeachment proceedings there have been objections to evidence on the grounds of relevancy, materiality, competence, and almost every other conceivable technical objection to evidence that you can think of. Historically the chairmen have ruled upon them usually sometimes sustaining and sometimes overruling, but consistently, almost invariably pointing out that the House committee conducting the inquiry is not subject to the ordinary rules of evidence, and that

this is an inquisition for the purpose of obtaining facts and understanding, and evidence which might not be admissible in a court proceeding, for example, is admissible for the purpose of furthering that understanding. We all know that a zealous counsel can be obstructive by interposing frivolous objections or sincere objections, with too great a frequency and much too hair-splitting judgment. I do not feel that it is essential, in fact, or even meritorious to have this provision in section 2. We should bear in mind that participation by the President's counsel is a courtesy offered by the committee and not a matter of right, and we should further bear in mind that this subparagraph 4 of section C, which appears on page 4, the President's counsel is already given the option of questioning any witness called before the committee. And therefore, it would seem to me to be redundant and unnecessary to provide that authority here in subsection 2.

My distinguished colleague, Mr. Cohen, has argued earlier that the President's counsel should have the same rights as counsel for any other witness. I am not presently advised that the President intends to appear as a witness. It he does appear as a witness, of course his counsel should have the right to protect him in any way he wishes to do so. But, until or unless he does appear as a witness, giving his counsel the right to interfere with the testimony brought forth by other witnesses would be giving him a power that is not given to counsel for other witnesses, nor to the committee. So, therefore, I urge that we strike the language I referred to, "or the President's counsel" in line 5 of subsection 2.

Mr. COHEN. Mr. Chairman?

Mr. KASTENMEIER. If I may respond briefly, I sympathize with what the gentleman from California has said. It is a view shared by many members, but it seems to me that the philosophy is that we accommodate the President and his counsel in terms of procedural opportunities and safeguards, and that, in fact, we lean over backward to do so. This is part of the philosophy of this document and the philosophy of our committee in terms of being fair. The philosophy of this document, is, as the gentleman said, as a matter of courtesy, and the chairman of the committee and the committee do control the proceeding. That would leave no doubt, not Mr. St. Clair or anyone else. And at the outset as well, if abuses do occur, we have stated, and I quote: "Subject to modification by the committee as it deems proper, as the presentation proceeds," we are referring to the procedures which we have outlined, so that the committee has ample opportunity to protect itself against any excesses that we appear to yield herein to Mr. St. Clair or anyone else. For that reason, I must respectfully oppose my friend's motion.

Mr. RAILSBACK. Mr. Chairman?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I will try to be very brief. And I want to commend you for your statement and point out that I think it is absolutely essential that this particular amendment be defeated. I think the Congress itself as an institution is going to be on trial. I think it is important that we do just what we suggested, that we lean over backward to give the President and his counsel every opportunity to participate.

And let me just give you some examples of the necessity of having that language in there. It may be that a witness would be called, that the President's counsel may have reason to believe would be defamatory or would be demeaning, or would say something that could be incriminating. And in that event, I think it proper that the President's counsel be permitted to raise an objection so that possibly we could consider going into executive session. I can see that. I can see that happening.

And I also agree with what you said that if he should be arbitrary, if Mr. St. Clair should be arbitrary, the chairman has the complete control. And in the event we did have to change the procedures, we have the mechanism to change the procedures. So, I just want to commend you for your position and indicate my support of it.

Mr. COHEN. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

Mr. KASTENMEIER. Are we ready for the question?

The gentleman from Maine, Mr. Cohen.

Mr. COHEN. Just a couple of points, Mr. Chairman. I can direct this to the staff perhaps. In your perusal of the impeachment proceeding, do you find the records proliferated with objections as to irrelevancy, materiality, or any other sort of technical objection that takes place during the course of a law trial?

Mr. WOODS. You find a record of a considerable amount of objection.

Mr. COHEN. Is it on a basis, or has it been on the basis that the inquiry should be limited to the commission of a criminal offense and not for any broader interpretation? In other words, that evidence coming in does not bear upon the commission of a crime, as many of those who have been impeached or considered for impeachment purposes have alleged in the past, and, therefore, a line of questioning might be considered irrelevant on that basis?

Mr. WOODS. It is a very rare thing. Perhaps it has occurred, but not frequently. And we are not aware of any circumstances in which any such objection to the relevancy of the line of questioning has been sustained.

Mr. COHEN. And it would be further your understanding that those witnesses who have been called to testify in past impeachment proceedings ordinarily have the benefit of counsel with them?

Mr. WOODS. I'm sorry, I did not hear.

Mr. COHEN. They have the benefit of counsel with them?

Mr. WOODS. Over the long range of the impeachment history I think the answer would be no.

Mr. COHEN. They do not?

Mr. WOODS. There is probably an increasing tendency for it. For counsel.

Mr. COHEN. The question I was going to raise is it would be rather inconceivable to me, although I am assuming that counsel for the witness might not raise an objection on the ground that it might be defamatory and incriminating and have counsel for the President sitting there who would raise it instead. That is not ordinarily done in my opinion, and I think to allay, if we can, the apprehensions of my colleague, Mr. Danielson, I think it becomes rather evident if the counsel for the President were to interpose objections periodically throughout

the investigation and where counsel for the defendant, or counsel for the witness rather would not. It would become rather apparent rather quickly that this was being interposed for dilatory or obstructionist purposes, and I do not think it is a legitimate concern and, therefore, I intend to vote against the amendment.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. I would like to raise a question upon the objection to the procedures of the committee, Mr. Counsel. Do you mean that the rules of the committee—nobody can object to the proceedings of the committee? They are set forth in the House rules, and are you saying the objection to the rules of the committee relating to the examination of witnesses or the admissibility of testimony?

Mr. WOODS. I think, I believe, the reference is somewhat broader than that. There are no objections to the House rules over which the committee has no control, but as to the procedures that have been adopted by this committee for the conduct of its business.

Mr. DRINAN. Well, I have difficulty with that because not even a member of the committee can raise a protest because those rules are pre-established, or those procedures, but do you mean that if by a majority vote the committee decides that a particular line of questioning is not admissible, then the President's counsel can object to that? Well, what can he object to that the members of the committee can't object to? But it is decided by a majority vote. I am not certain where or what the meaning of rule C 2 is.

Mr. WOODS. Well, first, Father, if I could point out the procedures referred to in C 2 are those relating to the examination of witnesses, not to the proceedings at large, and as to the second part of the question, the objection is not a controlling event in any sense. It is the raising of a point which counsel desires to be considered by the committee, and certainly if the committee has decided that it does not want to pursue a given line of questioning, or that it does want to pursue or that it wishes to receive tape recordings in lieu of personal appearances, or whatever kind of decision the committee has reached, counsel voices an objection to that and the committee hears his reason for thinking that the committee should decide otherwise, and then the committee proceeds to use its own best judgment as to how this matter should proceed. This is not a granting of any power, as I see it, to counsel. It is simply granting him the chance to be heard, and then be either sustained or overruled as the committee, in its wisdom, decides he should be.

Mr. DRINAN. Well, Mr. Counsel, why do you want to restrict that power, therefore, to these two elements alone, the examination of witnesses and the admissibility of testimony? Why do you not delete that and simply say objections to the procedures of the committee may be raised only by a witness and by the President's counsel? Why don't you broaden his right and say that he may raise an objection to procedures about anything?

Mr. RAILSBACK. Mr. Chairman?

Mr. KASTENMEIER. I recognize the gentleman from Illinois.

Mr. RAILSBACK. I wonder if it would not help if we amended to strike out "the procedures of the committee relating" and just said "objections to the examination of witnesses or to the admissibility of

testimony and evidence may be raised only by a witness." In other words, instead of "procedures".

Mr. WOODS. That would certainly be consistent with what the staff had intended by the draft; yes, sir.

Mr. DRINAN. Objections to what, to the examination——

Mr. RAILSBACK. I think what we ought to do is strike out in C 2, say "objections" and then strike out "to the procedures of the committee relating," so that it would read, "Objections to the examination of witnesses or to the admissibility of testimony and evidence may be raised only," instead of getting into this business of procedures, which I think is maybe a little bit misleading.

Mr. DRINAN. I accept that. I think that is a good suggestion, except that the essential question is not raised, is not answered yet by counsel. Why does he want to restrict the President's counsel to raising objections only to those two areas?

Mr. WOODS. Sir, I did not hear the question.

Mr. DRINAN. It was the same question as before, and that is, why do you want to restrict the President's counsel in his right to raise objections only to admissibility of evidence and the examination of witnesses? There would be other things.

Mr. WOODS. I should think that the basis for the limitation is that it is simply that it was thought it was practical for him to have and useful to him, and we did not contemplate that he would have any occasion to object to what we think are, and what the committee by that time has determined to be a fair and appropriate way in which to proceed.

Mr. DRINAN. Unless somebody else wants to talk, I would move the question.

Mr. DANIELSON. Mr. Chairman, point of order. I believe I have an amendment pending, and I have not yet had an opportunity to have a vote on it. I moved an amendment to strike "the President's counsel" and to make certain editorial changes, and I make a point of order that the amendment is out of order.

Mr. RAILSBACK. Whose amendment are you suggesting is out of order?

Mr. DANIELSON. Robert Drinan just offered an amendment.

Mr. RAILSBACK. I have not offered mine yet.

Mr. DANIELSON. Mr. Drinan just offered it.

Mr. KASTENMEIER. There is no amendment by the gentleman from Massachusetts pending.

Mr. DANIELSON. Fine. May I close on my amendment?

Mr. MEZVINSKY. Mr. Chairman? I just want to say that I——

Mr. KASTENMEIER. I yield to the gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. I think that Mr. Woods' comment about a practical solution, I am aware of the gentleman from California's suggestion, the reason we have this is because of due process, and we are leaning over backwards, and it is a practical kind of solution. It is like what Congressman Railsback says: it is basically keeping peace in the family; namely, on the Republican side, and for that reason, I will unfortunately and respectfully have to oppose the amendment.

Mr. RAILSBACK. Question.

Mr. KASTENMEIER. Does the gentleman from California desire to be recognized?

Mr. DANIELSON. Yes. I wish to close simply and to urge that the right that would here be granted by the President's counsel is a right in excess of and not granted to counsel for any other witness who would appear before the committee. I am certainly in favor of him having the same rights as everyone else, but I do not believe he should have rights over and above those afforded to other witnesses. And I, therefore, urge adoption of my amendment.

Mr. KASTENMEIER. Are you ready for the question? The question is the amendment by the gentleman from California striking the words "or the President's counsel" in section C 2.

All those in favor of the amendment please say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. All those opposed to the amendment please say nay.

[Chorus of "nays."]

Mr. KASTENMEIER. The nays have it and the amendment is rejected.

Mr. RAILSBACK. I have an amendment, Mr. Chairman.

Mr. KASTENMEIER. I recognize the gentleman from Illinois, Mr. Railsback

Mr. RAILSBACK. Mr. Chairman, I move to amend C 2 by striking after the word "Objections to the procedures of the committee relating, to the procedures of the committee relating" so that it would read "Objections to the examination of witnesses," and so forth from that point on.

Mr. KASTENMEIER. There has already been a discussion of the amendment. Is there any further discussion of this amendment?

Mr. GARRISON. Mr. Chairman?

Mr KASTENMEIER. Who is seeking recognition? Yes, Mr. Garrison.

Mr. GARRISON. If I might, Mr. Chairman, just one observation. It should be pointed out that there may be a difference in scope by the omission or inclusion of the word "procedures" which would arise in the following example: whether the examination of a particular witness occurs in open or in closed session I think would clearly be a procedure relating to the examination, and an objection interposed by the witness' counsel that this examination is proper, but should only occur in closed session and would be an objection going to the procedure, and not an objection to the examination. And in that sense, if the deletion were to take place, it certainly should be clarified on the record that an objection to such matters as whether the examination would be open or closed is not intended to be eliminated.

Mr. RAILSBACK. Mr. Chairman?

Mr. KASTENMEIER. The gentleman from Illinois.

Mr. RAILSBACK. Let me just briefly reply by saying what my intent is. My intent is not to prevent any of the people given the various privileges under item 2 from objecting for instance, to having testimony heard in open session. And I want to make it very clear that I fully believe that even if my amendment is adopted that there could still be an objection raised, for instance, to the question of whether a witness should be examined in open session or in a closed session. And so it is not my intent to be so narrowing or confining by the amendment. I want to make that very clear. The other way, however, if we

leave in "to the procedures," I think that we really are misleading, and perhaps confusing what really is the intent as I understand it of staff.

Mr. KASTENMEIER. Is there any further questions?

Mr. WOODS. Mr. Chairman, if I might make an observation?

Mr. KASTENMEIER. Mr. Woods.

Mr. WOODS. Perhaps the intent that Mr. Railsback has here, and Mr. Garrison's question could be reconciled by having the first portion of 2 read "Objections relating to the examination of witnesses or to the admissibility of evidence."

Mr. KASTENMEIER. Leaving in the word "relating"?

Mr. WOODS. Inserting the word "relating" in lieu of the word——

Mr. RAILSBACK. I have no objection to that. And, Mr. Chairman, I ask that my amendment be amended by including the word "relating."

Mr. KASTENMEIER. Without objection your amendment is so amended.

The question is now on the amendment. All those in favor of the amendment please say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed nay.

[No response.]

Mr. KASTENMEIER. The amendment is carried.

Proceeding on to, yes, I recognize the gentleman from Maine.

Mr. COHEN. I ask unanimous consent that the rest of the proposed procedure be considered as read.

Mr. KASTENMEIER. And open to amendment at any place?

Mr. COHEN. And open to amendment.

Mr. KASTENMEIER. Without objection the gentleman's request is agreed to.

Are there any other amendments?

The Chair has one amendment, and that is in section F, second line, "necessary for the," insert "fair and efficient conduct." "Fair and." It is a staff suggested amendment.

Mr. SMITH. Mr. Chairman, is that fair and necessary?

Mr. KASTENMEIER. Fair and efficient conduct. Fair and is the addition. Is there any discussion thereof?

If not, I put the amendment to you. All those in favor of the amendment please say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed nay.

[No response.]

Mr. KASTENMEIER. The amendment is carried.

Are there any further amendments?

If not, the Chair will call the question on the document, the impeachment inquiry proceedings as amended. The question is all those in favor of the procedures as amended, please say aye.

[Chorus of "ayes."]

Mr. KASTENMEIER. Opposed nay.

[No response.]

Mr. KASTENMEIER. The procedures are adopted, and the committee will adopt the report for the full committee.

I am informed and asked that the chairman has said that the meeting tonight will be at the time of 7:45 in this room.

One other question. The Chair will state that this subcommittee did not take up the Wiggins proposal today. The Chair, in discussions with my colleagues, feels that in view of the fact that it does relate to the President's response that this matter will have to be taken up first; that is to say the subject of the meeting tonight, before this subcommittee can properly address itself to the question of the procedures suggested by Mr. Wiggins. If the full committee thereafter wishes us to report out procedures relating to the clearing of evidence from the White House, we will be in a position to do so.

The subcommittee then stands adjourned and will report to the full committee.

[Whereupon at 12:18 p.m., the subcommittee adjourned.]

IMPEACHMENT INQUIRY

Impeachment Meeting

WEDNESDAY, MAY 1, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 8:08 p.m. in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel: Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The Chair has called this meeting tonight to consider the response by the President of the United States to the committee's subpena of April 11. At the same time, however, as this matter has occupied our attention, members of the committee have been going forward responsibly to consider rules of procedure for implementation when we begin evidentiary presentations. The Subcommittee on Civil Liberties, chaired by Mr. Kastenmeier, met in two extensive briefing sessions with counsel and in one business meeting over a 2-day period to consider the draft procedures and rules. Their work has been completed and the proposed rules are being made available to the members. They will be brought before the full committee for consideration on tomorrow, providing we are able to waive the 24-hour requirement rule so that we will meet and deliberate on these rules of procedure.

And I would ask the gentleman from Wisconsin at this moment, at this time, if he will not make that unanimous consent request?

Mr. KASTENMEIER. Mr. Chairman, as you have stated, the Subcommittee on Courts, Civil Liberties and the Administration of Justice is prepared to report to the full committee in terms of its recommendations for procedures in connection with the impeachment and accordingly, I do move at this time that the rules——

Mr. RAILSBACK. Could I just ask a question? Would the gentleman yield?

The CHAIRMAN. The gentleman from Illinois.

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I thank you for yielding. Just in the interest of possibly heading off an objection, am I correct that the rules themselves are very brief, I think something like what, 4 or 5 pages, and that they are going to be available tonight for all of the members to study prior to the meeting tomorrow?

Mr. KASTENMEIER. As a matter of fact, you are correct. They are 4 pages long. There were two sets which we put together and I will say we simplified, if anything.

Mr. DENNIS. Mr. Chairman, reserving the right to object, if I——

Mr. KASTENMEIER. If I could merely respond to the gentleman, and I would assume that they ought to be in each member's office at this very hour, are they not? I would ask——

Mr. WOODS. They were distributed this afternoon.

Mr. KASTENMEIER. And have been probably since this afternoon. So, they were adopted as of 12:15 at noontime today, and within the several hours following were made available to each member of this committee, I would say to the gentleman from Illinois.

Mr. RAILSBACK. Yes. Would you just yield for one more question?

Mr. KASTENMEIER. I will further yield.

Mr. RAILSBACK. During the consideration of the rules, we had several counsel present, including, I think, Mr. Garrison was present, I think Mr. Polk on our side was present, and the rules were adopted unanimously. Am I correct?

Mr. KASTENMEIER. That is correct. The rules were adopted unanimously. Counsel representing the committee, every spectrum of the committee, both the impeachment staff and the regular staff were present and participated in all the deliberations, and to the final version there is no dissent other than I would say the gentleman from California, Mr. Danielson, on my side had a serious question. Whether he still raises it or not is his prerogative, but there was no dissent to the rules as finally adopted. And I think they represent, quite candidly, a position the full committee can adopt.

Mr. DENNIS. Mr. Chairman, reserving the right to object?

The CHAIRMAN. The gentleman is recognized.

Mr. DENNIS. This matter of procedures is probably as important in its way as anything we are going to do. Felix Frankfurter said one time in an opinion, if I remember, that the history of American liberty was largely the history of procedure. I do not have any desire to delay the proceedings of this committee. None. But, I do have ideas on this subject. I do think it is important. I may want to offer some proposals of my own. I may want to offer some amendments to the rules proposed by the subcommittee, and I have had them on my desk now since about 5 o'clock or something like that this afternoon, and no chance to look at them and we are going to be down here now in a night session tonight. I do not know how late. I do not think it is reasonable to go back to the office when we adjourn here around midnight and start getting ready for a rules session tomorrow, and drafting amendments and what have you if we want to. And so I do not think we are under

quite that much of a pressure. If we want to go to Friday, I will meet, but, I am certainly going to be constrained to object, and I will object to a meeting tomorrow. I do object.

The CHAIRMAN. Objection is heard.

Mr. RANGEL. Move.

Mr. KASTENMEIER. Is it, Mr. Chairman——

The CHAIRMAN. Under the rules, under the rules of the committee, a two-thirds vote would be required to schedule the meeting without having given a 24-hour notice.

Mr. KASTENMEIER. Well, Mr. Chairman, I am constrained, notwithstanding the appropriate concern of the gentleman from Indiana to offer amendments as he may tomorrow and, indeed, if we even are able to conclude tomorrow, no one can say with any certainty that the proceedings which we embark upon to dispose of this question, can be concluded tomorrow morning. I do not know that it can. But, I would only say it is in the interest of the committee as a totality that we move as expeditiously as possible, and that I can only say to the gentleman from Indiana he will have occasion to offer his amendments. He will have occasion for them to be considered. All I shall do, if my request is granted, or should a motion be agreed to by this committee, is offer on tomorrow what the subcommittee has already agreed to. I know the gentleman understands that it is hoped for that next week we will already embark upon the enterprise that the country insists that we urgently do; namely, to go into the statement of fact and start the evidentiary proceedings, and that unless we are prepared to do this in advance by having procedures to accommodate that, we would not be able to proceed as expeditiously as the country and we here on the committee——

Mr. DENNIS. Would my friend from Wisconsin yield?

Mr. MCCLORY. Would the gentleman yield?

Mr. KASTENMEIER. Of course I yield. I yield first to the gentleman from Indiana.

Mr. DENNIS. I appreciate the gentleman yielding. The gentleman knows and the committee knows I am one of the members of this committee who has been insisting for a number of weeks, and quite vigorously that we should have business meetings and resolve some of the very questions to which the gentleman's subcommittee has now addressed itself and in my judgment, we might well have done that.

Now, I can not really see why, not having done that, we now have to do it overnight, draw your amendments, if any at midnight, when we are through here. Now, it just does not really appear reasonable to me, and that is the reason I am going to object. As I say, we can still get in before next week. There is Friday there, and I am willing to go along with that. But, I will object to tomorrow because I just do not think it is fair or reasonable, although I have the very highest respect for my friend from Wisconsin. But, I think you appreciate my position.

Mr. MCCLORY. Will the gentleman from Wisconsin yield?

Mr. KASTENMEIER. I will yield to the gentleman from Illinois, but I would like to comment only briefly. Of course, it would be very nice if we had had a great deal of time in advance of any obligation, procedural obligation we would embark upon to consider matters. But,

very often—but, it is I think the case that we could not have materially considered the rules, procedures that we considered yesterday and today 30 days ago or some other time in a vacuum. We had literally to be confronted with what is known as of today and yesterday and the day before and was not known a month ago. In this sense, we are embarked upon an unprecedented course, and we have to respond to this on the short-term basis and I think it is unfortunate that we were not noticed for tomorrow morning in advance. But, I would hope that so being vulnerable, it would not have subjected us to the situation where we have to further delay something which is very important for this committee and for the country.

Mr. McCLORY. Will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. McCLORY. I certainly do not want anybody to be deprived of a thorough review of the rules not the opportunity to offer amendments to the rules. And I might say that I intend to offer an amendment to the rules that are being proposed by your subcommittee.

However, I think it is extremely important that we act promptly on these, and that we have the rules of procedures adopted, if possible, tomorrow, and if not by Friday, so that we can proceed next week with the receipt of the initial presentation, and hopefully the receipt of evidence by this committee. And it seems to me that it is in the interest of an expeditious resolution of this entire impeachment inquiry that we waive the rule, waive the rule on notice at this time, that we do conduct the meeting on adoption of the rules tomorrow morning. And I certainly hope that a large percentage of the members on the minority side will support the motion so that we can meet tomorrow morning on the rules.

Mr. KASTENMEIER. I appreciate and accept the gentleman's statement.

Mr. HUTCHINSON. Will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Michigan.

Mr. HUTCHINSON. If the rules are suspended so that we can meet tomorrow, and we adopt the rules of procedure at that meeting tomorrow, are we assured that the evidentiary hearing, proceedings will commence on the 7th of May?

Mr. KASTENMEIER. I yield to the chairman.

Mr. HUTCHINSON. Can the chairman state when they will commence?

The CHAIRMAN. I can assure the gentleman only that they will commence next week. I am highly doubtful that we can commence on the 7th of May. But, I will assure the gentlemen that the initial presentation of the evidentiary material will begin next week.

Mr. HUTCHINSON. Would it then be—is it then so essential that the matter be disposed of tomorrow? Could it as well be disposed of on Monday?

Mr. KASTENMEIER. The rules, among other things, I would say to the gentleman from Michigan, state times during which members of this committee will have access to evidentiary material and other matters which, if not determined in advance, at least some days in advance of the hearing on the presentation of statement of facts, there will be a totally unknown quantity existent. It is, I think, in the interest of this committee, that these matters be resolved and put

to rest some days in advance, not only for the purpose of administration in terms of the staff, but so that we ourselves and the country at large know what the rights of the witnesses are and the members of this committee are with respect to the evidence. I do not think that matter ought to extend into next week for a resolution.

I move, Mr. Chairman, that this committee suspend the rules and announce a hearing, a meeting for tomorrow morning at 10:30 for the purpose of considering rules of procedure as reported from the Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Mr. DENNIS. The gentleman——

The CHAIRMAN. The motion has been seconded and the question is on the motion of the gentleman from Wisconsin for suspension of the rules and a two-thirds vote of those members present is required in order to suspend the rules.

Mr. DENNIS. Mr. Chairman, I move for a rollcall.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the role.

All those in favor please say aye, and all those opposed no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McCLORY.
Mr. McCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
[No response.]
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. No.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. No.
The CLERK. Mr. Latta.
Mr. LATTA. No.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.

The CLERK. Mr. Chairman, 32 members have voted aye. 5 members have voted no.

The CHAIRMAN. Two-thirds of the members having voted in the affirmative, the rules accordingly are suspended and the meeting on adopting the rules of procedure will be scheduled for tomorrow morning at 10:30. It will also be in order at that time that motions regarding procedures, including the motion previously offered last week by our friend, Mr. Wiggins, will be in order, although, as I did advise the gentleman, that motion, in light of the response, that we are considering tonight is rather moot.

I would also like to state that in scheduling this meeting I recognize that we had a Democratic caucus this morning and a busy legislative schedule for this afternoon, and I also had hoped that the members would have been sufficiently informed by the transcripts that they had received from the White House, as long as in advance of this meeting as possible, so that they might understand the nature of the transcripts and understand as well the nature and the substance and justification of our initial request for materials from the President which are in the hands of the members and have been in the hands of the members.

Tonight, however, the committee concerns itself with the matter on the agenda, the response of the President to our April 11 subpena. And for the purpose of advising the committee precisely on the material furnished, I am going to recognize Mr. Doar, and I will not recognize any member until Mr. Doar has completed his presentation, since I think that this is extremely important to an understanding of what position we are in.

Mr. Doar, will you please proceed.

Mr. DOAR. Mr. Chairman, members of the committee, before beginning, Mr. Jenner asked me to express his apology to the committee. He has scheduled many months ago a speaking engagement in Detroit, Mich., and he was not able to cancel or change that engagement because of tonight's meeting. Mr. Garrison is here with me on behalf of the inquiry staff as the senior minority counsel.

Mr. Chairman and members of the committee, on April 11, 1974, this committee authorized and issued a subpena which was served on that day on Richard M. Nixon, President of the United States, to be and appear before the Committee on the Judiciary, and to bring with him the things specified in the schedule attached hereto and made a part hereof.

On or before April 25, 1974, at the hour of 10 o'clock, this committee extended the time to answer this subpena to the President of the United States to April 30, 1974, at 10 o'clock. The President, pursuant to this subpena was commanded to then and there produce and deliver said things to said committee or the duly authorized representatives in connection with the committee's investigation authorized and directed by House Resolution 803, adopted February 6, 1974. Attached to the subpena was a schedule of things required to be produced pursuant to the subpena dated April 11, 1974. The subpena was very specific. The subpena required the President of the United States to produce all tapes, dictabelts or other electronic recordings, transcripts, memorandums, notes or other writing or things relating to the following conversations and then there were listed between February 20, approximately on April 18, 42 conversations between the President of the United States and certain of his key administration officials.

Prior to the submission of this subpena, service of this subpena, counsel for the committee has explained to Mr. St. Clair, counsel for the President, the relevancy and the materiality of the conversations requested.

On April 30, 1974, at 9:30 a.m., approximately, I received from Mr. St. Clair certain documents in response to the subpena. Although all of the members of the committee have received, Chairman Rodino's

request. Mr. St. Clair's response, his official response to the subpena, I would like to read the letter now. It is from the White House and it is dated April 30, 1974. And it reads:

Dear Mr. Doar:
At the direction of the President, I am forwarding herewith his submission of recorded presidential conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon.
Sincerely yours,
James D. St. Clair, special counsel to the President.

Attached to this letter was a 50-page document entitled "Submission of Recorded Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon," dated April 30. On page 3 President Nixon explained that this 50-page document was being submitted in order that the material submitted in this response to the committee's subpena can be viewed in the context of the events surrounding the Watergate incident and thereafter, the following summary is provided. At the end of the 50-page summary is an appendix consisting of the items which were submitted, a reference or an index of the items submitted to the committee. And I have before me, members of the committee, in these three folders as part of the official response, the appendix to the submission.

This morning, at Chairman Rodino's request, I circulated to the committee the appendix that was attached to the official submission so that all members would have the opportunity to see what was furnished, what materials were furnished to the committee by the President of the United States. Members of the committee, this appendix is a different appendix than the appendix that was attached to your submission, to the submission that was furnished to you, and each member of the committee received the same documents, but in addition, received certain additional transcripts of recorded conversations between the President and John Dean. As a matter of fact, seven recorded conversations which the committee staff had received earlier from the White House. I just want to emphasize that the official appendix to the submission is the one that you received this morning and it is different from the appendix which you received. The significant part, the difference is that there is a brief explanation in the right-hand column of this appendix explaining that some of the materials which had been requested had not been supplied. And if the committee would permit me, I have, or rather the inquiry staff have, prepared a chart that will illustrate what materials were asked for and what materials were submitted. And if I could bring that into the committee room, I think it would make the presentation clearer and if I just could describe it verbally.

The CHAIRMAN. You may proceed accordingly.

Mr. Doar, might I ask if that chart which you are going to present, does that reflect the charts which are at the members' desks?

Mr. DOAR. I have not seen the chart at the members' desk. Is there a chart?

No, it does not. It just is a chart, it is a large chart that I would hope that I could explain to the committee what material was furnished, but it does key to this appendix that is at the members' desk.

The CHAIRMAN. I understand.

Mr. DOAR. I wonder if all members can see this chart?

The CHAIRMAN. Why don't you get it further over this way?

Mr. Doar. Briefly, members of the committee, at the bottom of the chart are numbers, 1 through 52, which key to the appendix to the response of the President of the United States. On the left-hand column here are the materials which were specifically requested by the committee in its subpena which was served on April 11, and at the top of the chart are dates indicating the dates of the conversations running from February 20 over here, a number of conversations on April 15, and a number of conversations on April 16, and the number of conversations on April 17, and then conversations between other officials and the President on April 15. I believe these are Mr. Petersen and—or Mr. Kleindienst and then running finally to conversations on April 30.

Now, I want to call the committee's attention that the committee only required the President to produce 42 items in the subpena and there are 52 items that we have listed here.

Now, with respect to the response to the subpena, the first item that the committee asked to be produced were certain tapes and dictabelts, 42 tapes and dictabelts were asked to be produced, and none were delivered by the President to the committee.

The next, skipping over transcripts for a minute, the next item was that of Presidential notes of conversations.

The Chairman. Just a moment, Mr. Doar.

Mr. Wiggins. I realize, I realize you said no questions, but I cannot understand without asking the question, Mr. Doar.

Mr. Conyers. No questions.

Mr. Brooks. Regular order.

Mr. Seiberling. Regular order.

Mr. Conyers. No questions.

Mr. Rangel. No questions.

The Chairman. Is this directed to getting a better understanding of the presentation?

Mr. Wiggins. Entirely. It is not argumentative at all.

The Chairman. The gentleman may ask the question.

Mr. Wiggins. My only question, Mr. Doar, is this, and that is in each of the 42 cases, has the committee established that an electronic recording exists, and in each of the number of cases, has the committee established that tapes and dictabelts—I have trouble reading it—but, do Presidential notes for example, exist in all of the cases across the way?

Mr. Doar. We do not have any information with respect to whether or not they do exist. But, we do have indications that President Nixon has stated that he maintained such dictabelts and notes of certain meetings and conversations. And on November 12, 1973, in a Presidential statement, he said:

> Since I have been in Office, I have maintained a personal diary file which consists of notes which I have personally taken during meetings and of dictation belts on which I record recollections. The dictation belts and notes are placed in my personal diary file by my secretary.

Now, in response to the subpena that was issued by Judge Sirica last summer in which nine Watergate tapes were responded to, and where Presidential notes or dictabelts were asked to be furnished, on

two of the conversations there were Presidential dictabelts furnished. One was on June 20, 1972, and the other on June 30, 1972.

The President has also stated that he said to Mr. Petersen on about April 18 that he had a tape of a conversation with Mr. Dean on April 15. I have seen a letter from Mr. Buzhardt to Mr. Cox, the Special Prosecutor, which states that when the President spoke of that tape, he, in fact, was speaking of a dictabelt that he had made, or a recording that he had made after the conversation, so that while we do not have evidence of what material existed, we did not receive any information from Mr. St. Clair that any of these did not exist.

Mr. WIGGINS. All right. Thank you, very much.

Mr. DOAR. The same is true of other notes and other memorandums.

Now, Mr. Ehrlichman has testified that he took, on many occasions when he met with the President, verbatim notes of the conversations.

Ehrlichman stated: "I say substantially verbatim notes of my conversations with the President." And as I say, when the White House, when the President responded to the subpena issued by Judge Sirica with respect to three conversations with Mr. Haldeman, the President produced notes of conversations with Mr. Haldeman of which there was a tape recording as well, and then there were notes. Pardon me. There were four instances of conversations with Mr. Haldeman where there were Presidential notes produced in response to the subpena.

In response to the subpena of this committee, no notes were furnished to the committee, no Presidential notes of any of his key officials nor any memorandum dictated by any member of the meeting contemporaneous with or after one of the recorded conversations.

Now, there was furnished to the committee some, but not all of the conversations, transcripts. The reason why the line is wavy here, rather than up to the full—well, line here, bar line across, is that in a graphic form it seemed to me to be a fair way to indicate to the committee that these were partial and/or edited transcripts, and that they were not complete, full transcripts.

There is no denial about this. There was not anything indirect about the fact that the President advised the committee directly that he was submitting edited versions of the transcripts, making judgments with respect to relevancy and making judgments with respect to certain statements that might be offensive and which did not offend the sense of the conversation.

Now, over here on the very left, or my very right of the chart are eight conversations colored in dark and then a light brown, or a light red and a dark red. Now, these conversations were submitted in order, according to the President's response, so that the committee would have a full picture of all of the Watergate and the aftermath in order for it to make its decision with respect to the matters pending before it, with respect to the incident known as the Watergate matter. Now, paragraphs in our letter of April 19, we requested 75 additional items. Now, these 75 additional items ran back in time, principally back to the day that the Watergate break-in took place, which, if you had a chart would be over here somewhere, about, well, over 8 months before. And the only 3 of the 75, or maybe it was 79 recorded conversations that were submitted, were these 3 in the last days of April 1973? These conversations that are in dark red were transcripts, or press statements,

or partial press statements by White House officials that the President felt were relevant to the committee's consideration.

That briefly indicates the extent of the response to the committee of its subpena on April 11, 1974. Mr. Chairman, perhaps I could stop there and see if there are any questions.

The CHAIRMAN. Mr. Doar, I notice that there are tapes and dictabelts that are described, and I would like to know whether or not the subpena which we issued specifically called, and I know that members may not recollect, but there was a description of the materials that were requested in the appendix or the attachment to the subpena. Did the subpena call for materials other than tapes and transcripts, and were they produced at all?

Mr. DOAR. Well, the only thing that was produced, Mr. Chairman, were partial transcripts that are in these three folders right here on the table.

Mr. DENNIS. Mr. Chairman, may I ask a question?

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Did the staff submit a detailed justification for each request for a Presidential conversation?

Mr. DOAR. We did. We presented that to the committee before the subpena was issued.

Mr. BROOKS. Well, has the counsel for the President requested any further elaboration as to why a particular conversation was being requested; and if so, were such elaborations supplied?

Mr. DOAR. No request was made for any further elaboration.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. Doar, I will recognize each member who wants to be recognized for the purpose of asking questions since I think it is important to this proceeding that questions be asked.

Mr. Doar, what troubles me is that the President did, in his television telecast, did propose that in the event that these transcripts were not sufficient, that Mr. Hutchinson and I would have an opportunity to go to the White House, to listen to the original tapes. You and your staff have been at work on this investigation and have had to deal with tapes and recordings, and I would like to ask your professional opinion, and I know that you have some people on your staff who are professionally expert in supplying the answers, is it prudent for me and Mr. Hutchinson to make a determination of relevancy with respect to portions of tape recordings, not already transcribed?

Mr. DOAR. It is not prudent for you to do so.

The CHAIRMAN. Will you explain why?

Mr. DOAR. Well, the problem of listening, taking a transcript, and if you take a transcript and just take any substantial transcript like this of a conversation on April 14, 1973, and it may be 50 pages long, it may be 20 pages long, it may be 1 page, but they are varying lengths and, therefore, in these transcripts there are indications of omissions and there are also indications of where the conversation was unintelligible and, of course, there is a statement—I can't tell you how many times—"material unrelated to Presidential action deleted," and, therefore, you would have to take each one of these, Mr. Chairman, and go down to the White House, and listen to it, to each tape and go through it, and come to the portion deleted, and review each one of these tapes carefully and thoroughly before you could

make a judgment about the accuracy of the tape or the relevancy of the omissions.

But, we have found that, quite candidly, these transcripts are not accurate.

Now, I hasten to say, when I say they are not accurate, that I am not suggesting any intentional distortion. Not at all. I want to make that very clear. I am not suggesting any intentional distortion. What I am saying is that the amount of time and effort that you put into listening to one of these tapes is, that you can improve the transcript, the quality and the fullness of the transcript substantially by the type of equipment that you have and the patience and the energy that you have in listening to the recording.

The CHAIRMAN. Well, you say that we can improve. Has it been your experience with your professional staff that, as a matter of fact, that has occurred in your investigation of the tapes and in your examination of the tapes?

Mr. DOAR. Yes; we have done that in two ways. No. 1 is through the equipment that we have over in the Congressional Office Building. We have been able to get better quality of recordings than you get from the machinery that is down at the White House. This is through filtering and changing of things that are too complicated for me to explain. But, we do get a better quality, audible sound out of our equipment.

No. 2 is that we have found that we can make better recordings with our equipment, and that we could filter out noise, and that we can, therefore, pick up parts of the conversation that were marked unintelligible on the White House transcript.

I would strongly recommend to the members of the committee that they keep that in mind in reading these transcripts, not because there would be any intentional distortion, but because our transcripts of the conversations that we received, not in response to the subpena, but of the transcripts that you received as certain additional conversations between the President and John Dean, our transcripts are fuller and more complete.

Mr. HOGAN. Mr. Chairman?

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

I might say, Mr. Chairman, that I would have hoped that the President had included in his response the inclusion of our chief minority counsel and our chief counsel and chief minority counsel among those to screen or to review the tapes as to their accuracy and completeness and I also realize that we do have sophisticated equipment in our committee staff headquarters which would be very useful.

However, I would like to ask some questions, Mr. Doar. One thing, the tapes which we have already received, edition, we have received some tapes——

Mr. DOAR. Yes; we have.

Mr. MCCLORY. And it is proposed, is it not, in presenting evidence to this committee, and at least initially, to present it in the form of transcripts which you and other members of the staff will prepare for the benefit of the committee?

Mr. DOAR. No; it would be proposed, Congressman McClory, that the committee give us permission to equip the room so that the members of the committee could listen to the transcripts as well as follow it along with respect to some of the conversations. We think that there is a very significant difference between listening to a conversation and reading a transcript. All of us who are trial lawyers know the difference in the live courtroom experience and reading a brief on appeal. And it is substantially that. There is a substantial difference.

Mr. MCCLORY. In the presentation of evidence to the committee, is it proposed to play the tape before the full committee or to have us use earphones or what?

Mr. DOAR. To have you use earphones and play the tape before the full committee.

The CHAIRMAN. Would the gentleman yield so that I may enlighten him?

Mr. MCCLORY. Before the full committee?

Mr. DOAR. Yes.

The CHAIRMAN. Will the gentleman yield?

Mr. MCCLORY. Sure.

The CHAIRMAN. I would like to state, since the gentleman has already asked a question, which I think is very pertinent, I have instructed Mr. Doar to equip the room properly so that recorded conversations may be heard by each of the members. And Mr. Doar is going to proceed, and this is one of the reasons too that it is going to take some time. This room will be equipped accordingly.

Mr. MCCLORY. So that with respect to the tapes we have already received, it is proposed, too, that we will listen to those tapes?

Mr. DOAR. That is right. We would not, we would not ask the committee to listen to every word of every tape, because we would only pick out those portions that we felt were relevant. But, of course, once the evidentiary presentation starts, all of the tapes would be available for any committee member to listen to over in our office.

Mr. MCCLORY. Now, with respect to the matters that are omitted in the transcript, from the tape to the transcript, you are not suggesting, are you, that Mr. Rodino and Mr. Hutchinson would not be capable of determining the relevancy or the irrelevancy of the omitted material?

Mr. DOAR. Well, with all due respect, I am suggesting that. I do not think that——

Mr. MCCLORY. Do you think counsel is better——

The CHAIRMAN. I am not offended.

Mr. MCCLORY. Do you think that you and Mr. Jenner are better able to determine the relevancy than the chairman and the ranking member?

Mr. DOAR. Well, I think any lawyer that knows the case, and knows all of the facts, is better able to make a judgment as to whether or not a particular conversation—some of these are very—could be very close matters of relevancy.

Mr. MCCLORY. Well, they can do a better——

Mr. DOAR. If I could just say to members of the committee that we, the transcripts that we received, that you received from the White House with respect to some of the John Dean conversations, there

has been a judgment about relevancy made, so some of the conversation is not in your transcript, but it is in the transcript that the White House furnished to us about 2 months ago. Now, that meant that there was a judgment made on relevancy.

Mr. McCLORY. Well, you can so advise them about that, and they could still do a pretty good job, could they not?

Mr. DOAR. Well, no. You mean advise them——

Mr. McCLORY. Advise them about the discrepancies in the tapes that you have already received and the transcripts that you have already seen? You could advise them about that without depriving them of the right to listen to them?

Mr. DOAR. Under the procedure I do not think it would be possible for me to brief Congressman Rodino, Chairman Rodino, and Congressman Hutchinson as to what they might try to listen to.

Mr. McCLORY. Would your opinion be different if they improved the quality of the equipment at the White House for screening and listening to these tapes? What if they got as good equipment as we had at the staff headquarters? Then that would not be a valid argument, then, would it?

Mr. DOAR. Well, I think, without again—I do not want to be in the position of seeming to disagree with the Congressman from Illinois, but I really, respectfully say that in evaluating relevancy on matters in connection with these conversations that it really is, it is critical, and I really do not think that it would be possible to really advise on that.

Mr. McCLORY. May I ask one more question?

The CHAIRMAN. The time of the gentleman has expired and we are going to get on with other members.

Let me state that I have given a great deal of time to listening to tapes, to reading transcripts, and I must confess that despite the fact that I have been eager in pursuit of this responsibility, and have given it as much time as I possibly can, that it would be absolutely impossible for me to adequately and properly and fully discharge the responsibility that I have to the committee, to visit, as to what I have heard, to be able to authenticate and to be able to verify without having the opportunity to have counsel and technical experts in support of what I might say.

Mr. Waldie.

Mr. WALDIE. Mr. Doar, did I understand you to say that on the March 21 transcript that the President provided us, the deletions or the illegibles, and the inaudibles in some instances we have deciphered on our own equipment?

Mr. DOAR. Well, yes. I did say that.

Mr. WALDIE. Is that a rare thing, or is that a fairly common thing?

Mr. DOAR. Well, it is—there is, there is an improvement in the fullness of the recording.

Mr. WALDIE. Then may I direct a question to the Chair? Mr. Chairman, it would seem to me that the purpose of confidentiality was to respond to what Mr. St. Clair had represented was the President's concern that this committee could not keep these things confidential. It is quite apparent that the President is no longer concerned about these materials being kept confidential, and if we have a better

transcript of that recording than the President provided us, where the unintelligibles and the inaudibles, in fact, were transcribed, we surely should have that, and I would ask the chairman if the transcript of that nature could be provided each member of the committee?

Mr. COHEN. Would the gentleman yield?

The CHAIRMAN. Is the gentleman putting a question to me regarding the providing of those transcripts that are not contained in the transcripts that were provided by the White House?

Mr. WALDIE. Yes, Mr. Chairman.

The CHAIRMAN. Well, I believe that we are governed by the rules of confidentiality at this time, and until the committee decides otherwise, I do expect to comply with those rules.

Mr. WALDIE. Well, Mr. Chairman, maybe I did not make myself clear. Just let me limit it at this moment to the March 21 conversation of Mr. Dean and the President as to which confidentiality obviously no longer applies. The President has breached confidentiality. May we in the committee now have the transcript that our committee has prepared?

The CHAIRMAN. I believe——

Mr. WALDIE. With the unintelligibles and the inaudibles now clarified?

The CHAIRMAN. I believe the committee should be provided with those, and it is the intention of the Chair, at least, to provide the committee members with those transcripts, which I believe the staff is already considering doing.

Mr. WALDIE. May I ask one further question of Mr. Doar? I did not hear you relate to that chart where the missing tapes or transcripts were to be placed? Are those the white portions?

Mr. DOAR. Congressman Waldie, there are the white lines, and in the transcripts bar here, the second bar, the first two, and then No. 14.

Mr. WALDIE. When you describe the numbers, will you describe the reason that was assigned to their absence by the White House?

Mr. DOAR. Well, item 1A, or item 1 here, was a conversation that occurred between the President and Mr. Haldeman on or about February 20. The transcript, the appendix, indicates that a search of the tapes failed to disclose such a conversation. That is all the explanation there is.

With respect to the second one, it is a conversation between the President and Mr. Ehrlichman assigning Mr. Dean to work with the President on Watergate. That is on February 27. Again a search of the tapes failed to disclose such conversation.

Item 14 here, and item 17, or 16 and 17, were conversations that occurred in the executive office building after 2:22 p.m. on April 15, and according to the appendix, the tape ran out during a meeting with Mr. Kleindienst and nothing further was recorded in the executive office building office of the President on that day.

And then the other explanations were that the calls were made from a resident telephone and so the conversation was not recorded. One was 12:08 to 12:23 a.m. on the 16th. No. 18 was the one on April 16, early in the morning, 8:18 to 8:22. And I believe one on April 16 between the President from 9:27 to 9:49, a call made from a residence to the White House and then a short call from 10:13 to 10:15 on

April 13, a telephone conversation between the President and Mr. Kleindienst. And then on item No. 42, which is telephone conversation, the conversations were not recorded, because the conversation was at Camp David.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I am not going to use all of my time. But, I can see, what I am afraid I can see is the press coming up afterwards and taking pictures of this chart, which looks like there are a series of omissions, and yet, in response, Mr. Doar, to Mr. Wiggins' question, I think we ought to make it crystal clear that we do not know whether there was memoranda or notes or Presidential notes, or dictabelts, or electronic recordings on all of those days that are left blank. Is that right?

Mr. DOAR. Well, we know only—we certainly do not know with respect to the President's notes, other notes or memoranda.

Mr. RAILSBACK. But I mean, leaving those things blank, I can see pictures of that reproduced which make it look like he has complied with, you know, and I am not satisfied, and I want to make it clear, that I am not satisfied completely with his response, but I think that could be misrepresentative.

Mr. DOAR. I think that is fair, and I would have no intention to misrepresent that. I would say that if you look—I would say that if you took this part of the chart from this point up, that it is fair to show that there is no tapes. The tapes were not furnished and, of course, on these conversations you would have to have tapes to get the transcripts.

Mr. RAILSBACK. Yes. But, in respect to the dictabelts, for instance, we are not even sure there were dictabelts on all of those days, are we?

Mr. DOAR. Not at all. I only tell you what I know with respect to the habits of the President, and with respect to the fact that dictabelts were furnished on the 20th and the 30th of June.

And there is testimony and statements that there was a dictabelt made on the 15th of April.

Mr. RAILSBACK. I will yield to the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding.

Mr. Doar, just a couple of questions that I have on the tapes. Is it my understanding, is it correct, that we have in our possession a tape from March 21?

Mr. DOAR. Yes, we do.

Mr. COHEN. And do you have transcripts furnished by the White House to the committee?

Mr. DOAR. Yes.

Mr. COHEN. Am I correct that you have two separate transcripts from the White House as to that date?

Mr. DOAR. Yes, we do.

Mr. COHEN. And am I further correct that there is a difference between both of those transcripts?

Mr. DOAR. I cannot represent that, because I have not examined that transcript that closely.

Mr. COHEN. Do we have a third one from the Special Prosecutor's office?

Mr. DOAR. We have one from the Special Prosecutor's office.

Mr. COHEN. Do you know whether that is consistent with the other two?

Mr. DOAR. No. That is an improvement on the other two.

Mr. COHEN. And then we have one of our own?

Mr. DOAR. And that is an improvement on the other three.

Mr. COHEN. But one other point I would like to make on this. Am I correct also that in the material that has been furnished to us, the transcripts, that there are portions of that transcript where there are words missing without any notation in the transcript of words having been deleted for reasons such as being inaudible, or expletives, but have been picked up on the recordings that we have on our equipment and added to the transcripts that will be furnished to us?

Mr. DOAR. That is correct.

Mr. COHEN. And I assume the reason for this is because of our superior equipment?

Mr. DOAR. Yes, and our superior diligence in listening to the tapes.

Mr. COHEN. Thank you.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman. I hope my voice will hold up. I will just ask one question. Did Mr. St. Clair or the President make any explanation as to why the President was not supplying any items other than the transcripts?

Mr. DOAR. Well, I believe that in the submission that was enclosed it does make an explanation of supplying the transcripts, the edited transcripts and not the recordings, but there is no explanation with respect to Presidential notes, other notes, or memoranda.

Mr. SEIBERLING. So that he has not said that there are no notes, or memoranda, but has merely done nothing in response to that portion of the subpena; is that correct?

Mr. DOAR. That is correct.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. DENNIS. Mr. Chairman?

Mr. SEIBERLING. I yield to the gentleman from——

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Doar, If I understood you in answer to Mr. Wiggins and Mr. Railsback, you have already told us that with respect to the items on your chart, the President notes, other notes and memoranda, that as to those three items you do not, in fact, have any personal knowledge whether any Presidential notes, other notes, or memoranda dealing with the matters in the subpena exist; is that correct?

Mr. DOAR. No, I do not have any personal knowledge. I think——

Mr. DENNIS. And, therefore, even though your chart under those three headings is white, or blank, so far as your personal knowledge goes, there may have been 100 percent compliance with the subpena as to those three headings, is that not true?

Mr. DOAR. That is possible.

Mr. DENNIS. And as to the matter of dictabelts and electronic recordings, how many of them, to your personal knowledge, exists dealing with the matters called for in the subpena?

Mr. DOAR. I do not know that.

Mr. DENNIS. So that while that line two is white or blank, again there may have been 100 percent compliance, as far as you personally know, under that heading; is that right?

Mr. DOAR. That is on this heading here?

Mr. DENNIS. No. I said tapes, dictabelts, and electronic recordings. How many of them exist as to the items called for in the subpena, to your personal knowledge?

Mr. DOAR. Well, there are tapes and dictabelts for all of the dates on which there is a yellow portion in the second line.

Mr. DENNIS. You are sure that there was a dictabelt for each tape; is that correct?

Mr. DOAR. Oh, no. A tape. I am not referring to dictabelts.

Mr. DENNIS. Well, I say there would be a tape, yes, right. Of course there would be a tape. That is where the transcript comes from.

Now, what I am asking you, do you know anything about dictabelts as respects the matters called for in the subpena?

Mr. DOAR. I only know that the President has stated that he had a——

The CHAIRMAN. Mr. Doar. Will you kindly speak up?

Mr. DOAR. I only know that the President has stated that there was a tape of a conversation with John Dean on the 15th of April.

Mr. DENNIS. All right.

Mr. DOAR. And there was a letter from Mr. Buzhardt in which he said that the President was speaking of a dictabelt, of a recording dictated later, not a tape.

Mr. DENNIS. Well——

Mr. DOAR. That is all of the knowledge I have.

Mr. DENNIS. All right now. Is the 15th of April dictabelt the only one that you know of which bears on, is relating to the matters called for in our subpena?

Mr. DOAR. Yes. I think so, and I would also like to add, Mr. Dennis, that I know that the Special Prosecutor made an effort to get that, and I think, I believe, that they were not able to find that dictabelt.

Mr. DENNIS. All right. If you follow then, in your first line up there, dictabelts, the same procedure that you have used in transcripts, so far as you know it would be 100 percent compliance except for the dictabelt of April 15?

Is that not true?

Mr. DOAR. That is true and I cannot represent that with respect to the 15th of April.

Mr. DENNIS. Well, let me ask you a question. The chairman asked you a minute ago if it was true that you did not do certain things. Do you think it is fair to bring that chart, which on the transcript line is white, where there are no transcripts, and filled in where there are transcripts, and then on all of the other lines they're apparently white and vacant, and yet you have no personal knowledge as to whether the items exist?

Mr. DOAR. Yes; I do think it is fair. I think——

Mr. DENNIS. Well, I do not.

Mr. DOAR. Could I explain myself?

Mr. DENNIS. Of course, you can explain yourself. But, it seems to me before you do it that you ought to treat them the same, because

you give the impression here that out of five lines only one has been complied with and yet you have just told me that the other four may have been 100 percent complied with, with the exception of some dictabelt on April 15, as far as you know, and yet you show them as if blank on your chart. And that is why I do not think it is fair. Now, you tell me why it is.

Mr. DOAR. Well, Congressman Dennis, the issue is in this presentation what did the President furnish to the committee in compliance with its lawful subpena. A subpena under our system of law is a process which commands, which orders, the low and the high to obey an order of duly constituted authority. In this case and in every case in this country, there are no exceptions to the command of the law. It would have been a very easy thing, it was in the President's knowledge to advise this committee that there were no dictabelts.

Mr. DENNIS. May I interrupt you right there, Mr. Doar?

[Chorus of "noes."]

The CHAIRMAN. If the gentleman will pardon, Mr. Doar is answering the question which the gentleman asked him. Now, let him complete his answer.

Mr. DOAR. Well, I will complete it briefly. I do not want any impression left with any citizen of this country through any picture of this chart that there is any suggestion that the White House is full of notes and memorandums of transcripts. But I do think it is fair, Congressman Dennis, to say that in response to a lawful subpena, the President did not indicate one way or the other that there were no materials of the kind this committee commanded him to deliver on April 30, at 10 o'clock.

Mr. DENNIS. All right. Now, may I ask you this——

The CHAIRMAN. The gentleman's time has expired.

Mr. HUNGATE. Mr. Chairman?

Mr. DENNIS. Well, Mr. Chairman——

The CHAIRMAN. The gentleman's time has expired. I have given the gentleman 5 minutes.

Mr. HUNGATE. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman?

Mr. HUNGATE. Am I recognized?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman. I guess I am as concerned as anybody else about the forum that was chosen by the President for the presentation of the transcripts. Let me ask you this, Mr. Doar, prefacing my remarks by saying this, I think that the committee staff has maintained scrupulous confidentiality in this entire matter. I think that stands loud and stands tall, and speaks loud for this entire committee and this entire process. And I thank you and the staff for doing that. It will speak well of this committee for a long time to come.

Now, having said that, let me ask this question. Had the President complied with our subpena, that is, had they supplied the tapes that were requested, giving reasonable answers for those that could not be supplied, and the same is true for the dictabelts or notes or whatever, what presently would be the status of that subpenaed material?

Mr. DOAR. Well, the subpenaed material would be in the possession

of the inquiry staff under the rules of confidentiality adopted by this committee.

Mr. FLOWERS. And it would not be public knowledge as it is now?

Mr. DOAR. It would not be public knowledge.

Mr. FLOWERS. It would not be in the newspaper, or as the audience has it, the book form, and it would not be in that condition now?

Mr. DOAR. That is correct.

Mr. FLOWERS. It would be under the same rules of confidentiality as the other material that has come to the committee staff up to this point?

Mr. DOAR. That is correct.

Mr. FLOWERS. The thing that bothers me then is the fact that the form that was chosen for this was not the committee which was and is the legitimate forum for responding to the subpena and I just wonder what this requires in terms of using the public forum for further meetings of this committee? I am just thinking out loud, and I think as a minimal prerequisite, Mr. Chairman, I am glad that you said that you would, when members of this committee brought up the President's presentation of any facts, that at least immediately we be furnished with the committee's transcripts of those tapes that we have that correspond to the transcripts that we have been furnished by the President's counsel.

And I hope that you, Mr. Chairman, and your staff, our staff in this instance, can do that as soon as possible, and not await the presentation next week.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, there is a lesson for the committee in the report which has just been made by Mr. Doar, and the lesson is this: that we should be more careful lawyers in the future than we have been in the past to ascertain by discovery techniques which are available to us, that any material which we subpena, in fact, exists, and that it is under the possession or control or subject to the disposition of the President. Once we have that information in hand, and desire it or believe it would be relevant, then we might subpena it.

We, on the contrary, embarked on a subpena without knowing whether the material subpenaed, in fact, existed. And I suggest that that is not a procedure which we should follow in the future. We do have the power to ask the President under oath with respect to interrogatories as to material in his possession, and if we get an affirmative answer that it is in his possession, then there is no doubt, there is no ambiguity, left when he fails to furnish that information pursuant to a subpena.

The gentleman, our counsel, was advising us as to the law. It is an accurate statement of the law as well that the person subpenaed is under no legal duty to provide the issuer of that subpena with an explanation as to why material which was subpenaed was not furnished. He is merely obliged to meet the command of the subpena. And it might well be that the President, at least insofar as transcripts are concerned, met that command, and we are in an awkward position now, Mr. Doar, of not knowing whether he met our commands or not with respect to the other matters, because we did not know for sure,

and do not know for sure, what he had in his possession. I think we ought to try to avoid that in the future.

Mr. DOAR. Well, we do know about the tapes on the days where we have transcripts. And we do know that the transcripts are edited and partial transcripts.

Mr. WIGGINS. Well now—well now, do we really know that? We, in fact, have been careful students of the newspaper and we have been reading transcripts from other proceedings but we have not directed to the President, so far as I know, any interrogatories finding out from the President just what tapes are in existence. I think that the President's statement under oath with respect to that question ought to precede any subpenas of those types.

Mr. DOAR. Well, it has not been my experience that when you issue a subpena duces tecum to produce books, records, and documents that it was necessary to ask the person subpenaed if the documents were in his possession before you issued the subpena.

Mr. WIGGINS. Let me assure the gentleman that that has been my experience, and when you seek to hold a person in contempt for example, for failing to adequately respond to a subpena, you best have him under oath in advance that he, in fact, has the material, or you are apt to find that you are out in left field in seeking a contempt citation in normal civil litigation.

And I cannot agree with the gentleman's assessment of common practice.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman.

Mr. Doar, in the subpena we sent down there by a 33 to 3 vote, which was prepared I think in a bipartisan manner, we did request items you have listed, did we not, tapes, dictabelts, electronic recordings, transcripts, memorandums, notes, or other writings? Those are the terms of that subpena?

Mr. DOAR. Those are the terms of the subpena.

Mr. HUNGATE. Was any response made to the effect that there are no Presidential notes?

Mr. DOAR. No.

Mr. HUNGATE. Or that there were no other notes?

Mr. DOAR. No.

Mr. HUNGATE. Or that there were no memoranda?

Mr. DOAR. No.

Mr. HUNGATE. Or that there were no dictabelts? Did they respond that there were no dictabelts?

Mr. DOAR. No.

Mr. HUNGATE. So, to the best of your ability, you have listed there the things that this committee, in a bipartisan way, requested, and where you received the items you have so indicated and where you did not receive them, and did not receive a denial of their existence, you have indicated that you have not had a response to that part of your subpena. Is that fair?

Mr. DOAR. That is true, with the exception of these blank white areas marked in here, and in these things there has been an explanation of why the transcripts were not furnished.

Mr. HUNGATE. In your opening statement, did I perhaps misunderstand you as regarding some statement that had been made by the

President at some time on television as to the existence of notes, his notes or diary on these events?

Mr. DOAR. Well, I did make a statement. I have it here. Just permit me to see if I can find it. The President said in a statement on November 12, 1973:

> Since I have been in office, I have maintained a personal diary file which consists of notes which I have personally taken during meetings and have dictation belts on which I record recollections. The dictation belts and notes are placed in my personal diary file by my secretary.

Mr. HUNGATE. Thank you, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. Mr. Doar, the letter of April 30 which you sent to each of us and which had a copy of the letter of James St. Clair to yourself in the appendix, that appendix, was that appendix prepared by the White House?

Mr. DOAR. Yes, sir.

Mr. SANDMAN. Well, does not that appendix in 52 items give reasons for why some of them were not supplied?

Mr. DOAR. Yes, sir.

Mr. SANDMAN. So you did know from his appendix what was not supplied and what was not available, did you not?

Mr. DOAR. With respect to transcripts, we did have an explanation.

Mr. SANDMAN. Yes. But I mean, for example, in the areas where they had items 1 and 2 where it says a search for the tape failed to disclose such a conversation, do you have any knowledge that a conversation was recorded by tape or otherwise on that date?

Mr. DOAR. Well, we had a reasonable basis to believe that there was such a conversation. There was an agenda prepared for a meeting between the President and Mr. Haldeman with respect to the possible——

Mr. SANDMAN. Yes. But we do not have any real evidence that any such thing did exist, do we?

Mr. DOAR. No; we do not.

Mr. SANDMAN. All right. That is an important point. Now, let us get back to the one that you cite, April 15. On April 15, according to item 31, the tape ran out and they said that five items that you requested were not recorded because the tape ran out.

Now, do you have any special knowledge to prove that the tape did not run out?

Mr. DOAR. No; I do not have any question——

Mr. SANDMAN. Well, is that not a fair answer?

Mr. DOAR. Yes. And I make it.

Mr. SANDMAN. OK. Now, eight other items were not recorded. It says so right on here. If you have some knowledge to the contrary, or some evidence to the contrary, why do we not have that?

Mr. DOAR. We do not have any evidence to the contrary.

Mr. SANDMAN. So, we have no proof that such items ever existed?

Mr. DOAR. We have diaries indicating that there was a conversation, but not that there was a recording of it.

Mr. SANDMAN. Yes. But of the five items not recorded in answer to item 31, we cannot dispute that they were recorded, can we?

Mr. DOAR. No, sir.

Mr. SANDMAN. OK, so those I think we have to accept that they were not recorded and the eight items that were never recorded, according to the appendix, unless we prove to the contrary, and that answer would seem to me to be acceptable, would it not?

Mr. DOAR. Yes.

Mr. SANDMAN. OK. That is 13 of them right there.

Now, let me ask you a simple question. What would the ordinary man on the street think of this chart of yours, where all of these blanks exist? Would he not believe that somebody deliberately withheld all of those blanks?

Mr. DOAR. No; I do not think he would.

Mr. SANDMAN. What other conclusion could he reach?

Mr. DOAR. What other conclusion he could reach? He would have to have my presentation, my presentation in connection with the chart. I am not speaking with this chart alone. I am giving it to you with an explanation. There was no response with respect to these items which were subpenaed.

Mr. SANDMAN. All right now, in the 13 items that I did discuss with you, which is in the lines of transcripts, they all show blanks.

Mr. DOAR. That is right.

Mr. SANDMAN. And reading your chart there isn't one item of answer as to why those blanks exist, and to give a fair account of those transcripts, should not your chart show something about why they're not included there?

Mr. DOAR. My explanation is there is a reason for that and the reasons are this: You have to consider the chart with the appendix. I did not purport that this chart would speak entirely for itself.

Mr. SANDMAN. Yes. But you know what is going to happen? That chart is going to be on the front page of every newspaper.

Now, second you give a quantity which shows a percentage of what was given for what you requested on a given date. Some of those it looks like it may be 85 percent, some may be 90 percent. I think that is what you meant to do, the rest being deleted, is that true?

Mr. DOAR. Well, we just wanted to indicate that they were partial, edited transcripts.

Mr. SANDMAN. OK. That is all I want to know. Now, something was edited, something is not recorded. You have not listened to the tapes, and obviously, the chairman does not want to listen to the tapes——

The CHAIRMAN. The gentleman——

Mr. SANDMAN. Pardon me. How do you know——

The CHAIRMAN. I am afraid that the gentleman is trying to read the chairman's mind.

Mr. SANDMAN. How do you know, how do you know what was deleted? You could not know.

Mr. DOAR. No.

Mr. SANDMAN. Because you did not read the transcript or the tape.

Mr. DOAR. Well, in some cases you can see that portions are deleted. In other cases, by looking at the transcript you cannot tell that.

Mr. SANDMAN. Well, he did not record everything because everything was not absolutely material to this. This at least is what I am told. Whether this is true or not I do not know. And if somebody does not listen to these tapes I am never going to know.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Mann.

Mr. MANN. Mr. Chairman, I am pleased that the gentleman from New Jersey has called attention to the letter of transmittal of April 30, 1974, which I think each member will acknowledge is on his desk, and happens to be signed by John Doar. And it includes the White House statement as to why those white spaces exist.

However, I find by looking at the chart, which says response to subpena, that you left out a white space, No. 42 which is not here.

Mr. DOAR. Well, the reason, and I wanted to explain that, is that this 42, in order to make it easier for the committee, corresponds to the 42 items that are listed in your appendix and so that it is set up on the other appendix but exactly the number you would find in item 42 falls into another item on this chart.

Mr. MANN. Now, if there is any question about the explanation of the White House for the failure to produce the items, it is involved in your letter and appendix of April 30, and if it is not available to the press, then here is my copy. I am somewhat surprised at the statement of the good lawyer from California, Mr. Wiggins, that this committee should be clairvoyant in its knowledge of what is available at the White House. I am particularly disturbed about what that indicates with reference to communication between this committee and the White House. After 2 months and 5 days, instead of this committee being advised of what was or what was not available, the President mounts his electronic throne and tells the American people what is or is not available. Has this committee failed to offer to communicate with the White House?

Mr. DOAR. No; it has not.

Mr. MANN. You know, certain deletions from and inadequacies of these transcripts cause me some concern and these expletives, actions not related to the President. I recall in World War II that the American people took a great deal of satisfaction out of [expletive] nuts. I also recall they took a lot of satisfaction or dissatisfaction as they may have seen it out of President Truman's response to certain music critics' statements, which all goes to show that the tapes as subpenaed by this committee, and an expert analysis of those tapes is essential to a determination of the whole truth. Now, how can anyone object to the whole truth? If one does not understand the motivation of this committee, then they can't understand the motivation of this member, that I am not concerned with partisanship, I am not concerned with anything but the whole truth, and unless I get it, I am handicapped in my service to the American people in determining this issue.

The CHAIRMAN. My Latta, were you seeking recognition? Mr. Butler?

Mr. BUTLER. I pass, Mr. Chairman.

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I have I believe three questions. I will try to move them along pretty fast.

With respect to the 10 voids in the list of transcripts, there are 10 as I count them, it is my understanding 10 out of 42 that the White House did give an explanation that the tape was either not found or otherwise not available, is that true?

Mr. DOAR. Yes; either that there was no recorded conversation or that the tape had run out.

Mr. DANIELSON. But at least there was an explanation?

Mr. DOAR. An explanation?

Mr. DANIELSON. An explanation of the fact they were missing?

Mr. DOAR. Right.

Mr. DANIELSON. A reason why they were not produced?

Mr. DOAR. That is correct. Right.

Mr. DANIELSON. Was there any similar explanation as to the other four categories of material, tapes, dictabelts, electronic recordings, Presidential notes, other notes or memoranda?

Mr. DOAR. There was with respect to tapes.

Mr. DANIELSON. Well, the tapes, as to the 10 tapes——

Mr. DOAR. With all of the tapes the President said that he was supplying transcripts in lieu of tapes.

Mr. DANIELSON. Oh, he conceded there were tapes but that he was only supplying transcripts.

Mr. DOAR. That is correct.

Mr. DANIELSON. But on the voids, the voids in the transcript line, there was an explanation that they did not exist or at least were not found, is that true?

Mr. DOAR. That is correct.

Mr. DANIELSON. And no such explanation on the other categories?

Mr. DOAR. That is correct.

Mr. DANIELSON. As to the tapes, and the taping mechanism, do you know on the basis of your work and study of the transcripts, and the like, who at the White House knew that these conversations were being taped?

Mr. DOAR. I know only of some people that knew.

Mr. DANIELSON. Do you know if the President knew?

Mr. DOAR. The President did know.

Mr. DANIELSON. Do you know whether Mr. Dean knew?

Mr. DOAR. I do not believe Mr. Dean knew. No; I do not think he knew.

Mr. DANIELSON. Do you know anyone other than the President who knew that the tapes or the tape recordings were being made?

Mr. DOAR. Yes; I know Mr. Butterfield knew.

Mr. DANIELSON. Oh, yes.

Mr. DOAR. I believe, I believe Mr. Haldeman knew and there may have been one or two other Secret Service people who knew.

Mr. DANIELSON. All right; you have also worked with some of the few tapes we do have in our possession. Have the expletives been eliminated, erased from those tapes?

Mr. DOAR. No; they have not.

Mr. DANIELSON. Lastly, do you believe having listened to some of these tapes, that it would be possible for our chairman, Mr. Rodino, and for Mr. Hutchinson, to make an examination of the tapes at the White House and at that time determine whether or not the tapes, the integrity of the tapes themselves, has been preserved? That is, could they determine whether there has been any additions, deletions, erasures, mutilization, recordings over or any form of alteration which would alter them from their original condition?

Mr. DOAR. No; they could not determine that by themselves.

Mr. DANIELSON. That would require a technical examination by electronic or mechanical specialists; would it not?

Mr. DOAR. That is correct.

Mr. DANIELSON. Thank you.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Doar, with respect to your comment about who knew the tapes were being made, do you know at what point the President knew? Did he at one point make a decision that the tapes would be made or did he know on an ongoing basis? The reason I ask, I have come to the inescapable conclusion that he must have forgotten they were being made. In other words, I can well understand that if the Secret Service sent him a memorandum and said in order to protect your life we need to record everything that goes on in the Oval Office, and he writes "OK" on the memorandum and then so he did have knowledge of it. But, did he on an ongoing basis have access to the tapes, and was he reminded that they were being made? If so, I find it very hard to believe.

Mr. DOAR. I do not have any indication of that; no.

Mr. HOGAN. You do not know at what point in time he found out they were being taped? I mean, or granted approval for it?

Mr. DOAR. Well, I believe, I believe that the—I do not know when the first tape was made, when the system was installed. I believe it was sometime in 1971.

Mr. HOGAN. So could we assume that he approved the installation and then perhaps promptly forgot that it was even there?

Mr. DOAR. Well, you can assume that, you can assume that he, the President, of course approved the installation.

Mr. HOGAN. Thank you.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. Doar, I am concerned that somehow the questions raised by the gentleman from California, whom I respect as a lawyer, seems to be asking you to provide the information we, in fact, we're asking the President to provide, and I just—you made a point as to explaining what a subpena means for any ordinary individual, whether it is the President or whether it is a Member of Congress or whether it is a private citizen. And I note that under the rules of procedure for noncompliance that we have the language of failure by any person without adequate excuse to obey a subpena served upon him may be deemed in contempt, noncompliance from which the subpena issued. Is it true then regarding the other matters that the Presidential notes and other notes and the memoranda, that in this case he had no excuse, whether it was adequate or inadequate? Is that a fair conclusion as to the other items that seem to be blank there on the chart?

Mr. DOAR. Well, I do not think it would be fair to make a judgment without an explanation but as the matter stands now, there is noncompliance with the subpena because there was no explanation. There may—the President may have an explanation. Certainly——

The CHAIRMAN. I would like to advise the gentleman that I do not think that it is fair to ask Mr. Doar to conjecture on these questions.

I think that Mr. Doar is trying to give us a professional opinion as to what he actually knows and what his experience is with these tapes and recordings.

The gentleman may proceed.

Mr. MEZVINSKY. I certainly understand the point made by the chairman and I think the point that seems to be coming through loud and clear is that with no adequate excuse, to me we do seem to have the appearance of noncompliance, which somehow upsets me because it almost gives us the feeling that we are going through a constitutional process of tiddly-winks from the White House and he does not seem to understand that noncompliance or compliance with the information is in effect, ignoring the rule that this committee has. So, Mr. Chairman, I respect the presentation by Mr. Doar, and I am concerned that, in fact, by this presentation, it does have the appearance without question of noncompliance.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Doar, just one question or two, Mr. Doar. With reference to the items, excluding tapes, leaving that question out of it, and in dictabelts, can you give us a list of the other things which you requested and how we requested and transcripts, memorandums, notes and other writings or things. Those in the language of the subpena that you can describe with particularity and now exist from your present research and could be stated more specifically if you had to state in the below the yellow lines there, where you could fill in the blanks, the blanks of your own knowledge, or of the staff of what was not submitted?

Could you provide us with a list of those or are there any?

Mr. DOAR. I could not provide you with a list and I do not know whether there are any. I do know that there is testimony to the effect that some of President Nixon's key aides kept notes or memorandums of conversations. But, I do not know about these conversations.

Mr. BUTLER. Well, now, that specifically is my question.

Mr. DOAR. I do not know about these conversations.

Mr. BUTLER. Can your staff put together from their present knowledge a list——

Mr. DOAR. No: we cannot. No; we cannot.

Mr. BUTLER. Well, then, are you going to suggest a procedure for us to determine, for example, possibly interrogatories, where there are some items, some such items or not or do you think that we have got to go forward with what we have?

Mr. DOAR. Well, the appropriate procedure is for the person who receives the subpena to indicate that there were no such documents, memorandums available. When the President responded to the subpena in Judge Sirica's court he submitted certain things, and if they were not he indicated with respect to the transcripts which ones were not available so that would be the appropriate procedure.

Mr. BUTLER. Well, I know, recognize that and I realize I am beating kind of a dead horse here but we have been down that road and we do not know and the President has declined and now I judge from what you say that we are just going to go forward from this point without any knowledge as to those items and that really does not concern me too much at the moment. I think we could probably find out by interrogatories if we found out that was insignificant.

But, the next question to me is your evidentiary presentation, we are hoping to proceed with next week, is that going to be delayed by shortcomings in the response to the subpena, as you view it, or can we go forward now with the evidentiary presentation in any event?

Mr. DOAR. No. We can go forward with the evidentiary presentation. But it is always the best way if you, this committee, is satisfied that they have all of the material which they feel is necessary to consider in connection with this inquiry.

Mr. BUTLER. Well, I share that view. Thank you.

The CHAIRMAN. Mr. Doar, why don't you sit down. I am sure you are rather tired of standing there.

Mr. Rangel.

Mr. RANGEL. Mr. Doar, I do not know why we have that chart either. But you did not issue any subpena to anybody, did you? Wasn't it this committee that issued a subpena?

Mr. DOAR. That is correct.

Mr. RANGEL. And 33 people on this committee either present or by proxy voted for that subpena, is that correct?

Mr. DOAR. That is correct.

Mr. RANGEL. And you are now reporting back to us what we received as a result of that subpena?

Mr. DOAR. That is correct.

Mr. RANGEL. And all of the listing on the left hand side of that chart is what we as a committee requested and that yellow business is the business that we got on television and sent to us, right?

Mr. DOAR. That is correct.

Mr. RANGEL. And so it is safe to say that if we requested it we wanted it, we did not get it, and all we have are these edited transcripts. So, I do not see the need for the chart myself and I have to agree with some of my colleagues on the other side that the fact remains that we requested information, we thought that we needed it then, we did not get it nor did we get an explanation of why we did not get it so that the question of noncompliance I think is moot and while the chart is colorful in parts it is just as absent as the response to our subpena and I thank you for your presentation without the chart.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman.

Let me say at the outset, Mr. Chairman, that I was quite disappointed to hear Mr. Doar say that you were not prudent, nor was our ranking member prudent to listen to these tapes because I needn't remind you that on February 22 this committee adopted rules of confidentiality which restricted the members of this committee to two individuals to listen to these tapes. And you happen to be one of them, and the ranking member the other. Now, I was quite disappointed to hear that comment.

But, let me just ask the question here, Mr. Doar. Turning to the subpena itself and the schedule of things required to be produced pursuant to the subpena dated April 11, 1974, I would like to read the first paragraph. "All tapes, dictabelts or other electronic recordings, transcripts, memoranda, notes or other writings or things relating to the following conversations:" Am I reading from the proper document?

Mr. DOAR. Yes; you are.

Mr. LATTA. I would like to ask you whether or not it would be possible for anybody to interpret this to be in the alternative, and if so, Mr. Chairman, I would hope that this committee in its hearings on this serious matter would not turn into the road show that we had on the other side of the Capitol Building. I would like to ask you, Mr. Chairman, Mr. Doar, why you did not state, all tapes, dictabelts or other electronic recordings, transcripts, memoranda, notes, or other writings and things relating to the following conversations so that there could not be any possible question as to what this committee wanted?

Mr. DOAR. Well, I do not believe that the "and" would change the meaning of the language.

Mr. LATTA. There would not be any possibility in that case, however, of it being interpreted as being in the alternative whether or not we wanted the tapes or whether we wanted the transcripts.

Mr. DOAR. Well, I see that, yes sir.

Mr. LATTA. One further question, and that is with regard to the chart.

Did the committee request you to prepare that chart, or did the staff do it on its own?

Mr. DOAR. We prepared that for presentation to illustrate this tonight.

Mr. LATTA. Well, I am certain that this committee as a committee wants to be fair and I think that you have admitted that this chart can be misinterpreted. I think you made the comment that you could point out what you meant by the chart but certainly you cannot accompany this chart when it is printed in the newspapers or put on the screens of the television sets across the country as to what you meant, so I would hope that when you leave you would cover up the chart and take it with you so that we do not have this misinterpretation.

Mr. RANGEL. No coverups.

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, in light of the comment that was made, shortly I believe before, I think it is imperative to underscore what I think is a very essential difference in the role that you and Mr. Hutchinson assumed under the rules of confidentiality of this committee with respect to screening factual material, including tapes, in the course of getting ready for a factual presentation.

It was clearly understood and included in those rules of confidentiality adopted by us that at the time when the factual presentation would be made that the actual material would then be available to each member of this committee, including the tapes, if we chose to listen to them and deemed that it was pertinent to hear the tape in order to hear how something may have been said as well as to read in fact what was said. Now, that was a rule of self-limitation that we imposed upon ourselves, but it was one of timing and not one of denying to those who must make the final judgment, which was all 38 of us, denying us access, prior to making the judgment, to the best material available if we deemed it necessary to hear it or to have access to it. The proposal that has been advanced does not comport with that principal which we have followed in the rules of confidentiality that in effect would place

the other 36 members of this committee in the position of delegating an important constitutional responsibility of theirs and I do not believe that we should be called upon to do that. Nor, that the chairman and the ranking member should accede to that role. It is a fundamentally different role that is being put forth and it is imperative that that difference be recognized if the integrity and the judgment of each member of this committee in this important matter is to be preserved.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. Mr. Chairman, following up on the conversation earlier as a result of a question by Mr. Waldie of California on the tape of March 21, which we have a copy, the 1½-hour conversation, as I understand it, between the President and Mr. Dean——

Mr. DOAR. We do have that.

Mr. OWENS. I think it would be extremely helpful and educational to the committee, Mr. Chairman, if our staff were to take that tape and make a copy of that tape, with the deletions that are in the President's transcript, and allow the members of the committee either at a special briefing say on Friday or late tomorrow or at our convenience in the committee headquarters in the Congressional Hotel to hear that tape. We would not be making public any additional information. It would have the deletions that the President has made, and let us hear the inflections as we move to try to decide how important it is that we have the tapes if there are any, if there is any compromise that can be worked out; and I submit it would be terribly educational for us to be able to hear that tape. And we would not be breaking in any way our rules of confidentiality. Is there any reason that cannot be done, Mr. Chairman?

The CHAIRMAN. I do not believe that there is. However, until this time I know that we are governed by the rules of confidentiality, and I would like an expression from the ranking minority member.

Mr. OWENS. Mr. Chairman, you see we are revealing nothing that the President has not made public. It would be edited to take out the materials that the President's transcribers had taken out and it would simply have the materials on the tape which are recorded in the transcripts he has offered the committee.

The CHAIRMAN. Since the President has already made the transcript public, I have no objection as such so long as, I believe, that the ranking minority member would join with me in this and if this would comport with our rules of confidentiality. I think that certainly we would have no objection.

Mr. HUTCHINSON. Mr. Chairman, let me just state that I think we would not violate any rules of confidentiality by making available to members of the committee the same material which has been made available publicly via the transcript. In other words, the tape that would express the same things as is in the transcript. I cannot see that we would violate anything there.

Mr. OWENS. A lot of members are concerned how important it is that we hear the inflections and this would certainly give us a very educational experience.

The CHAIRMAN. I will so instruct the staff.

Mr. WIGGINS. Mr. Chairman, reserving the right to object, since that is apparently in violation of the rule, it would take unanimous

consent and I reserve the right to object if I may. I want to be sure I understand what the chairman is ordering. Is the chairman ordering that all of the members are going to listen or are we going to receive another transcript, this one prepared by your own staff? What is it our chairman is ordering?

The CHAIRMAN. The Chair has ordered that the transcript, the transcript which has been prepared by the staff, which is the same transcript except that this is in our judgment an improvement, be released to the members.

Mr. WIGGINS. All right now——

Mr. OWENS. Mr. Chairman, my request was that we be able to hear a recording, the recording of the March 21 conversation, the hour and one-half conversation between the President and Mr. Dean from which a copy of, obviously, of the tape that we have from which the material, which the material was exorcised, would also be exorcised. In other words, no new materials than what was in the President's own public transcript, the tape recording, and then to compare that. Or, Mr. Chairman, to compare that with the written transcript for voice inflections to see whether in fact that really is that important.

The CHAIRMAN. Well, first of all I would like to say that I believe, without wanting to just go beyond what is compliance, I think that we would have to be released from the rules of confidentiality that presently exist with relation to those matters, and if we are released from those rules of confidentiality with reference to that particular tape then I believe each member can hear it. And I do not see any reason why they cannot, except for the fact that I believe it would also be in good taste that those expletives be edited from the tapes.

Mr. OWENS. My suggestion is that we make the same exact editing, exorcising of the tapes which the President did, that we be able to hear, if there is a conversation.

Mr. BROOKS. Would the gentleman yield to me?

Mr. OWENS. Certainly.

Mr. BROOKS. It is my understanding that we will take up the procedures, the procedural rules tomorrow and that tomorrow we will do that, and anticipate that by Monday of next week, Monday or Tuesday of next week, sometime next week, all of the tapes, all of the materials that are in the hands of the staff will be available to the members. And I think that it will just about solve that problem.

Mr. OWENS. Well, is it intended we will hear the March 21 tape next week in the first 5 days of our overall presentation? I was not under that impression. Is it intended that we will hear the March 21 conversation between Mr. Dean and the President in our overall initial presentation in the first 4 or 5 days of next week?

Mr. DOAR. Yes, it is intended.

Mr. OWENS. I was trying to work, as we suggest we try to work out a compromise, if one is being attempted to be worked out that that would be helpful.

The CHAIRMAN. I would hope the gentleman would defer that.

Mr. WIGGINS. Mr. Chairman, have you made an order, Mr. Chairman?

Mr. HOGAN. Would the gentleman yield?

Mr. WIGGINS. Have you made an order, Mr. Chairman?

The CHAIRMAN. No. I actually have not. I have stated that the tape of the 21st, that insofar as that tape is concerned that I think that Mr. Hutchinson and I are bound by the rules of confidentiality, and until the committee releases us from that compliance I do not believe that we could permit the members to listen to the tapes and to that tape of March 21.

Mr. HOGAN. Mr. Chairman?

Mr. Chairman, the gentleman from Ohio yielded to me and I would like to use that time to direct a question to the chairman.

I understood the chairman to say that the expletives would be deleted from the tape which we would be allowed to listen to. If that is the case, I would like to suggest Mr. Chairman, that from reading the transcripts it seems to me that in many instances they are essential to understanding the meaning of the sentence. And I would, I would suggest that the members of the committee ought to be mature enough to be able to listen to those without being shocked. But, I do think that they do directly relate to the meaning of the sentence in many instances.

The CHAIRMAN. Well, in light of the fact that tomorrow we're going to be considering the rules of procedure I believe that it would be in order to take up this question and since I think that until such time the committee has bound the chairman and the ranking minority member and the staff to adhering to compliance with the rules of confidentiality.

Mr. Moorhead.

Mr. MOORHEAD. Mr. Chairman, as we have been discussing for the last few minutes the importance of the members of the committee to hear some of these tapes I would like to point out that the President has offered that the chairman and the ranking Republican member hear all the tapes that are present at the White House. And I feel this is far less than a refusal for compliance when he has offered to make that available to the chairman and the ranking member. I feel it is the responsibility of this committee to do everything they can to find out the facts and when those facts have been made available to the two members of our committee, who have heard certain tapes already, I think it would just be the worst possible kind of behavior for our ranking member and our chairman not to listen to those tapes that are made available and check them against the transcripts. They may not be as capable. Maybe they are as capable as the people we have hired to help us. But I do think both of the gentlemen are highly competent lawyers. I think they can get most of the information that we want, and they certainly could advance this inquiry a long ways if they would do that job.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

We were not supplied, I understand, Mr. Doar, with any explanation for the failure to respond to the items in the subpena, the notes and other memorandums, Presidential notes, dictabelts, and the like, is that correct?

Mr. DOAR. That is correct.

Ms. HOLTZMAN. Now, I also gather then on April 11 you informed this committee that Mr. St. Clair was prepared to turn over tapes

in response to four items on our February 25 letter. Has Mr. St. Clair ever indicated to you since that time why he was willing to turn over tapes if we did not issue and subpena, but is not willing to turn over tapes in response to a subpena?

Mr. DOAR. No; he has not.

Ms. HOLTZMAN. Now, further along those lines, did Mr. St. Clair indicate to you, did he indicate to you that he was going to turn over tapes in response to the first four items of our February 25 letter? He did, is that correct?

Mr. DOAR. That was what we were discussing; yes.

Ms. HOLTZMAN. Now, is it not correct that item one of those first four items is the conversation on February 20, 1973, between the President and Mr. Haldeman?

Mr. DOAR. That is correct.

Ms. HOLTZMAN. And Mr. St. Clair did not at that time advise you that no such tape existed or could not be found?

Mr. DOAR. No; that would not be fair because we had two conversations. What he said was, in that conversation, was just before the committee met to vote on the subpena, he said what would be the action of the committee if he furnished three or four of the items in the subpena required by the letter in the next few days. And if you would just permit me and I do not mean to interrupt you——

Ms. HOLTZMAN. I do not mean to interrupt you.

Mr. DOAR [continuing]. And I apologize, but I think it is important that I relate to the committee that I did have an earlier conversation with Mr. St. Clair in which he said:

> Are you sure that the conversation that you listed in item 1 occurred on February 20 because we have looked for it and we cannot find it. And would you check back and give me all of the bases for your belief that it was on the 20th.

And I did do that. And so that he had told me prior to the conversation on the morning of April 11 that they were having difficulty in finding that recording.

Ms. HOLTZMAN. Did he advise you—well, I will just withdraw any further questions. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Eilberg.

Mr. EILBERG. Mr. Chairman, about 2 weeks ago I circulated a questionnaire in my district and asked a number of questions concerning the impeachment inquiry. And one of the questions I asked was "Do you believe the President should give the House Judiciary Committee all of the information the committee requests for its impeachment inquiry?" And I tabulated the first 1,000 returns in my district and they were as follows in answer to the question: Yes, 78.3 percent; no, 16.2 percent; undecided, 4.7 percent; and no response, 0.8 percent.

In other words, Mr. Chairman, the first 1,000 responses indicated that by a percentage of 78 percent that the President should give the House Judiciary Committee all of the information it desired. I have had perhaps 10,000 replies come in since the very beginning and I have not tabulated beyond the first 1,000 but from my estimate of the returns, the figures are approximately the same, perhaps a little bit higher than 78 percent. I suggest Mr. Chairman, this represents the mood of the people and since we represent the people I think it is

time for the committee to consider what to do about the President's failure to supply all of the information requested.

The CHAIRMAN. I would like to direct a question to Mr. Garrison.

Mr. Garrison, can you give us your professional opinion as to whether or not, in fact, the subpena issued by this committee has been complied with?

Mr. GARRISON. Mr. Chairman, I think you have to answer that question in something other than a yes or no. I do not think there is any room for doubt that literally the subpena has not been complied with. However, we are not at this juncture in the style of a litigant in court, arguing a case as to whether there has been a literal compliance. I think it would be more accurate to view our position at this moment as if we were a litigant or a party deciding whether to seek forceable compliance.

Mr. Chairman, what I am saying is that I think that whether the President has complied with the subpena, in the final analysis, is really answerable only in terms of whether this committee thinks that the President has complied with the subpena. It is a qualitative matter, not a quantitative matter. I am not suggesting any phrase such as substantial compliance or others that have been used as a legal theory to answer the question. I am only saying that just as it would probably not be asserted that receipt of the original tapes as opposed to copies is the only acceptable compliance that the committee has to make judgments beyond whether a copy is acceptable in lieu of the original, but then on to whether an edited copy is acceptable in lieu of an unedited one and so forth and that the question of actual noncompliance is a very different one from the question of literal noncompliance.

The CHAIRMAN. Mr. Garrison——

Mr. RANGEL. Mr. Chairman, could I get a copy of his reply?

The CHAIRMAN. Mr. Garrison, you as a member of the minority staff have joined in the requests that were made in the preparation of the subpena, is that not correct?

Mr. GARRISON. Yes; it is.

The CHAIRMAN. Did you not join in the preparation of this subpena on the basis of information which you felt was reliable enough that the matters that you were seeking, conversations and others, other matters, other things, other documents, were relevant and necessary to this inquiry?

Mr. GARRISON. Yes, sir.

The CHAIRMAN. And do you feel that on the basis of the subpena that you helped to prepare that there was sufficient information to warrant that conversations do exist on the specific items requested at the specific times requested?

Mr. GARRISON. No, sir, I would say that there was sufficient information to warrant the inference that conversations may exist and that that was a sufficient showing for purposes of issuing the subpena.

The CHAIRMAN. And at no time to your knowledge has a member of the minority staff learned, have you as a member of the minority staff, have you learned that the White House has been in touch with us in any way to say whether or not they would or would not comply with the subpena?

Mr. GARRISON. I am aware of no communications other than those which have been revealed to the committee through previous meetings

and this evening. And I would not, I would not want to elaborate upon that.

The CHAIRMAN. Well, thank you very much, Mr. Garrison.

Mr. Donohue.

Mr. DONOHUE. Mr. Garrison, as you have stated to the chairman, you assisted in preparing the subpena. You understood what was meant by the different items set forth in the subpena, did you not?

Mr. GARRISON. Yes, sir.

Mr. DONOHUE. And when the subpena mentioned tapes, it was your understanding that it meant the tapes, is that not so?

Mr. GARRISON. Well, let me say——

Mr. DONOHUE. Is it so or is it not so?

Mr. GARRISON. I would say if the question is my understanding that the answer is certainly that that would be the most appropriate response. But, of course, my understanding would not be controlling as to the legal effect of the subpena or the adequacy of the President's response. I am sure if you were to query all staff members you could get many understandings.

Mr. DONOHUE. But when you prepared, set forth that expression "tapes" you anticipated that if the White House was so inclined, they would produce the tapes: is that not so?

Mr. GARRISON. Well, Congressman, I really feel that that question imposes a burden upon individual staff members which is not really fair for the purposes of this inquiry. All members of the staff would view the wording of that subpena and place their personal interpretations.

Mr. DONOHUE. But you will expect that the response to that subpena would be the furnishing of the best evidence, and the best evidence would be the tapes themselves: is that not so?

Mr. GARRISON. I would say, Congressman——

Mr. DONOHUE. As a professional man.

Mr. GARRISON. Professionally, the reason I suggested earlier that the analysis of the adequacy of the President's response should be a qualitative one, and not a quantitative one, is that I would think that a member of the committee could determine that in some cases a transcript was an adequate compliance with the terms of the subpena as to a particular conversation.

Mr. DONOHUE. In your opinion would a transcript be as good as the original tape itself?

Mr. GARRISON. In some respects, Congressman, in all honesty, the transcript could be better if the original tape is not easy to understand, and you do not have equipment that enables you to interpret what is being said.

Mr. DONOHUE. Even though the transcript was prepared by the party that was being checked, as it was in this case?

Mr. GARRISON. Congressman, I think Mr. Doar has indicated that where we have detected differences between the transcripts prepared by the party; that is, the White House and our own, that those differences have not always been such that would impair our ability to rely upon the White House transcript. There are differences but the significance of those differences varies a great deal from instance to instance.

Mr. McCLORY. Mr. Chairman?

Mr. DONOHUE. Well, Mr. Chairman——

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. At this time I ask unanimous consent that the chairman be authorized and directed to send a letter to the President on behalf of our committee stating that the response received from the President on April 30 is not in compliance with the committee's subpena that was issued on April 11, 1974.

Mr. McCLORY. Mr. Chairman——

The CHAIRMAN. Is there objection?

Mr. HUTCHINSON. Objection.

The CHAIRMAN. Objection is heard.

Mr. DONOHUE. Well, now, Mr. Chairman, in view of the objection I move that the chairman be authorized and directed to send a letter to the President on behalf of our committee stating that this committee finds the President has failed, as of 10 a.m. on April 30, to comply with its subpena that was issued on April 11, 1974.

Mr. BROOKS. I second the motion, Mr. Chairman.

The CHAIRMAN. The motion is made and seconded.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Before we vote on the motion, I want to make this comment. It seems to me that the testimony here, the statements we have received here, the large volume of material we have received in the form of transcripts, together with the explanations and supplementary material, provide the committee with a great volume of information. And it is information that we are seeking, and it is not a rigid response to the subpena, or a toeing the line insofar as some demand of this committee is concerned, but it is information. And it seems to me that to the extent that we may feel that this information is inadequate, or is incomplete, or is inaccurate, the mechanism is provided whereby you, Mr. Chairman, and the ranking member, Mr. Hutchinson, can go and listen to the complete tapes of all of the material that we have requested, and test the accuracy and the completeness.

And it seems to me that that is a substantial and an adequate response to our requirement and does provide this committee with a great volume of necessary and relevant information upon which we can go forward in this inquiry. And I hope that we will not be divisive at this stage in any way and that we can go forward with a united and combined and bipartisan effort toward completing this inquiry expeditiously.

Mr. RAILSBACK. Mr. Chairman?

Mr. SEIBERLING. Question.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I wonder if perhaps we would not be well advised to consider sending a letter that would be the least bit conciliatory or constructive rather than just what I would call, I think as Mr. Donohue's position, it is almost like rescinding a declaration of noncompliance. I do not really see, I really do not see where it accomplishes anything. And it is my understanding that Mr. Cohen, if he is given the opportunity, has a letter which he believes is constructive in tenor and tone and might be acceptable to the majority,

or perhaps they would want to amend it. But at least it is a counter-proposal that kind of keeps things alive rather than hardens any of the positions. And I just think a declaration of noncompliance does not do anything.

Mr. COHEN. Will the gentleman yield?

Mr. RAILSBACK. I will be glad to yield to Mr. Cohen.

The CHAIRMAN. Not for the purpose of offering any amendment.

Mr. Waldie.

Mr. WALDIE. Well, Mr. Chairman, I would like to ask counsel several questions.

Mr. Doar, is noncompliance the same as contempt?

Mr. DOAR. No; I do not believe it is.

Mr. WALDIE. In what respects does it differ? Would the failure to comply with this subpena be grounds for contempt?

Mr. DOAR. Well, the failure to comply—well, you could not have grounds for contempt unless a person failed to comply with a subpena. But you could have a failure to comply that would not be contemptuous.

Mr. WALDIE. Well, what is the not contemptuous?

Mr. DOAR. Well, the most classic example——

Mr. WALDIE. No, in this case is it not contemptuous?

Mr. DOAR. Well, I would not want to express a judgment on that.

Mr. WALDIE. What would it take to be contemptuous?

Mr. DOAR. Again, I would not—I think that I would not want to express a judgment on that, because I think that the committee needs to consider a number of elements in making that decision.

Mr. WALDIE. Is noncompliance willful?

Mr. DOAR. If noncompliance is willfulness, that is a relevant element in considering whether it is contemptuous.

Mr. WALDIE. Was it willful, willful in this instance?

Mr. DOAR. It was willful in this instance, because with respect to the tapes——

Mr. WALDIE. Is noncompliance an impeachable offense?

Mr. DOAR. Legally, noncompliance with a subpena could be considered an impeachable offense under certain circumstances.

Mr. WALDIE. May I address that question to Mr. Garrsion? Mr. Garrison, do you concur that under these circumstances noncompliance "could," and the answer would be "Yes."

Mr. GARRISON. I would have to answer that, underscoring the word could, and the answer would be "Yes."

Mr. WALDIE. Why do you underscore the word?

Mr. GARRISON. Because it would be, ultimately be, in the judgment of the committee.

Mr. WALDIE. Of course. But, noncompliance with a subpena could be asserted as an impeachable offense?

Mr. GARRISON. I would think so.

Mr. WALDIE. Noncompliance with a subpena could be, if willful, contempt?

Mr. GARRISON. It could be.

Mr WALDIE. In either of your opinions, what would it constitute to find willfulness in this instance of noncompliance? Is willfulness, is willfulness absent, in either of your opinions?

Mr. DOAR. No. With respect to, with respect to the tapes.

Mr. DENNIS. Mr. Chairman?

Mr. DOAR. The submission sets forth the President's position.

Mr. WALDIE. Which is a willful noncompliance?

Mr. DOAR. That is correct.

Mr. WALDIE. Mr. Chairman, just in closing, I do not think noncompliance really amounts to anything except indicating a lack of will on the part of the committee to say that the President, in fact, has been contemptuous of the committee. It does seem to me the President has been contemptuous, and it has been a willful noncompliance. And to back away from it by sending him a letter informing him that he has not complied, which would seem to me to be informing him of something he probably is aware of, really constitutes nothing constructive except to indicate perhaps a lack of will or impotence on the part of the committee. It would seem much more proper for the committee to find the President to be that which he most assuredly is, in contempt of this committee. And I would hope that at an appropriate time there would be an opportunity for the committee to determine if they would not prefer that course of conduct than a conduct that does not seem to me to possess a great deal of meaning. And I yield back the balance of my time.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I can recognize members for the purpose of discussion only to the motion.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

I happen to agree with the gentleman from California with respect to the lack of constructive implications of the motion that has been made. This is a matter of rather deep personal and professional and I would suppose political conviction to each person on this committee and I, therefore, only want to take this opportunity to set forth my own personal views.

When I voted to issue the subpena to President Nixon, I did not consider it to be a hollow or an idle act and that vote for me at least carried with it the full weight of this body's history, its heritage, and I would hope its legacy. It is my understanding that if the tapes had been turned over under our rules of procedure which we have adopted and the rules of confidentiality, you and the chairman and Mr. Hutchinson would have had the opportunity to listen to the tapes in conjunction with Mr. Doar and Mr. Jenner and have had the benefit of technical experts who would be competent to verify their authenticity. My understanding is under the proposed procedure of President Nixon that would be available.

So, I would say as a matter of technical compliance there has been a failure. At the same time, I am also concerned about Mr. Doar indicating here earlier tonight that many of the transcripts contained in these 1,200 pages where it is marked inaudible could be picked up by our equipment. Many of the omissions which do not appear on these documents could also be picked up by our equipment which only confirms my own feelings in this matter that we do have to make some access to the tapes.

I was interested to hear one of my colleagues mention that he has been polling his district to find out what the public wants. Frankly, I do not think that is a proper consideration, with all due respect, because the argument has been made to me that perhaps the public will perceive the President's tender to us as substantial compliance. In my own opinion, the great decision which faces us cannot be based upon the shifting sands of public opinion. Although I have only read certain portions of the transcripts it occurs to me rather readily that what has been done in this long year of Watergate has been directed to the PR factor, whether it be public relations or public reaction, and I think my duty as a member of this committee rests on much higher grounds than that. I feel that there are no contours to the Constitution, that we have to turn square corners with it. But, by the same token, I believe there is an area of compromise. I do not believe the chairman has any intent of foreclosing the opportunity of this committee to communicate to the President our objections, what we find objectionable to the procedure. And at the appropriate time, I would like to offer an amendment to the pending motion to indicate what I think the major objections of this committee are, to set them forth in the letter, at the same time indicating that what has been furnished is not technical compliance or full compliance, and indicate quite clearly to the President what we feel would be essential to comport with our subpena. I would hope that it would have the support of both sides of the aisle.

The CHAIRMAN. Thank you very much, Mr. Cohen. At this time I would like to read a statement which I prepared and I prepared it after much deliberation. And I would hope that the committee would bear with me. The statement was prepared as a written statement, because I wanted it to be accurate and to accurately reflect my feeling in this matter.

To this point in our proceedings my statements and my actions have been dictated by the responsibility I owe to the committee, to the House under its resolution, and to the people under article I, section 4 of the Constitution. I shall continue to follow this course.

Because of my great respect for the Office of the President and for the dignity of the House of Representatives, I, at every turn, as chairman of this committee, have sought to avoid precipitous action in our search for the truth in the matters inescapably before us.

I regret that while we demonstrated time and time again that we were not seeking any confrontation with the President of the United States, we were only seeking evidence—the best evidence—evidence, the relevance of which under the Constitution and the resolution only we can determine—that we have been delayed by the President.

There is no question that, whatever else the President may have done or been thought to have done on Monday evening, and whatever individual members of this committee may think of the merits of that action, the President has not complied with our subpena. We did not subpena an edited White House version of partial transcripts of portions of Presidential conversations. We did not subpena a Presidential interpretation of what is necessary or relevant for our inquiry. And we did not subpena a lawyer's argument presented before we have heard any of the evidence.

We did subpena specific documents of specific facts of specific relevance to our inquiry. We had hoped and I had hoped very firmly and expected the President lawfully to comply. The President did not.

Under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry. These are matters which, under the Constitution, only the House has the sole power to determine.

Former Attorney General Elliot Richardson said last Sunday that the supplying of edited transcripts would be an insufficient response to the subpena. He said:

> I think the Judiciary Committee has a right to know what has been omitted, in effect, and to exercise some independent judgment as to what is relevant to its purposes, and I don't think that for the President unilaterally to furnish what he thinks is relevant and say "That is all you get" is a sufficient response to the subpenas.

Furthermore, the procedure suggested by the President for Mr. Hutchinson and me to come to the White House to review the subpenaed tape recordings to determine the relevance and accuracy of the partial transcripts is not compliance with our subpena.

The subpoena issued by the committee required materials covered by it to be delivered to the committee in order that they be available for the committee's deliberations. There was good reason for this. It is not simply a question of the accuracy of transcripts or even of the relevancy of omissions, although both factors are obviously critical. The procedures followed by the committee must be such that all committee members—each of whom has to exercise personal judgments on this matter of enormous importance to the Nation—and ultimately all Members of the House of Representatives, are satisfied that they have had full and fair opportunity to judge for themselves all the evidence. It is, therefore, mandatory that the committee not depart from the ordinary and expected process in the way the President suggested, or in any other manner that might suggest the intrusion of secret accommodations, or raise new questions about the thoroughness, fairness, and objectivity of the committee's work.

Our proceedings must be clean and straightforward and complete if we are going to restore fundamental confidence among all of the people in the integrity of our institutions. After all of this time, after all of the arguments, after all of the confusion, it is essential that these procedings be absolutely straightforward and not equivocal, in any way. The President's suggestion that the committee have only the transcripts is not something that I or any member of the committee can explain to the American people. It would only raise questions about the committee's inquiry. The committee must follow the appropriate, the proper, the lawful way as it moves ahead.

I still hope, and I believe all of us still hope and expect that the President will comply with our subpena.

We are going to go ahead, preserving the integrity of our constitutional process. We are going to move ahead fairly and thoroughly and expeditiously as the American people expect and the Constitution requires us to do. The evidentiary presentation, as I stated before,

will begin next week. I will announce the date and time to the committee members on Monday. Once we start the evidentiary proceedings, I expect to hold the committee in session for at least 3 full days, morning and afternoon, each week.

And I hope and trust that next, as I have instructed Mr. Doar, he will prepare and equip the committee room so that we can listen, at the appropriate time, to relevant recorded conversations.

Now I shall recognize any other member.

Mr. WIGGINS. Mr. Chairman?

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I have been silent during much of this debate, both this time and during the debate when the subpena was issued.

Mr. Chairman, in our system of separated powers, it was never contemplated that the coordinate branches of Government should confront each other, and confrontation should be avoided at all costs, in my opinion, because confrontation never works. Confrontation produces merely stalemate.

Recognizing that, Mr. Chairman, it was my philosophy that since, for all practical purposes, the subpena of this committee against the President of the United States could not be enforced, that the subpena ought not to have been issued. I think that since, and again this matter is just my own philosophy, but since this committee can no more order the President of the United States to do something than it could order a court if we should issue our subpena to a court, I just wonder how the court would comply with our subpena. My idea, Mr. Chairman, is our proper course of action must have to be the road of discussion, negotiation, and reason. And I hope that since that is the only way that we can succeed, that we pursue that road and not the road of confrontation at all.

Now, in my opinion, the subpena to the President was simply an additional request, to me, and I think that the material that he has offered to us we should receive, and we should consider and act upon, not that that means that we cannot continue to discuss, and negotiate and point out those particular areas where we think we need more information. But, that is the only way we are ever going to get it, is through a road of negotiation and discussion, Mr. Chairman. Consequently, I voted against the subpena. I do not think that we should simply declare that the President has not complied with our subpena. I think we should make a good faith effort to accept this material and to digest it and then to make further representations if it proves to be inadequate.

I admit that I am not an expert in electronics and there certainly are other lawyers probably better qualified than I to weigh evidence. But, I am prepared to do my very best if this committee instructs me to do so. I am prepared to go down to the White House and do my very best to compare the President's transcripts with the original tapes and to report back to the committee accordingly. I, of course, would not do so unless the chairman also would participate and unless the committee instructed us to do so. But I think, Mr. Chairman, that is the course of action that we should pursue.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, it seems to me that this proposal, as made by Mr. Donohue, is modest, and a fair proposal. And I do not think in any way it can be interpreted as a confrontation. It can not be interpreted in any way as a resolution to cite the President in contempt. We have a mandate here, a very clear one, from the House of Representatives, and that is to get the best evidence. We have no choice. It is our responsibility and we cannot negotiate it away.

Now, Mr. Cohen's substitute that we have seen for the first time, and I have read it, I am afraid we should remind ourselves that our staff has been negotiating with Mr. St. Clair and with the White House on this matter for over 2 months. The original letter went out on the 27th, I believe, of February, 2 months of negotiation. I am sure the White House heard about the very, rather acceptable proposal I believe, offered by the gentleman from California, Mr. Wiggins, that was never actually considered by this committee. But I am sure that it would have been received rather well by the committee, which would have had the tapes. Is that your proposal, Mr. Railsback?

Mr. RAILSBACK. No. Would you yield?

Mr. EDWARDS. Yes. Go ahead.

Mr. RAILSBACK. I want to thank you for yielding. And, you know what I wonder about, what I wonder about, what you are suggesting is whether we have really ever officially or formally conveyed to the White House our willingness to set up that procedure that we have all talked about so much, but I do not think we have ever really conveyed it to them.

Mr. EDWARDS. Well, the enactment or the passing of the Donohue resolution does not preclude any negotiation. It permits us to go about our business and stop this endless negotiation, or hassling that we have had over the past 2 months. I really think it is a most modest proposal.

I yield to Mr. Cohen.

Mr. COHEN. I thank the gentleman for yielding. I believe you indicated that my proposal does nothing but indicate more negotiation. As I understand Mr. Donohue's proposal or motion, he simply puts this committee on record as saying there was not compliance with the subpena. The second paragraph of the letter that I propose indicates exactly "We regret to advise you that the committee finds that these transcripts do not represent full compliance with the subpena issued by this committee on April 11," the same objective, and also setting forth the reasons why we do not. Now, that does not seem to me, in view of the chairman's statement, where he said that he hoped the President will comply, that means, in effect, he is saying I hope he will in the future. But, we're not foreclosing that, nor does this letter. It simply sets forth in detail exactly why we feel there has not been sufficient compliance.

Mr. EDWARDS. I would not be in favor of your proposal, although I do respect your submission of it. And I think that it ought to be pointed out that the members on the minority side have been of great assistance during these past 2 months in urging the White House to comply. They have offered real leadership to the White House and asked them over and over again, would the White House comply with

the terms of the subpena. But, I think, I do think that Mr. Cohen's counterproposal is weak in many ways and I think it is less than dignified for us not to just make a simple, polite statement of noncompliance.

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Chairman, thank you very much. It seems to me that the motion of the gentleman from Massachusetts is premature at this time. I think there must be a great many members of this committee who have not finished reading all of the transcript that we received yesterday. The chairman has said that the staff is going to supply this committee with our transcripts made by our staff from tapes in our possession for comparison with similar transcripts now supplied by the President, made from the same or copies of the same tapes. It would seem to me that it would be the better part of wisdom to wait until this committee had finished reading the transcripts that the President has furnished to us, and until we have had a chance to make this comparison between the transcripts made by our perhaps better equipment and the transcripts which have been furnished.

Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I just want to say it seems quite obvious that it is pretty late now and that I would like to quote our current Vice President, who I know Mr. Cohen and I have an equal regard for, and in a letter dated the 29th of July 1972, former Chairman Emanuel Celler to then Representative Gerald Ford, commenting on the use of subpenas during the investigation of Justice Douglas, and he said:

> I cannot perceive how you can conduct a meaningful investigation, neither witch hunt nor whitewash, as promised, without obtaining sworn testimony and production of private records other than those conveniently volunteered by the accused and his associates.

Now, the counsel have made clear that as a factual and legal matter, that the subpena has not been complied with, and that is again a simple matter of fact. The tapes were sought and the tapes were not delivered. And I have got the greatest faith in the ability and in the integrity of our chairman and our ranking member, Mr. Hutchinson, but they cannot and should not be expected to undertake the enormous constitutional responsibility that reposes in the full House. Were they to do that, were they to accept the arrangement proposed, I could not in good conscience answer to my constituents, the House could not in good conscience answer to the American people.

From all indications, it takes several hours of trained listening to make out 1 hour of tape. Our chairman and Mr. Hutchinson, alone, without technical assistance, have neither the time nor the particular expertise as tape experts to assume this responsibility. But, the specifics of any counter offer are not at issue.

What is at issue is the rule of law, as both a factual and legal matter, that the President is in noncompliance. And I do not believe that the work of the Congress should for this reason be delayed. But, I do believe that the committee simply and with dignity should so state, that the President has not complied.

Mr. HOGAN. Will the gentleman yield?

Mr. BROOKS. I would be delighted to yield to my friend from Maryland, Mr. Hogan.

Mr. HOGAN. As a matter of fact, were subpenas issued to Justice Douglas?

Mr. BROOKS. I do not recall. I am just quoting the statement as to what should be done by the now Vice President. I do not use him very often, but when I think he is right.

Mr. HOGAN. Well, if the gentleman will yield further, my recollection is that subpenas were not issued in that case and yet the subcommittee recommended against impeachment.

Mr. BROOKS. Well, I would just want to point out as a member of the subcommittee, that I do recall Justice Douglas furnished voluntarily everything that we asked in the way of personal records, expenditures, his income, his traveling, and there were some other rather interesting facets of his life that were revealed too.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, as I understand the existing procedure with reference to the tapes which now counsel and the chairman are now listening to, they're actually not the original tapes but are tapes which have been copied at the White House and brought to the committee, to the staff, and they are subjected to our more sophisticated equipment?

The CHAIRMAN. That is correct.

Mr. BUTLER. I would like the chairman's assurance that insofar as the tapes are concerned, and the subpena is concerned, with tapes, that this is, this procedure is a compliance, in your judgment, with our subpena; that is, the acceptance not of the original of the tapes but a copy which has been made in the presence of the staff of the committee. And I would also, Mr. Chairman, would like your assurance that in communicating with the White House our feeling of noncompliance that the procedure which this committee would contemplate is a continuous reference to tapes, is a continuation of the procedure which we have used in the past with reference to the tapes which are now in our possession?

The CHAIRMAN. Of course.

Mr. BUTLER. And I would appreciate then, Mr. Chairman, your assurance that in communicating this in the letter, that Mr. Donohue contemplates, that this will be made perfectly clear, both to the White House and to the President.

The CHAIRMAN. Perfectly clear.

Mr. BUTLER. Thank you.

Mr. LOTT. Mr. Chairman?

Mr. CHAIRMAN. Mr. Lott.

Mr. LOTT. Mr. Chairman, is a copy of the proposed letter available to the members of the committee so that we can see what we are fixing to vote on, the language we are fixing to vote on? The proposed letter? Not Mr. Cohen's, the one——

The CHAIRMAN. No. I believe that all the gentleman has suggested is that a letter be directed in accordance with the resolution which he has offered.

Mr. LOTT. Well, Mr. Chairman, I would like to say that I think that we have now come to the point for which this meeting was really

called, and I think that I just could not vote on a situation or a letter that will go out without knowing exactly what was going to be in that letter. Mr. Cohen's letter was prepared this afternoon, certainly after 5 o'clock, and do you have a copy of the letter?

Mr. DANIELSON. It was distributed. It is probably at your desk.

Mr. LOTT. The letter is simply going to be this resolution? I believe I do not have it.

The CHAIRMAN. I have none, but the gentleman has supplied me with a copy of the proposed letter which would merely read that the President, the White House, and I believe the gentleman has now been provided with a copy so I need not read it.

Mr. LOTT. I would think that other members would like copies. Thank you very much.

Mr. HOGAN. Could other members get a copy of the letter?

The CHAIRMAN. I have been furnished with a copy. This is the first time I have been furnished with a copy [reading]:

The President, The White House, Washington, D.C.
Dear Mr. President:
The Committee on the Judiciary has directed me to advise you that it finds that as of 10 a.m., April 30, you are in noncompliance with the committee's subpena of April 11, 1974.
Sincerely, Peter W. Rodino, Jr., chairman.

Mr. MEZVINSKY. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman.

In the discussions that I have participated in, since the subpena was issued and the subpena was extended, and Wednesday's television as to what action the committee should take, some people have talked about impeachment, some people have talked about contempt, and one of the milder suggestions was a simple letter that this is noncompliance. And I have heard no suggestion that we send a letter that this is compliance. I think the letter is mild, and I think it should be mild. And I heard in this discussion with members, and these alternatives in discussions with people from my district, and I do not, as some may, have criticism for those who survey their districts as to what their people think on these issues. I call that representative government as opposed to the public be damned. I think there is a judicial matter in here too and when we consider the judicial nature of this proceeding I just wonder if a subpena from the House of Representatives or if any of us on this committee think such a subpena is inferior to a subpena issued by the court. And I wonder if the members of this committee, all of whom are lawyers, have ever tried to judge on a qualitative, quantitative sufficient in kind answer on a subpena. I have never been very lucky with it.

Now, it was suggested that they would permit, permit, if you will, the chairman and the ranking member to go down to the White House. The subpena was issued from this body, Mr. Chairman, and to me this House of Representatives is the people's body. Somebody cannot die and get you into this office. Somebody cannot appoint you to this office. The Members of the House are elected and that is the only way you can get here. And they are elected every 2 years. And I think we carry a heavy responsibility, and when you consider the separation

of powers, perhaps you can surmise which one I think is the greatest, the one that is closest to the people. And I think that the letter of the gentleman from Maine offers many constructive alternatives, but I think when it goes on, as I read it, it still means that I must delegate my right to hear those tapes to a decision by the chairman and the ranking minority member. And I just cannot do that.

Thank you, Mr. Chairman.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman for yielding to me.

Mr. Chairman, I want to compliment you on the eloquence of your remarks. And I have heard many other statements which were obviously deeply felt by members. But, we should not confuse the emotionalism which tends to be involved in this issue from the law. And I have heard some misstatements of law, I believe. And I do not hold myself out to be that much of an orator, but I believe some of the statements were in error. We are asked this evening, Mr. Chairman, to determine that the response of the President is inadequate.

Now, for any member to vote aye on that resolution, he has to decide for himself that the material requested by this committee, in fact, exists. Our counsel has advised us that he is unsure with respect to some of the matters. In addition, we're going to have to decide in order to vote aye that the material requested not only exists but is now in the possession or under the control of the President. Our counsel has advised us on that point that with respect to much of the matters requested he is unsure. And that finally, and this is the most difficult of all, we have to decide that the President has failed adequately to deliver the material requested and has done so without lawful justification or excuse. Now, that is the tough question.

Unless we are going to be slaves to form, rather than substance, unless we are going to be more concerned with a tape than the substance of the testimony, we should not decide that a tape is necessarily adequate and that a transcript is inadequate. I want the gentlemen here present and ladies present to know that I, too, am somewhat dissatisfied with the response, but I am not prepared to say that as a matter of law it is insufficient.

People have stated here this evening, Mr. Chairman, that the President is dutybound to furnish whatever this committee requests. Well, I beg to differ. I beg to differ. The President is not bound. The President is under no lawful obligation to furnish this material which is irrelevant to the impeachment inquiry. This committee has no right to demand information which is irrelevant to the impeachment inquiry.

The problem is that we do not have a court in this proceeding standing between the parties to determine the issue of relevancy and it points up with emphasis, Mr. Chairman, the necessity of working out an adequate mechanism for the resolution of this matter. Now we do not solve it by saying that we have a right to all that we request, because we do not. That misstates the relative duties of the President, the committee vis-a-vis the President.

Let me tell you, Mr. Chairman, what I think we ought to do. I do not think that we ought to be slaves to form, at least at this juncture. If the President has, in fact, made a significant, substantial compliance, and I do not know that he has not, then we ought to recognize that fact. The difficulty, Mr. Chairman, is that I diligently have

perused this mass of material delivered to my desk yesterday morning, and I am on page 200. I hope this weekend, barring interruptions, to complete it. Who on this committee has read it all? I doubt that anybody has yet read it all. I frankly doubt that the staff has carefully digested the entire submission.

Is it not obvious, Mr. Chairman, that it is premature for us to now determine the substance of what was delivered to us is inadequate when we have not read it?

I think so. What we're doing instead is saying that the form of the submission is insufficient, and in that respect I do not think we should slavishly adhere to form but rather should carefully adhere to substance. The better part of wisdom was expressed by the gentleman from New York, and this matter ought properly to be considered after the members have read the material submitted. And I hope that the members will vote no to the resolution for those reasons and we can take that up next week.

Mr. MANN. Will the gentleman yield?

Mr. WIGGINS. Of course I will.

Mr. MANN. I have great respect for the gentleman's legal ability. But, what lawful justification or excuse has been even advanced by the President for the failure to furnish the tapes, the relevant portion of the tapes?

Mr. WIGGINS. Well, I have not read the entire submission. I have read portions, and the President has claimed that he is apparently under no duty to furnish portions of the material, for the reason that it is irrelevant. Now, if he is not right, he is not on good grounds.

Mr. MANN. I have a reference to the portions that have been furnished us in written form. What lawful justification or excuse has been offered? Has national security been mentioned, has executive privilege been mentioned, or has privacy been mentioned?

Mr. WIGGINS. Relevance has. Relevance has.

Mr. MANN. Relevance, I am not objecting to for the moment, as to those portions which are excluded on the basis of relevance. But, what lawful justification or excuse has been advanced to not furnish this committee with the items subpenaed that are relevant, and that are recognized to the relevant by the fact that they were furnished to us in writing?

Mr. WIGGINS. Yes. I think on the narrow question the President is probably under no duty at this time to give advanced justification. It has to be resolved in some way, in some other forum, I suppose. I am not sure what that forum would be, but I do not think that the gentleman ought to be that slavishly following the form of this submission if, in fact, the substance of it meets our needs. We are simply provoking a confrontation with the President.

The CHAIRMAN. I recognize the gentleman further, and if the gentleman would yield, I would like to recognize the gentleman.

Mr. MANN. I yield.

The CHAIRMAN. I would like to advise the gentleman from California that it has been a matter of record that in every communication that was sent by Mr. Doar to Mr. St. Clair, along with Mr. Hutchinson's absolute understanding that this would be the case, that we sought, in all instances, with every specific request, only those materials that would be relevant to the inquiry. And we gave an absolute assurance, Mr. Hutchinson and I, that under no circumstances would

we want to keep any material that was not relevant, that would have been material that there would have been the claim of national security information or anything that was outside of the scope of our inquiry. This was never even in any way replied to or responded to. This offer on our part has been long outstanding and has been included implicit and expressed in every communication and piece of correspondence that we sent along with our requests.

Mr. WIGGINS. Well, Mr. Chairman, if I could partially respond, I will be pleased to.

Mr. MANN. I yield.

The CHAIRMAN. The gentleman has the time.

Mr. MANN. I yield.

Mr. WIGGINS. I recognize that the committee on several occasions indicated that it has no desire to take possession of irrelevant material. I read some correspondence to that effect this afternoon. Indeed, as I remember the letter of April 4, signed by our counsel, Mr. Doar, he indicated to counsel for the President that it would be expected that in the first instance the President would make some claim of irrelevancy. I think that is proper. And has not, in fact, the President made a claim of irrelevancy now?

Let us not decide the issue against him without working out a mechanism for considering it. To say that he is in noncompliance for failure to furnish information is not to give proper consideration to his justification that it is irrelevant.

We need some mechanism to solve that, Mr. Chairman.

Mr. BROOKS. Mr. Chairman, I have an amendment at the desk to the motion by Mr. Donohue, the amendment being a letter which tracks his position which you read, which says:

> The Committee on the Judiciary has directed me to advise you that it finds that as of 10 a.m. April 30 you have failed to comply with the committee's subpena of April 11, 1974. Peter W. Rodino, Jr., Chairman.

I would offer that as an amendment, copies of which are available.

The CHAIRMAN. The gentleman will not be recognized for purposes of offering an amendment at this time since we are just discussing the motion.

Mr. Dennis.

Mr. DENNIS. Mr. Chairman, when this matter arose yesterday I gave it considerable thought as I know all of the other members of the committee have. And I made a statement to the press at that time and this is what I said. I said the President's proposal is a considerable step and should furnish a satisfactory basis on which to move forward. I have confidence in Mr. Hutchinson and in Mr. Rodino. I think they can and will compare the transcripts and the original tapes. There may be additional necessary adjustments. If, for example, Mr. Hutchinson and Mr. Rodino should come to the conclusion that a particular original tape or tapes should be heard by the committee or that any tape or tapes should be checked by an electronic expert, then I think the President ought to agree. But, the President's proposal ought to furnish a framework within which reasonable men can proceed.

Now, that is still the way I feel about this proposition, and that is the spirit in which I wish this committee could proceed at this time.

For example, it has been suggested that counsel should have been included and certainly I would have had no objections had our counsel been included, but they cannot really add anything beyond the chairman and the ranking member. They are not electronics experts either. In the past, experts at the White House have taped off things for our counsel and they have brought them back up to our sophisticated equipment, listened to them, rerecorded them. Mr. Hutchinson and Mr. Rodino can do that just as well as counsel, if, assuming that the same cooperation should be forthcoming from the White House, and I am not sure it is foreclosed. And that is the kind of thing I think that we ought to explore before we get into a confrontation situation.

Now, I do not see much sense in sitting down and writing the man a letter. If we think he is in contempt, I am kind of inclined to agree with the gentleman from California, Mr. Waldie, that sure, if we have reached that point and I do not think we have, why don't we go ahead and say so. If we intend to try to work things out, which for the reason Mr. Hutchinson has suggested, I think is the sensible thing to do, then what good does it do to sit down and write a contentious letter about it, unless of course, you want to set up a basis for taking a contempt action later on.

But, we can always do that if we get to that point in the road, as has been said before. I just think we are premature. Why get into a confrontation unless we need to? There are 1,200 pages to read here. Maybe I will feel differently when I have read them. Maybe I will feel differently next week or in 2 weeks. Now, we have got an awful lot of work to do here and until we do it, until we do it, why take off into the wild blue yonder? I am not sure at all that contempt is an impeachable offense. Nobody has ever held that it is. I do not really think myself that it is one that will go down with the American people very well.

But, if we get around to that, there is plenty of time for it. If we need more information, there are lots of things that we could do. We are not closing the door. I am not closing my personal door. I just raise the question whether we are really accomplishing anything at this time by sitting down and writing the President a letter and saying you are not in compliance.

It does not make him any more in compliance if he is not and it does not make him in compliance if he is. We are just sort of lamenting our feelings when we are really not willing to do anything about it, such as contempt, and very wisely so for obvious reasons. So, I am going to vote against this motion and I hope some of my friends on both sides of the aisle will do so likewise, just for commonsense reasons, as I would say.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I move that all debate on this motion and all amendments thereto end at 11:15.

Mr. MEZVINSKY. Mr. Chairman?

Mr. SARBANES. Second the motion.

Mr. SEIBERLING. Question.

The CHAIRMAN. The motion has been made and seconded that all debate on this motion, amendments thereto, end at 11:15.

All those in favor of the amendment please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "nays."]

The CHAIRMAN. The ayes appear to have it and the ayes have it.

Mr. MARAZITI. Mr. Chairman?

The CHAIRMAN. Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Chairman. It appears to me that basically what this committee is interested in is procuring the facts and I think that a mechanism has been set forth whereby the facts can be procured. And it may very well be as has been indicated here, that the President is in substantial compliance with the subpena. Transcripts have been submitted and I can understand that members of the committee and the President may have a question as to whether or not these transcripts are authentic. But, we have a mechanism to determine it. I for one and I know that many members of the committee have confidence in the chairman and in Mr. Hutchinson to verify whether the transcripts are correct. And if they are not, we can face the issue at that particular time.

I think they should listen and report to us and then act. I concur with the observations of Mr. Wiggins that today is not the time to act on this motion. I concur with the observations of Mr. Hutchinson. I think nothing can be gained by a controversy. We have the mechanism to procure the facts. We have the right to submit interrogatories under oath. And it seems to me that taking a course that would lead to a controversy would only impede the effectiveness and the work of this committee.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Chairman, I agree with you to a large extent that the response is not complete, and I also share your hope that the President will fully comply in the near future. It seems to me there are very important matters around the whole issue of the language of the subpena. I personally believe that our counsel should be included in any review of the accuracy of the tapes.

Speaking for myself, and I imagine a great many members of the committee, I am not willing at this time to forego what I believe is my right to personally listen to a tape when in the course of the presentation to us it seems to me there is a critical tape and a part or parts of one that will be important in my deliberations on this matter.

We further have the question of the authenticity of the White House tapes themselves which has not been discussed. The question of the White House equipment has been mentioned, and it seems to me that this is one that could be resolved either by our taking our equipment down there or the White House themselves improving the quality of their own equipment.

I was really quite disturbed by one remark that the Donohue motion would end the hassling. If this means the end of the negotiations, I think we are getting into very dangerous ground. What I am really raising is will the letter that is proposed in this motion and the amendment before us accomplish fuller compliance and an agreement on the issues that you have raised? I think this is the fundamental issue before the committee, Mr. Chairman.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I move to amend the motion by Mr. Donohue to include the letter I read shortly before, and which members have a copy of at their desks.

Mr. DONOHUE. Mr. Chairman, I will be very pleased to accept the gentleman's amendment.

Mr. DENNIS. Is that this 4-line letter?

Mr. BROOKS. That is correct. Yes, sir.

The CHAIRMAN. The gentleman who has offered the motion has accepted the amendment, and I do not believe that there is any need to vote on that.

Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

At this time, because of the limited amount of time, I would like to simply read the motion for the benefit of those here who do not have a copy. It would in essence state exactly what the Donohue letter is proposing. It says:

Dear Mr. President:

The House Judiciary Committee acknowledges receipt of the transcripts of White House conversations which you forwarded to the committee on April 30, 1974.

We regret to advise you, however, that the committee finds that these transcripts do not represent full compliance with the subpena issued by this committee on April 11.

The committee recognizes your interest in protecting the Office of the President against the dissemination of information that is of a national security nature or that is irrelevant to or beyond the scope of the committee's investigation. We trust that you recognize the committee's obligation to the American people under the Constitution to search out and review all information relevant to its inquiry.

We believe that both the committee's and the President's interests can be protected and that a fair, just, and mutually satisfactory resolution of this issue can be found.

We believe that it is essential that the committee have the benefit of counsel in reviewing the original tapes on which the transcripts were based. In addition, the committee believes it essential that it have the opportunity to verify the authenticity of the tapes through the use of technical assistance. It also may be that, upon further examination, the committee will find the need to review certain of the original tapes which, in the opinion of the chairman and the ranking minority member, are of importance to the committee's inquiry.

We trust that you will recognize and be willing to satisfy the needs of the House Judiciary Committee on the particulars outlined above.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. The question is on the amendment offered by the gentleman——

Mr. FLOWERS. Mr. Chairman, I have a parliamentary inquiry. Would an amendment to the gentleman from Maine's amendment be in order?

Mr. CHAIRMAN. Yes; it would.

Mr. FLOWERS. Mr. Chairman, I have an amendment to the gentleman from Maine's amendment. Having grappled with my own letter writing ability, I will ask, without any time for a debate, I will ask my colleagues to please refer to the gentleman's letter that he has furnished all of us. My amendment would be to strike the language contained in paragraph 3 beginning with "the committee" through the end of paragraph 4, the word "found."

The next paragraph 5, strike the language on line 5, "upon further examination." Strike the word "certain" at the end of line 5 and the

word at the beginning of line 6. On line 6 strike the words "in the opinion of the chairman and the ranking minority member" and add to the end of the sentence on line 7, beginning with at the end of the sentence "the committee's inquiry" to read "the committee's inquiry in accordance with the same rules of confidentiality as applied to previous material requested and received by the committee."

Mr. COHEN. I have no objection to that.

The CHAIRMAN. The question is——

Mr. DENNIS. Mr. Chairman, would the gentleman yield?

The CHAIRMAN. Did the gentleman from Maine accept?

Mr. COHEN. I do, yes.

The CHAIRMAN. The amendment?

Mr. RAILSBACK. Could we have it read, Mr. Chairman?

Read the whole thing.

The CHAIRMAN. Will the gentleman read the amendment?

Mr. FLOWERS. Read it as it would appear?

The CHAIRMAN. As it would appear and as an amendment to the amendment.

Mr. FLOWERS. Thank you, Mr. Chairman.

Dear Mr. President:

The House Judiciary Committee acknowledges receipt of the transcripts of White House conversations which you forwarded to the committee on April 30, 1974.

We regret to advise you, however, that the committee finds that these transcripts do not represent full compliance with the subpena issued by this committee on April 11.

We believe that it is essential that the committee have the benefit of counsel in reviewing the original tapes on which the transcripts were based. In addition, the committee believes it essential that it have the opportunity to verify the authenticity of the tapes through the use of technical assistance. It also may be that the committee will find the need to review certain of the original tapes which are of importance to the committee's inquiry in accordance with the same rules of confidentiality as applied to previous material requested and received by the committee.

We trust that you will recognize and be willing to satisfy the needs of the House Judiciary Committee on the particulars outlined above.

Sincerely yours,

The CHAIRMAN. The question is on the amendment offered by the gentleman as amended by the gentleman from Alabama.

All those in favor of the amendment please say aye.

[Chorus of "ayes."]

The Chairman. All opposed, no.

[Chorus of "noes."]

Mr. RAILSBACK. Could we get a vote, Mr. Chairman?

The CHAIRMAN. A rollcall vote is demanded, and the clerk will call the roll. All those in favor of the amendment as amended by the gentleman from Alabama please say aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

Mr. CLERK. Mr. Hungate.
Mr. HUNGATE. No.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
Mr. CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
Mr. DANIELSON. No.
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
Mr. CLERK. Mr. Rangel.
Mr. RANGEL. No.
The. CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. No.

The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. No.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. No.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. No.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No, the clerk will report.
The CLERK. Eleven voted aye, 27 voted no.
The CHAIRMAN. And the amendment is not agreed to.
The question now occurs on the motion——
Mr. LATTA. Mr. Chairman?
The CHAIRMAN. The question now occurs on the motion offered by the gentleman from——
Mr. LATTA. Mr. Chairman?
The CHAIRMAN [continuing]. Massachusetts as amended by the gentleman from Texas, Mr. Brooks. All those——
Mr. LATTA. Mr. Chairman? Mr. Chairman?
The CHAIRMAN. A rollcall?
Mr. MCCLORY. Rollcall.
Mr. LATTA. Mr. Chairman, I was seeking recognition. I move to lay the motion on the table.
Mr. LOTT. Second.
The CHAIRMAN. The motion to table is in order, and no debate on the motion. The question is on the motion to table.
All those in favor of the motion to table please say "aye."
[Chorus of "ayes."]
The CHAIRMAN. All those opposed, "no."
[Chorus of "noes."]
The CHAIRMAN. And the noes appear to have it.
Mr. LATTA. Rollcall, Mr. Chairman.
The CHAIRMAN. A rollcall is demanded and the clerk will call the roll. All those in favor please say "aye," all those opposed, "no."
The CLERK. Mr. Donohue.
Mr. DONOHUE. No.
The CLERK. Mr. Brooks.
Mr. BROOKS. No.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. No.
The CLERK. Mr. Edwards.
Mr. EDWARDS. No.
The CLERK. Mr. Hungate.
Mr. HUNGATE. No.
The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. No.
The CLERK. Mr. Mann.
Mr. MANN. No.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
Mr. DANIELSON. No.
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. No.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.

Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No, the clerk will report.
The CLERK. Eighteen voted aye, 20 voted no.
The CHAIRMAN. And the motion is not agreed to.

The question now occurs on the motion offered by the gentleman from Massachusetts, as amended by the gentleman from Texas, Mr. Brooks.

All those in favor of adopting the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

The CHAIRMAN. I know that you are going to call for a roll, and so I anticipate it. A rollcall is demanded.

All those in favor of the adoption of the motion please say aye and all those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.
Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. No.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. No.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. No.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. No.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. No.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. No.
The CLERK. Mr. Latta.
Mr. LATTA. No.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye, the clerk will please report.
The CLERK. Twenty voted aye, 18 voted no.
The CHAIRMAN. And the motion is agreed to.
Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I would like to be recognized for the purpose of making a motion, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized.

Mr. CONYERS. The motion has been distributed to all of the members and I move that the Committee on the Judiciary of the House of Representatives cite Richard M. Nixon, President of the United States, for contempt of the Congress for failure to comply with the duly authorized subpena issued on April 11, 1974.

I seek recognition to speak on it, Mr. Chairman.

Mr. WIGGINS. Mr. Chairman, point of order. In making a point of order, I make a point of order against the motion.

The CHAIRMAN. The gentleman will state the point of order.

Mr. WIGGINS. All right. The motion, by its terms, has this committee citing the President for contempt. Under the law, this committee has no power to cite anybody for contempt. The House of Representatives does, but not this committee. Accordingly, a point of order will lay as to the motion.

Mr. CONYERS. Well, Mr. Chairman——

The CHAIRMAN. Will the gentleman want to reply to the point of order?

Mr. CONYERS. Certainly, Mr. Chairman. I think that this is a technical reference. This same motion in this same form has been made in the Congress as of September of 1973 before and in the Armed Services Committee on the same basis. If the chairman insists on recognizing the point of order, I am perfectly prepared to amend the motion to meet the technical objection raised by the gentleman from California.

Mr. WIGGINS. I insist on my point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from California makes a point of order, which while technical the Chair must sustain.

Mr. CONYERS. Well, Mr. Chairman, I seek recognition for another motion.

The CHAIRMAN. The gentleman is recognized.

Mr. CONYERS. I move that the committee give that consideration to the matter of citing Richard M. Nixon, President of the United States, in contempt of the Congress for failure to comply with the duly authorized subpena of April 11, 1974.

And I would like to be recognized to speak to the motion, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized.

Mr. CONYERS. Mr. Chairman——

Mr. DENNIS. Mr. Chairman, could we hear that motion?

The CHAIRMAN. Will the gentleman restate his motion? The gentleman from Indiana has not heard it.

Mr. CONYERS. Will the secretary read the motion, will the reporter read the motion?

[Reporter read back prior motion by Mr. Conyers.]

Mr. DENNIS. Mr. Chairman, point of order.

The CHAIRMAN. The gentleman makes a point of order.

The gentleman will state the point of order.

Mr. DENNIS. I do not want to raise a question about writing because I do not think that might be fair under the circumstances, but I do

make the point of order that there really is not—the motion just does not make any sense. Give that consideration—I do not know what that means. I think we ought to have intelligible motions before us.

The CHAIRMAN. Well, if the gentleman—the Chair is prepared to rule on the point of order, unless the gentleman wants to be heard.

Mr. CONYERS. Mr. Chairman, I would like to withdraw that motion. I think I can meet the objection raised by the two gentlemen in their previous points of order.

The CHAIRMAN. If there is no objection, the gentleman is recognized.

Mr. CONYERS. Mr. Chairman, I move this time that the Committee on the Judiciary recommend to the House of Representatives that Richard M. Nixon, President of the United States, be cited for failure to comply with the duly authorized subpena of April 11, 1974.

And I seek recognition on that motion.

The CHAIRMAN. The gentleman is recognized.

Mr. CONYERS. Mr. Chairman and members of the committee, I have rather carefully considered all of the testimony that has been presented here by our staff counsel. I have listened with great interest and as carefully as possible to the comments of the members. And in my conscience I would like to make clear that at this point I am unable to honestly believe, as the chairman rather eloquently articulated, that perhaps by sending the President of the United States a letter he will see the light and begin to comply.

Now, I find that the subpena was clearly, duly issued, that the materials requested were relevant and extremely specific, and that, without any attempt to create division on this committee, I think that we can no longer ignore the fact that the President of the United States is in willful noncompliance, and that there is little real likelihood that this well-intentioned missile from the Judiciary Committee is going to correct an intransigence that is now, I think, rather deep in the conduct of the person subject to these impeachment proceedings. And so I think that nothing would be more appropriate than because this is Law Day, May 1, that we begin or at least close it by enforcing the law against and upon the President of the United States.

I say that we can order the President to do something and that under the Constitution it is rather specific and clearly enunciated. We have here a procedure that I would like to recall to the members' attention in the United States Code Annotated. It is in title II, section 192 and 194, that deals with the method of certification in which we would send to the Speaker a notice of the noncompliance with a report from this committee and that the Speaker would not have to worry about the problems of enforcement. It seems clear to me, and I think reasonable to suspect that there will be other subpenas and other noncompliances and I would like these contempt citations to stack up, if you will, in the Speaker's office rather than we be drawn into any kind of litigation in the court, at least on our part.

And so, it is out of my concern for the integrity of this Congress which has clearly been impugned by the conduct and the method in which the President has determined to treat our very first request that I ask the earnest consideration of every member of this committee, and that they support this motion to cite the President for contempt.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. It will only take a moment. I regret that my friend from Michigan has offered this motion, but since he has, and since he speaks with clean truth about the matter, I am reluctantly going to vote for it.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I support the motion, and I do so with these comments. There was an effort, and I understand it, that if we went soft, and if we did not confront what had really happened, and called it by another name, we could preserve a bipartisan vote on this committee. I think the vote that was cast upon the calling of contempt noncompliance might very readily assure those who are so persuaded that that course of action is really not very productive. If contempt is what in fact the President has committed, contempt ought to be what this committee calls it, and describes it as being.

Second, I have heard numerous comments tonight that confrontation is something to be studiously avoided. I find that spirit very prevalent in the committee. I find it lacking totally on the part of the President. Confrontation is a course of action that he chooses, and I only suggest to those who believe that confrontation ought to be avoided that the impeachment process is the ultimate confrontation of the legislative branch with the executive branch by a constitutional definition. And for us to be frightened, for us to be overly cautious, for us to be wary, of confronting a President who does not possess the same reluctance to confront the Judiciary Committee, plays into his hands, Mr. Chairman. I think we have to, somewhere along the line, tell the President, and tell the members that believe in the President, that the committee no longer is going to tolerate the contemptuous conduct that he has demonstrated toward this committee.

Now, the only way I know of telling him that is to comply with the rules of our House, and I find nothing in the rules of our House about noncompliance. I find much about contempt. And I will support the gentleman from Michigan's motion in that regard.

Mr. MAYNE. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. The Chair would like to—the Chair would like to state that I regret very much that the gentleman from Michigan has offered such a motion at this time. I seriously question the wisdom of the motion at this time, despite the fact that I know that the gentleman has time and again demonstrated great restraint. But, at this time, recognizing that the President has failed to comply, to seek to call upon the House of Representatives to cite the President for contempt, it would seem to me that this course is totally unwise, since it diverts us from the purpose which I think we have set ourselves upon, and that is to inquire, to inquire, and to inquire. And I stated that next week this committee will be considering the evidentiary material which is necessary for this committee's honest judgment of the facts that presently are before it and of such other facts that may become before it.

And I, therefore, believe that taking the time of this committee to pursue this course, which would only mean that the Speaker at some time would be authorized to so summon the President under the cus-

tody of the Sergeant at Arms, and would bring the President before the bar of the House, and a full hearing before the House, and then to find him in contempt, have him cited, reprimanded, and then released from custody by the Speaker, would certainly be not the kind of action that would bring forth the kind of results that we are seeking, and that is to make a determination for the American people.

We can consider the noncompliance of the President when we are considering the question of possible grounds of impeachment. And I think that this is a very serious and sobering thought, and I would hope that the gentleman from Michigan recognizes this. And while I know he is determined to continue with his motion, I would hope that he would withdraw his motion. If not, the chairman is going to vote against it.

Mr. SEIBERLING. Mr. Chairman?

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. I call for the question on the motion.

Mr. FLOWERS. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, there is no question in my mind that the——

Mr. MAYNE. Mr. Chairman, point of order. Has the Chair ruled on my request? I moved, called for the question.

The CHAIRMAN. Well, I did not hear the gentleman move the question. The gentleman merely asked the question, said the question.

Mr. MAYNE. Well, I will move the previous question.

The CHAIRMAN. Well, I am going to recognize the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, there is not any question in my mind but what the President's action toward this committee and toward the Congress has been contemptuous in the extreme. To respond to a lawful subpena by going on television is not a decent thing to do. And at a proper time I would support a motion to hold the President in contempt of Congress, but this is not that time. We have a job to do, as the chairman has pointed out, and we should not be diverted from it. And at the proper time we could take into consideration the actions of the President. And therefore, I move to table this motion.

Mr. CONYERS. Point of order, Mr. Chairman.

Mr. BROOKS. The motion is to table.

Mr. CONYERS. As the Chair well knows, the motion——

Mr. SEIBERLING. I have moved to table the motion.

Mr. CONYERS. A motion to table is not debatable either before or after.

The CHAIRMAN. The motion to table is not debatable, and the question is on the motion to table.

All those in favor of the motion to table please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it.

Mr. CONYERS. Rollcall.
Mr. LATTA. Rollcall, Mr. Chairman.
The CHAIRMAN. A rollcall is demanded, and all those in favor of the motion to table will say aye, and all those opposed will say no.
The clerk will call the roll.
The CLERK. Mr. Donohue.
Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. No.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Abstain.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The clerk will report the vote.
The CLERK. Mr. Chairman. 32 voted aye, 5 voted no, 1 abstention.
The CHAIRMAN. And the motion is not agreed.
Mr. SEIBERLING. I move we adjourn.
Mr. KASTENMEIER. Move we adjourn.
The CHAIRMAN. The motion is made to adjourn.
All those in favor, please say aye.
[Chorus of "ayes."]
The CHAIRMAN. All those opposed, no.
[No response.]
The CHAIRMAN. And the committee is adjourned.
[Whereupon, at 11:40 p.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Impeachment Meeting

THURSDAY, MAY 2, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice at 10:50 a.m. in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, Jr., senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Franklin G. Polk, associate counsel; and Dan Cohen, counsel.

The CHAIRMAN. The committee will come to order.

This morning's meeting has been called for the purpose of considering the rules of procedure, and in accordance with last night's vote on the part of the committee to waive the rules, to suspend the rules, we are meeting at this time to consider these rules of procedure.

I would initially like to state that the gentleman from California I know had originally proposed a motion that he had intended to make which would be considered along with the rules of procedure.

I understand that the gentleman recognizes at this moment that that proposal might be moot at this time and, therefore, although I still will reserve for him the right to make that motion when he does come in, I feel that we should go on now with the consideration of the rules of procedure. And for that purpose I recognize the chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice. Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Our subcommittee was referred the question of considering and recommending to the full committee the procedures to be followed in conducting the committee's impeachment inquiry. Following two briefing sessions, the committee met formally yesterday and considered the procedures. At the conclusion of that meeting, the subcommittee voted unanimously to vote favorably for the proposed procedures which are before each member of the committee entitled "Impeachment Inquiry Procedures." It is my understanding that they were in the hands of members—at least in their offices yesterday afternoon.

The procedures we have adopted are intended to permit each member of the committee to make his own decision with respect to the evidence which will be before us during the conduct of the impeachment inquiry. With this in mind, the procedures provide that at the outset of each presentation, committee counsel shall make a presentation consisting of a general overview of the material to be presented. At that time, each member of the committee will receive written materials relating to the presentment which will follow.

There are provisions in the procedures to permit individual committee members to present additional evidence to the committee.

There are also procedures whereby each member of the committee has full access to all materials which have been obtained by the inquiry staff.

Finally, there are provisions respecting the participation of the President's counsel in these proceedings.

In addition to the document entitled "Impeachment Inquiry Procedures," each member of the committee should also have before him a report which details with greater specificity the procedures we are considering today. It is my expectation that there will be a general discussion of these procedures prior to the consideration of the proposal. It is also my understanding at this hour Mr. Chairman, that there may be a number of amendments to be offered.

In consideration, Mr. Chairman, of what you have said with respect to the proposal of Mr. Wiggins, at the outset there were three proposals, one was a draft of impeachment inquiry proceedings dealing with the method of factual presentation to the committee; and second, there was a draft of hearing procedures dealing with the receiving of testimony, should the committee determine to call witnesses, these two separate drafts were joined by us, were put together into the single document before you.

Of course, members of the committee had before them for some days a proposal by Mr. Wiggins with respect to screening material, evidence that might come from the White House in terms of any issue raised by the President with respect to relevancy, and national security or executive privilege. The committee, in the light of events this week, as the chairman stated, felt that the question might be moot, and if it were, indeed, not moot, the question would have to turn on what the committee determined with respect to the President's offer, or suggestion, as conveyed by his submission earlier this week. We felt that it contained matters affecting policy which would require a mandate from the full committee with respect to whether or not this subcommittee should present to the full committee any formulation of rules with respect to that question.

The subcommittee stands ready, should the full committee so direct us, to consider rules with respect to screening of evidence, or with respect to otherwise handling matters suggested in the proposal by the gentleman from California, Mr. Wiggins.

I would say only finally, Mr. Chairman, that the rules, that the procedures that we have suggested, have included, we think, generous participation by counsel to the President, and that there was not, on this point, perhaps unanimous views in the subcommittee. But, we were prepared to believe that the general suggestion made by the chairman a week ago or so with respect to that, those privileges to be accorded the President's counsel, were appropriate, and to a very great extent that are embodied in the procedures we are submitting to you this morning.

It is also clear that the philosophy, however, of these procedures and rules, is that the control of all of these proceedings be in this committee, and in its chairman, and of that there should be no doubt. We furthermore state at the outset of the procedures, the first line, which I should read to you:

> The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 803, subject to modification by the committee as it deems proper as the presentation proceeds.

This is important, because should any exigency arise, any question about the role of those who appear before us, the committee can, it is anticipated, address itself to that by modification of the rules.

Mr. Chairman, at the proper time, I would move adoption of the recommendation of the committee with respect to impeachment inquiry procedures. I will only make one additional comment, which I should make and state that we determine the presentation of the statement of facts, the original presentation to the committee is a hearing for purposes of the House rules. This means, of course, that if the full committee agrees, that proceedings which are not otherwise closed, in connection therewith, for good and sufficient reason as determined by the full committee, shall, indeed, be opened, and the rules of the House with respect to hearings shall obtain.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The Chair would like to state that after conferring with the ranking minority member it is the intention of the Chair to proceed with the general discussion of the proposal for no more than a half hour and that would mean at 11:30 general discussion would be concluded, and we would hope that we could conclude it prior to that, and then go on with the reading of the rules and open the proposal for amendment.

If there is no objection, I would so proceed.

Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I want to join with my colleague from Wisconsin, Chairman Kastenmeier, in what he said, and I would like to just give you and the committee a little more background. Initially there was presented to the members of the subcommittee a staff report and a staff recommendation. There were some substantial changes made from the original staff report. For instance, there was a proposed rule which really would have permitted, and I know that

this was not the intent, but would have permitted meetings to be called without notice at all, and the reason was to get around the 7-day normal requirement of the House rules. We changed that to kind of conform with our other procedures which provide for at least a 24-hour notice to be given of any meeting.

Second, there was a provision that said Mr. St. Clair, the President's counsel, may be permitted to participate in executive sessions. And we changed that to mean shall be permitted so that he is always assured of being entitled to participate, or at least be present at all of the executive sessions.

Third, there was a concern expressed under the original draft that our counsel would not necessarily initially present or—I'm sorry, that counsel would not initially examine the witnesses, and there was, I think there was, a concurrence of opinion that it was desirable for our counsel to initially examine so that we could avoid having a lot of repetition, and then members could possibly fill in the gaps at the end under the 5-minute rule.

I have just a kind of a technical amendment that I will offer at the proper time. But I want to say that, in my opinion, the members of the committee and the subcommittee, including the majority members, have leaned over backwards to try to assure that Mr. St. Clair, and the President, would receive a full opportunity to participate in every single stage. And I personally appreciate this because there have been some areas of disagreement from time to time, and I personally am very satisfied, very satisfied, with the rules.

The CHAIRMAN. The Chair would like a show of hands of those members who would like to be recognized, with preference being given to the subcommittee members, so that I will allocate the time equally among the members.

[Show of hands.]

The CHAIRMAN. Thirteen members are seeking recognition, and that means that we will allot 2 minutes to each member.

I recognize the gentleman from Illinois, Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

The CHAIRMAN. For 2 minutes.

Mr. MCCLORY. Thank you, Mr. Chairman.

Each of the members has before him a proposed amendment that I will offer, which does nothing more than to provide that at our open hearings we shall permit television and radio broadcasts, and photography in addition to, of course, having the writing press.

We must all recognize that there is broad general interest in this subject. The facilities here in the committee room are limited, and this will provide an opportunity for those who want to view our proceedings on television to have that opportunity.

The amendment, of course, will be subject to the House rules, which provide very strict limitations with regard to protections of witnesses, with regard to limitations on commercial advertising, if they are live hearings, and other precautions, other protections, which of course, will have to be observed. However, I think what this would do, it would be to obviate the necessity for a separate vote with respect to each session, and to have the television excluded if there is an objection on the part of one member.

We do have a precedent for this in the televising of the Ford Confirmation Hearings, and it seems to me that this is consistent with the practices of our committee.

I yield to the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. I thank my good friend from Illinois. His amendment, in my view, is acceptable. It is contemplated that these are open hearings, and that the electronic media would be permitted to be present.

But, the committee would be required, under the rules, to vote affirmatively at the outset of each session. This obviates the necessity for that particular vote and for that reason I think is more practicable, and for my own part, I am agreeable.

Mr. MCCLORY. I thank the gentleman, and I will offer the amendment at the appropriate time. And I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired. Thanks.

The Chair failed to recognize that the gentleman from Texas, Mr. Brooks, was also seeking recognition, so we will allot another extra 2 minutes.

Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to ask if it is the understanding of the Chair that the full committee staff, both Democratic and Republican, will be allowed the same access and opportunity to examine all testimony, papers, and things obtained by the inquiry staff at the same time that we as members get that? Will our staff have that same opportunity, or do we need to have an amendment to provide for that on page 2, subchapter 3, or paragraph 3? I am talking about the full committee staff, Mr. Polk on your staff, and Mr. Zeifman, Mr. Cohen? The full committee, both Republican and Democrat given appropriate access?

The CHAIRMAN. The Chair will have to refer that question to the gentleman from Wisconsin.

Mr. BROOKS. Who?

The CHAIRMAN. The gentleman from Wisconsin.

Mr. KASTENMEIER. If you will yield to me——

Mr. BROOKS. I am trying to get this question answered.

Mr. KASTENMEIER. Of course it has to do with the definition of the term "staff" here. I assume that for all other purposes, the procedures of the committee as followed in the past will be followed with respect to full committee staff. If it is contemplated that they do not presently have access and require access, in my view, the rules should so state, if that is the purpose of the gentleman.

Mr. BROOKS. That is my intention. But, how do you interpret the existing procedure or policy? What do you plan to do? This is what I am trying to find out. If there is any doubt in your mind, I will offer an amendment to make it clear that we do.

As Mr. Kastenmeier points out——

The CHAIRMAN. Well, it would be my intention to include the committee staff, the full committee staff, and that would include Mr. Zeifman, Mr. Polk. Up until this time it was my understanding that it was the impeachment inquiry staff that was privy to all of this. But, I think for purposes of the rules of procedure, I think that

this would be a determination by me and Mr. Hutchinson, and I would certainly have no objection to that.

Mr. BROOKS. I would not offer the amendment since it would be taken care of in that fashion.

Mr. KASTENMEIER. Yes. If the gentleman from Texas would yield, we did not contemplate that particular point in the procedures we are submitting to you this morning.

Mr. BROOKS. If I have any time left, I would just like to say in one-half a second that I am hopeful that we can alter a little bit the thrust of Mr. Kastenmeier on page 1, subparagraph A, line 3. I understand that Mr. Hogan is going to introduce an amendment to that effect, but I had thought about it last night, and it worried me about the statement of fact that details in paragraph form the facts. And I was thinking that something like his statement of detailing evidence is good enough language, or a summary of the evidence would be preferable to a statement of fact detailing in paragraph form.

The CHAIRMAN. The gentleman's time has expired.

Mr. BROOKS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Railsback for 2 minutes.

Mr. RAILSBACK. I think, Mr. Chairman, if Mr. Dennis is going to be recognized next I can yield. Can I yield to him?

All right then, I will yield back.

The CHAIRMAN. The Chair recognizes Mr. Conyers for 2 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

I am disturbed about the rights of counsel of the President in these evidentiary hearings, and I want to direct your attention to section C4, in which, as I interpret this language, the President's counsel is going to have rights to cross-examination and to call witnesses. I am not going to support any such provision or anything near it.

And I feel constrained to advise the chairman, and especially my friend from Wisconsin, that I may offer an amendment to delete C4 in its entirety if there is not some clear understanding on it.

Now, as a civil libertarian, it seems to me that we have gone to great excess in and are probably making a serious mistake that will insure that we never ever emerge from these evidentiary hearings in terms of allowing the President's counsel to take this unlimited and overfull participation in hearings that we are conducting to merely advise the Congress. This is not a trial, and it may be that for one time this committee has been bent over backwards in trying to maintain this theoretical bipartisanship that is going on. And I yield to the subcommittee chairman if he wishes to throw some light on this.

Mr. KASTENMEIER. Well, I thank the gentleman from Michigan for raising that. It will, I think, also be raised by one or two others.

The subcommittee, in agreement I think with the chairman of this committee, determined upon, settled upon the notion that these procedures shall reflect ample participation by the persons representative of whom is subject of the inquiry. Whether or not in due course anyone will have to regret that, one cannot say. But, in terms of the precedent of the past, which while uneven, nonetheless seems to amply justify, and particularly in such a case, the representation of Mr. Nixon in this case.

The CHAIRMAN. The gentleman's time has expired.

The Chair recognizes Mr. Eilberg for 2 minutes.

Mr. EILBERG. Mr. Chairman, I think that there is such a multiple interest identified with this matter that we should bend over backward to allow the public and the news media to participate. And in connection with Mr. McClory's proposed amendment, which the gentleman from Wisconsin stated he would accept, I would just like to ask a couple of questions of Mr. Kastenmeier.

In the language it refers to television, radio broadcast, still photography. Am I correct in assuming this would be not only tapes, but live broadcasts as well?

Mr. KASTENMEIER. To the extent, if the gentleman will yield, and you are referring to the proposed amendment by the gentleman from Illinois, which I have just seen 5 or 10 minutes ago, to the extent that it is consistent with the orderly proceeding, I assume that live broadcasts are permitted. But, I would yield to counsel, that is to say, are not distinguished from other still or taped or filmed television, but I would yield to counsel, either I think perhaps Mr. Zeifman or Mr. Cohen. Is he present? Or Mr. Doar perhaps. Do you have any comment on whether or not live television would be permitted at such a hearing, assuming the electronic media are otherwise permitted? It is my understanding that they would be if, indeed, they do not interfere with the hearings themselves. Is that not correct? I yield to my chairman perhaps.

The CHAIRMAN. Counsel, Mr. Cohen, who has been following this has I think the rules which will explain it.

Mr. DAN COHEN. Under the rules of the House, the committee can vote if two conditions exist, to authorize television. The two conditions that must exist are a hearing, and a hearing that is open to the public. Under those circumstances, the rules of the House permit the committee to authorize the presence of electronic media, and then it is a matter for the networks and for the industry themselves to determine if that would in their interest include live TV. So, the committee can authorize it, and then it is up to the industry to determine if they wish to go forward.

Mr. KASTENMEIER. The answer to your question then is yes.

Mr. EILBERG. Mr. Chairman, one more question. I would like to see live coverage of the executive meetings too, except where perhaps there are indicted defendants whose rights might be privileged or when there might be other special reasons why there should be no live coverage. I wonder if the chairman, Mr. Kastenmeier, would react to that?

Mr. KASTENMEIER. It is my understanding that the present House rules do not permit the telecasting of official meetings of the committee. It is for this reason that we very carefully denominated the presentation to be a hearing.

Mr. EILBERG. I thank the chairman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Dennis for 2 minutes.

Mr. DENNIS. Thank you, Mr. Chairman.

First I would like to compliment the subcommittee on doing what I regard as a good job in general on the rules of procedure, particularly so far as I am concerned with recognizing the right of the President's counsel to be present and to examine and cross-examine witnesses.

As a civil libertarian myself, and one who has spent a certain amount of time enforcing civil liberties in the courtroom which is the only place where they mean anything, I think that provision is of the essence of due process.

Now, I have five amendments that I intend to offer and I will discuss them in greater detail at the proper time. I may say at this time three of them, I believe, strengthen and improve the right of the defendant's counsel or the President's counsel, making slight changes in the language. The other two, one of them specifically recognizes the right and prerogative of members of this committee under the 5-minute rule to question if they so desire, and the final one expresses my view that we should determine at this time who certain key witnesses are, particularly those who apparently may have some information on the alleged payment made to Mr. Hunt's counsel on the night of March 21, 1973, and should be called. I do not address myself to the question of whether or not they should be given immunity, should any of them claim it. But, because that is a possibility, I think we should now grapple with the question of whether we should not call them, and the general question of whether we should not have oral testimony.

And that is the subject of my last amendment. And I will discuss all of these matters in greater detail at the proper time and I thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes for 2 minutes Mr. Danielson.

Mr. DANIELSON. I was a member of the subcommittee and in general I approve of the report we have submitted.

At the appropriate time, however, I am going to offer, and it has been prepared, an amendment to strike that portion of paragraph C2 which would permit the President's counsel to participate in the questioning of witnesses. This is not a trial. It is not an adversary proceeding. The President and his counsel are here only as a matter of courtesy extended by the committee and not as a matter of right. They have no standing in this hearing whatever except in connection with the courtesy which we have granted to them.

This is a constitutional, parliamentary proceeding rather than a trial, and the sole power of impeachment being vested in the House of Representatives, I submit that it is probably even unconstitutional for us to permit participation in the actual work of the committee by the official whose activities are subject to the inquiry itself.

Historically, as you examine the cases, from far back to the inception of impeachment right down to the present, objections to the admissibility of testimony have been raised from time to time in almost each case. I can envision the President's counsel objecting to almost every question that is asked, and then trying to indulge in cross-examination. There are ample other opportunities for President's counsel to participate under the other rules in this present report. And I shall, therefore, move to strike the words "or the President's counsel" in subparagraph 2 of section C.

I yield back.

The CHAIRMAN. The Chair recognizes Mr. Seiberling for 2 minutes.

Mr. SEIBERLING. Thank you, Mr. Chairman.

I too, have the same kinds of misgivings expressed by Mr. Danielson and Mr. Conyers with respect to the participation by the President's counsel. I think that the approach taken by the draft rules submitted by the staff was far more circumspect and far more in keeping with the kind of inquisition, which is what this hearing is, which is more comparable to a grand jury than to a trial, and therefore, I may well support the amendments proposed by Mr. Danielson and Mr. Conyers.

I would also like to question the chairman of the subcommittee as to whether in paragraph B1, it would not be desirable to stipulate some time within which committee members may bring additional evidence to the committee's attention and I wonder if that has been considered?

Mr. KASTENMEIER. If the gentleman will yield?

Mr. SEIBERLING. I will yield to the gentleman.

Mr. KASTENMEIER. Yes, if the gentleman will yield, we did not discuss that in any detail but I will say that my problem with the time is that we did not want to restrict members. We did not want to say that you would have to bring additional evidence by any certain date or at the outset of some sort of presentation, because that after all, most members are under the disadvantage of not having had, other than those transcripts before them now, any of the evidence until sometime next week, so that it may take them some time to determine what additional evidence they may be interested in bringing to the committee.

Mr. SEIBERLING. Well, should it not be——

Mr. KASTENMEIER. We would not be in a position to set a time limit.

Mr. SEIBERLING. Should it not be limited to some time prior to the or up to the completion of the presentation? After that is completed, are you suggesting that?

The CHAIRMAN. The time of the gentleman has expired.

Mr. SEIBERLING. That additional evidence could be submitted?

Mr. KASTENMEIER. No, I am not.

The CHAIRMAN. The Chair recognizes Mr. Hogan for 2 minutes.

Mr. HOGAN. Thank you, Mr. Chairman.

At the appropriate time, if I am recognized, I intend to offer an amendment which would, throughout the committee's proposals of procedure, delete the word "fact" where it appears and insert instead the word "evidence". Now, this may at first seem to be a semantic distinction, but I do not believe that it is. I think it is very important, because in our understanding of the law, facts connote a conclusion made upon evidence and the staff is not the trier of the fact in this inquiry; the committee is. So, I think it is very important that we make it eminently clear that if the evidence is going to be assessed, and if we are going on that evidence, come to some conclusion of fact, we, the committee, are doing that, and not the staff.

So, I would urge my colleagues to support the amendment which does not do any injustice to the fine work of the subcommittee, but I think does make clear where the constitutional responsibility resides in this impeachment inquiry.

I also, on page 2, include in my amendment, copies of which are being typed, the suggestion of the gentleman from Texas, Mr. Brooks, which would insure that the full committee staff, majority and minority, would have access to the evidence.

The CHAIRMAN. The Chair recognizes Mr. Rangel for 2 minutes.

Mr. RANGEL. Thank you, Mr. Chairman.

I would like to join in with my colleagues in restricting the activities of the President's counsel. And if my colleague, Mr. Dennis, is holding himself out to be a civil libertarian, then I would like to take on the role of a strict constructionist of the Constitution in indicating that it seems to me that the legislative body has a constitutional responsibility to investigate activities on the part of the President of the United States which is the executive branch of Government, and that we have to take into consideration that Mr. St. Clair has been far less than responsive to the legitimate inquiries made by this committee in order to obtain the facts and that this committee has voted that the President of the United States is illegally in noncompliance of our subpena. And the Vice President of the United States has viciously attacked the integrity of Mr. Jenner, one of our counsel, of the legislative branch, and it seems to me that he has been in office long enough that he could discharge Mr. Agnew's speechwriters. But, obviously he sees fit to follow in the same trend which means that as we search for the truth, what we are attempting to do is to give tools to the executive branch of Government which would impede our efforts in order to search for the truth.

And I certainly believe that most of the work that has been done by the subcommittee in extending a courtesy to the President's counsel rather than a constitutional right, should be adoped. But, to say that he could sit there and question and object, and intimidate witnesses that may be able to shine a light as to what really happened within the executive branch of Government——

Mr. RAILSBACK. Would the gentleman yield?

Mr. RANGEL. I hope that this committee might see fit to recognize that we have our obligations to the House of Representatives rather than to the counsel to the President.

The CHAIRMAN. The gentleman's time has expired.

Mr. RANGEL. Thank you.

The CHAIRMAN. The Chair recognizes Ms. Jordan for 2 minutes.

Ms. JORDAN. Mr. Chairman, I have some similar concerns to those which have been expressed.

I think it is important for this committee to keep control of the inquiry, because it is our function, it is our responsibility, and I would like to propound this question to Mr. Kastenmeier.

Mr. Kastenmeier, if I could have your attention for a moment. It is contemplated in C4 where the words appear "the President's counsel may participate subject to instructions from the chairman", is it contemplated that the chairman would have the right to require the presubmission of questions by the President's counsel before those questions would be propounded to a witness?

Mr. KASTENMEIER. On that point, I would like to yield to counsel, Mr. Doar.

My recollection is we did—let me say to the gentlewoman from Texas there was a discussion of that point. I do not see it resolved elsewhere in the rules. As you can determine from the reading of 4, which reads as follows: "The President's counsel may question any witness called before committee, subject to instructions from the chairman or presiding member respecting the time, scope, and duration of the examination," we meant to give the chairman the authority to limit, consistent with orderly procedure, such examination. We contemplated that the questions could be either in writing or orally presented, but whether the chairman shall have the right to determine that in advance, in terms of the President's counsel, I would yield to Mr. Doar to respond.

Mr. DOAR. Congressman Kastenmeier, Mr. Wood, who worked with your subcommittee, is prepared to give you the answer on that and elaborate on the discussion.

The CHAIRMAN. Mr. Woods.

Mr. WOODS. Mr. Chairman, it was contemplated that the chairman would have whatever authority and means of control were appropriate to the situation as it developed during the hearing. And I would conceive that this would include the right, should it become necessary, to require that questions be submitted in advance in writing. And it would not necessarily require that. This would be a matter which would be left to the discretion of the chairman.

The CHAIRMAN. The gentlelady's time has expired.

The Chair recognizes Mr. Waldie for 2 minutes.

Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I yield to Ms. Holtzman.

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Waldie. I have a few questions.

Specifically under A1, Mr. Kastenmeier, are we precluded from receiving the statement of fact prior to, a day or two before we actually conduct, we actually conduct the hearing?

Mr. KASTENMEIER. It is contemplated that at the outset; that is to say, the first day of the proceedings, before the proceeding commences, that members shall have a copy of the statement of fact.

Ms. HOLTZMAN. Now, with regard——

Mr. KASTENMEIER. And have access at that time to all evidence, related documents and other evidentiary material and an index.

Ms. HOLTZMAN. Thank you.

Mr. KASTENMEIER. But not necessarily any time before then.

Ms. HOLTZMAN. Now, with respect to C2, and the right of the President's counsel to raise objections, under the language of that paragraph it would seem to me that as the witness is being examined and responding that the President's counsel could at every moment raise an oral objection to the presentation by the witness. And I think that would create the possibility of turning this proceeding, which ought to be orderly, into a circus. I have no problem with permitting the President's counsel to raise objections after a witness has testified or before the committee makes a judgment on the testimony, in writing. But, I would strongly object, if that is the purport of paragraph C2, to allowing the President's counsel to interrupt the examination of the witness.

Mr. RAILSBACK. Would the gentlewoman yield?

Would the gentlewoman yield?

Ms. HOLTZMAN. I would like to have an answer from Mr. Kastenmeier whether or not he feels that paragraph would permit the President's counsel to interrupt the examination of the witness to raise objections?

Mr. KASTENMEIER. Well, it does, yes. It would. I think obviously the objection must stand on its own feet. I contemplate, I think the subcommittee contemplated that the Chair would have full control over the proceedings with respect to entertaining objections. There is a right to make objections, but I think objections may be appropriately made.

Well, I can say that the majority of the subcommittee had no difficulty in accepting the fact that such objections may from time to time be made, but could be handled by the Chair and might, indeed, contribute to a fairer and fuller inquiry.

The CHAIRMAN. The time of the gentlelady has expired.

The Chair recognizes Mr. Latta for 2 minutes.

Mr. LATTA. Thank you, Mr. Chairman.

I find myself in agreement with my good friend from Texas, Mr. Brooks, and Mr. Hogan as to the statement of fact which appears in here. I think that is what this committee is all about, trying to get the facts, and to permit the staff to issue a statement of fact in advance of our hearings, I think would be wrong.

There are several things in this document that I think need to be called to our attention. Certainly I would oppose, as a member of this committee, and even if I were not a member of this committee, protest as an American, the denial of the President's counsel to play a full role in cross-examination of witnesses. I believe the American people believe in fair play and they want the truth. And I think the way the document is written now it is unusually restrictive, not only for the President's counsel, but for members of this committee. I would like to point out just a couple.

On page 2, under B, "following the presentation, the committee shall determine whether it desires additional evidence. Any committee member may bring additional evidence to the committee's attention." Why cannot a member of this committee request that additional evidence be brought to the committee's attention? Members of this committee might not have additional evidence to bring before this committee. So, we are denied the right under this item to even request that additional evidence be brought forth.

Under 2, "The President's counsel shall be invited to respond to the presentation, orally or in writing as shall be determined by the committee." How can you respond in writing if it is oral during the examination of the witness?

Mr. RAILSBACK. Would the gentleman yield?

Mr. LATTA. I have only got 2 minutes.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAILSBACK. It is just a technical amendment——

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Iowa for 2 minutes, Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I first just want to say that it is rather ironic that today, and I support basically the report, I was on the subcommittee, but at the same time that we are allowing the counsel and spelling out his role, we find ourselves not allowing our counsel, supposedly, to be privy of the opportunity to go to the White House, which I think is rather ironic. But, with that in mind, and with Mr. St. Clair's role in mind, and since there is some confusion as to whether Mr. St. Clair has, in fact, had the opportunity to listen to the tapes himself, and is privy to all of the information that may be available, what I want to make clear is there is nothing in these rules of procedure that preclude any member of this committee from asking questions of Mr. St. Clair. Am I correct? Is that a proper interpretation, that no member of this committee is precluded from asking Mr. St. Clair any questions that are necessary for our deliberations? Would counsel or would the chairman of the subcommittee care to comment on that point?

Mr. KASTENMEIER. That is not precisely covered in the rules, as the gentleman knows. He participated in the drafting of them. But, I would think that such an inquiry could be made to Mr. St. Clair, but he would have, he would have to be recognized for that purpose, which would have to be given by the chairman.

And if the chairman recognized a member for the purpose of propounding a question to Mr. St. Clair, I see nothing in the rules to forbid that such procedure take place.

Mr. MEZVINSKY. OK. I would like to yield my 5 seconds to Mr. Flowers.

Mr. FLOWERS. I support the subcommittee fully and I think all of the reservations the members have are covered by the first paragraph of this report that says everything we do here is subject to modification by the committee as it deems proper, and as the presentation proceeds. I thank the subcommittee for a good job.

The CHAIRMAN. The time of the gentleman has expired.

All time has now expired for the purposes of debate. And I will ask the clerk to read.

The CLERK [reading]:

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 803, subject to modification by the committee as it deems proper as the presentation proceeds.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, excuse me for interrupting. We all do have copies of the proposed rules of procedure. I wonder if there would be any objection if I would ask unanimous consent if the proposed rules be considered as read and open for amendment at any point?

The CHAIRMAN. Is there objection?

Mr. SEIBERLING. I object.

Mr. DANIELSON. I object.

The CHAIRMAN. Objections heard. The clerk will continue to read.

The CLERK [reading]:

A. The committee shall receive from committee counsel at a hearing an initial presentation consisting of (i) a written statement of fact that details in paragraph form the facts believed——

Mr. HOGAN. Mr. Chairman?

The CLERK [continues reading]:

By the staff to be pertinent to the inquiry, (ii) a general description of the scope and manner of the presentation of evidence, and (iii) a detailed presentation of the evidentiary material, other than the testimony of witnesses.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, is it the Chair's intention to entertain amendments at the point we reach them, or to have it read and then have it open for amendment at any point?

The CHAIRMAN. The Chair had intended that it be fully read and then be open for amendment at any point.

Mr. HOGAN. I will withdraw any consideration at this point.

The CLERK [reading]:

1. Each member of the committee shall receive a copy of (i) the statement of fact, (ii) the related documents and other evidentiary material, and (iii) an index of all testimony, papers, and things that have been obtained by the committee, whether or not relied upon in the statement of fact.

2. Each paragraph of the statement of fact shall be annotated to related evidentiary material (e.g., documents, recordings and transcripts thereof, transcripts of grand jury or congressional testimony, or affidavits). Where applicable, the annotations will identify witnesses believed by the staff to be sources of additional information important to the committee's understanding of the subject matter of the paragraph in question.

3. On the commencement of the presentation, each member of the committee shall be given access to and the opportunity to examine all testimony, papers and things that have been obtained by the inquiry staff, whether or not relied upon in the statement of fact.

4. The President's counsel shall be furnished a copy of the statement of fact and related documents and other evidentiary material at the time that those materials are furnished to the members and the President and his counsel shall be invited to attend and observe the presentation.

Mr. SEIBERLING. Point of order, Mr. Chairman.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. When I made my objection I was under the apprehension that we were going to have amendments offered to each section as it was reached, and therefore, I would ask unanimous consent that we do that, and that the amendments to section A now be in order.

The CHAIRMAN. If the gentleman will defer, the Chair has already stated that the clerk will read, and after the proposal has been fully read that the amendments may be offered at any point. And if the member wants to make a point of order at that time he may.

Mr. SEIBERLING. Very well.

The CHAIRMAN. The clerk will continue to read.

The CLERK [reading]:

B. Following that presentation the committee shall determine whether it desires additional evidence.

1. Any committee member may bring additional evidence to the committee's attention.

2. The President's counsel shall be invited to respond to the presentation, orally or in writing as shall be determined by the committee.

3. Should the President's counsel wish the committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the committee shall determine whether the suggested evidence is necessary to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

C. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The President and his counsel shall be invited to attend all hearings, including any held in executive session.

2. Objections relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a member of the committee, committee counsel or the President's counsel and shall be ruled upon by the chairman or presiding member. Such rulings shall be final, unless overruled by a vote of a majority of the members present. In the case of a tie vote, the ruling of the Chair shall prevail.

3. Committee counsel shall commence the questioning of each witness and may also be permitted by the chairman or presiding member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the committee, subject to instructions from the chairman or presiding member respecting the time, scope, and duration of the examination.

D. The committee shall determine, pursuant to the rules of the House, whether and to what exent the evidence to be presented shall be received in executive session.

E. The chairman shall make public announcement of the date, time, place, and subject matter of any committee hearing as soon as practicable and in no event less than 24 hours before the commencement of the hearing.

F. The chairman is authorized to promulgate additional procedures as he deems necessary for the fair and efficient conduct of committee hearings held pursuant to H. Res. 803, provided that the additional procedures are not inconsistent with these procedures, the rules of the committee, and the rules of the House. Such procedures shall govern the conduct of the hearings, unless overruled by a vote of a majority of the members present.

Mr. HOGAN. Mr. Chairman?

Mr. DANIELSON. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. McClory?

Mr. MCCLORY. Mr. Chairman, I have an amendment.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Mr. MCCLORY. On page 4, after paragraph D, add a new paragraph E as follows:

"E. Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage in accord with the rules of the House and the rules of procedure of the committee as amended on November 13, 1973," and redesignate subsequent paragraphs accordingly.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. The gentleman is recognized.

Mr. MCCLORY. Mr. Chairman, I did discuss this generally in the general debate, and if there are any questions I will be happy to answer them. At that time I did yield to Mr. Kastenmeier, the chairman of the subcommittee, who indicated that as far as the subcommittee chairman was concerned, he would accept the amendment.

Mr. HOGAN. Will the gentleman yield for a question?

Mr. MCCLORY. Yes. I yield to the gentleman from Maryland.

Mr. HOGAN. Is it the intention of the gentleman from Illinois if we have television that it be done on a pool basis with only one camera and a limited amount of lights?

Mr. MCCLORY. It is subject to the general rules of the House. Now, whether that would be worked out by some arrangement or not, it could be, but it would not necessarily be that way. I am not familiar

with the technical aspects. There are limitations with regard to the kinds of lighting and things like that, so it does not interfere with the operation of the committee. And it seems to me that there are limitations to the extent that persons who are not members of the committee are subjected to flashing that might be degrading, or things like that.

Mr. KASTENMEIER. Would you yield?

Mr. MCCLORY. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. It is my understanding that the practices pursuant to the rules of the House is for the chairman to be in control of the electronic media insofar as they affect the proceedings, notwithstanding any other right given them.

Mr. MCCLORY. There is a strict rule in the House rules that limits it to four television cameras, I might say, if there are no other arrangements made.

If there are no objections, Mr. Chairman, I would move the adoption of the amendment.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Illinois. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and the amendment is agreed to.

Mr. MCCLORY. Thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland, Mr. Hogan.

Mr. HOGAN. Thank you. Mr. Chairman. I have an amendment that has been passed out.

The CHAIRMAN. The clerk will read the amendment.

The Clerk [reading]:

Hogan amendment. Page 1, line 7. Delete "Fact that details in paragraph form the facts" and insert "evidence". Delete "facts" and insert "evidence".

Mr. HOGAN. Copies should be distributed.

The CHAIRMAN. I believe all the members have copies.

Mr. HOGAN. There is an expanded version. I do not know whether everybody has the detailed one. Would the clerk distribute those?

The CLERK. The last version we received was the typed version of the handwritten one.

Mr. HOGAN. I am not sure whether the committee members have that version.

The CLERK. This version has been distributed.

[Chorus of "noes."]

The CLERK. I apologize. We understood they had been distributed. We can reproduce them and have them in short order.

Mr. HOGAN. Mr. Chairman, it really is a very simple amendment, and it may appear to be complex as it is read, but all through all we do is substitute the word "evidence" for "facts" where it appears in the body of rules of procedure.

The CHAIRMAN. Might I address a question to the gentleman? My understanding is that this evidentiary material in the presentation

is going to take place in two parts. Is there any intention on the part of the gentleman to have his amendment reflect an amending of the rules as they would relate to the total presentation, the first and initial part of the presentation and the second part of the presentation, which I think is going to deal with an entirely different method of presentation?

Mr. HOGAN. Well, I am addressing my amendment, Mr. Chairman to the rules of procedure which we are about to adopt today, and wherever the word "fact" appears, I would substitute the word "evidence," because as I indicated in my previous remarks, the word "fact" connotes a conclusion on the basis of evidence.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. If the gentleman from Maryland has concluded, I would like to respond.

Mr. HOGAN. Well, I do not think that it has been all read yet, but where were we. Mr. Chairman?

The CHAIRMAN. I merely addressed a question to the gentleman. I believe that the clerk has not yet read the final version of the gentleman's amendment. So, the clerk should read.

The CLERK [reading]:

Line 13, delete "fact" and insert "evidence." Line 16, delete "fact" and insert "evidence."

The CHAIRMAN. Excuse me at that point. Did the clerk say line 16 or 15?

The CLERK. 16. There was a typographical error. [Reading.]

Line 17. Paragraph A2, delete "fact" and insert "evidence."
Page 2. Paragraph A3, Line 4. Insert after the word "committee", "and full committee staff, majority and minority".
Paragraph 4, line 9, delete "fact" and insert "evidence."

The CHAIRMAN. The gentleman from Maryland.

Mr. HOGAN. Mr. Chairman, I will not belabor the point. I made it during the general debate. I would just like to reiterate that under our system of justice, "fact" is a conclusion on the basis of evidence and in an adversary proceeding both sides present evidence trying to convince the tryer of the fact what the facts are. So, I think it is an important distinction that we indicate in our rules of procedure that the staff is not coming to the conclusion as to facts. The staff is coming forward with evidence on the basis of which the committee will decide what those facts are.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. The gentleman raises an excellent point.

However, in fairness to the staff and the original formulation of what is called "statement of facts" it was termed a "proposed statement of facts." After all, it is not, it is not supposed to be evidence in and of itself, but rather drawn from evidence. The subcommittee, however, struck the term "proposed," leaving it bare as a "statement of fact." We did that notwithstanding the fact that the staff had used the word "proposed" because it would ultimately be up to the committee to make the determination of what was a fact in that context.

However, we felt it was unnecessary, that that was understood patently, and that it was unnecessary to have the word "proposed statement of fact." This should not, the term as used, "statement of fact," should not be assumed to be anything final, or conclusionary with respect to the elements under investigation.

This is a statement of, for lack of a better word, facts drawn from evidence, with which the committee may or may not agree.

In that sense it is a proposed statement. The reason that it seems to me that evidence does not help us, and it may be semantical in part, is because it is drawn from evidence, and merely to repeat the word evidence in the manner of presentation of evidence or the like, of evidentiary material, does not help us descriptively. Descriptively it should be termed, we believe, either a statement of fact, or if the committee prefers, a proposed statement of fact.

I would like to yield, Mr. Chairman, very briefly, to the gentleman, counsel, John Doar, for any comment he might have to make.

Mr. DOAR. Well, members of the committee——

The CHAIRMAN. Mr. Doar.

Mr. DOAR. The Congressman from Wisconsin has stated the concept that the staff had when they submitted their draft proposal to the subcommittee. And this proposed statement of fact would be drawn from he evidence. It would not be conclusionary of the fact. They would be evidentiary facts, they would be proposals which the committee would be free to accept or reject, depending upon the evidence that was presented in a fair and objective way to support them, statements of fact which we would try to present in an objective, nonconclusionary proposed manner.

Mr. HOGAN. Will the gentleman yield to me?

Mr. KASTENMEIER. Of course, I yield to the gentleman from Maryland.

Mr. HOGAN. Majority counsel and the chairman of the subcommittee have made the very point on which I object. Both have used the words facts drawn from the evidence and that is precisely what I object to: I do not think that that is a staff function. The responsibility for drawing facts from the evidence is that of the committee members, not the staff, so that is precisely why I think it is appropriate, desirable, and necessary to substitute the word fact with "evidence" for the word "fact" wherever it appears.

Mr. SEIBERLING. Would the gentleman yield?

Mr. HOGAN. The gentleman from Wisconsin has the time.

Mr. KASTENMEIER. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Well, if this change were made, would it be your interpretation then that anyone could challenge at the outset any evidence in the statement of evidence on the grounds that it was not legal evidence?

Mr. HOGAN. Would the gentleman from Wisconsin yield to me to reply?

Mr. KASTENMEIER. Yes, I yield to the gentleman from Maryland.

Mr. HOGAN. I would assume that during our deliberations, our responsibility is to ascertain the truth, and on the basis of a factual summary, come to the conclusion as to whether or not the President should be impeached. So I would assume that members of the committee

might offer evidence, the President's counsel might offer evidence, which would challenge the evidence offered by our staff. And from an assessment of these respective offerings, we, the members of the committee, would come to our own conclusion as to what the facts are.

Mr. SEIBERLING. Well, I understand that. But, what I am raising is whether or not by substituting the word "evidence" for "facts" we are going to give rise to a challenge ab initio on each statement in the statement of evidence as to whether that particular evidence is admissible under the rules of evidence, and whether we will do that in the process of sifting out the whole collection of evidence?

Mr. HOGAN. If the gentleman will allow me to answer further, the rules of evidence really do not apply to our deliberations so I do not think that is a concern. My real concern is that we give the impression to the world that we have already ascertained the facts when that is not our status whatsoever. It is to look at the evidence, to see if we then will decide the facts?

Mr. SEIBERLING. Well, if the gentleman will yield further I think that if all we are talking about is a semantics problem then we can resolve that by substituting the word "evidence" to make it clear that we have not already found the facts. There is no objection to that as far as I am concerned. But, it should not be used as a tool by Mr. St. Clair or anybody else to try to challenge the initial statement of facts.

Mr. HOGAN. I could not agree with the gentleman from Ohio more fully. We are not looking at this in the context of the Federal rules of evidence. We are looking at what the word itself connotes.

Mr. KASTENMEIER. May I in conclusion say, Mr. Chairman, and I have the time, say that it would seem to me that to call, to term this a "statement of evidence" would be improper. It is not strictly a statement of evidence. The evidence lays back of this presentation and this presentation is an attempt to synthesize the evidence and to present what is a statement of fact or a statement of proposed, or proposed statement of fact.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. The Chair would like to address a question to Mr. Hogan with relation to your proposed amendment. On paragraph A3, line 4, insert after the word "committee" "and full committee staff, majority and minority."

Does the gentleman intend that the Chair and the ranking minority member would not have the discretion as they do now in the rules of confidentiality to designate staff as we have already, already contemplated that we might have, and that would be in the present members of the staff, Mr. Zeifman and Mr. Polk?

Mr. HOGAN. It is not my intention, Mr. Chairman, to in any way interfere with the discretion of the ranking minority member and the chairman. But, when we look at the mass of work that we are going to have to assimilate, I think all of us have always relied on the fine work of our staff. And to hamper our work in this area by restricting the staff access to a degree where 38 members do not get enough import from the staff, I think that is going to be a problem for us.

But, I certainly agree if the chairman is saying that it should not be everyone on the staff having access to it.

The CHAIRMAN. The Chair would like to advise the gentleman that presently the impeachment inquiry staff is composed of already 100-and-some-odd people with professional staff of about 42 who are at

the disposal of the gentleman. But, we had for purposes of retaining confidentiality and complying with those rules, we had assured that we would not go beyond them, and Mr. Zeifman and Mr. Polk. And it would seem to me that to do otherwise would be to open up this beyond any ability on my part to comprehend, without violating all of the rules that we have presently adopted.

Mr. HOGAN. Being persuaded by the eloquence of the chairman, I ask unanimous consent that that part of the amendment be deleted from my amendment.

The CHAIRMAN. Without objection——

Mr. HOGAN. The part relating to, on the assurance of the chairman, and his explanation of the problem, the words "and full committee staff, majority and minority," on line 4 of page 2 be deleted from my amendment.

The CHAIRMAN. Well——

Mr. BROOKS. Mr. Chairman——

The CHAIRMAN. If the gentleman would yield at that point, the Chair would like to suggest—and I think this is after conferring with counsel—that it would serve our purpose better if we would add after the word "minority," "as designated by the chairman and the ranking minority member."

Mr. HOGAN. I would certainly accept the gentleman's amendment to my amendment.

Mr. RAILSBACK. Mr. Chairman?

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I have some questions, just technical questions. Again, I look at the Hogan amendment that has been passed out, and I get confused that it is not accurate. Maybe Mr. Hogan can correct me or maybe I have got the wrong copy, but I get here that he has amended line 7. He wants to amend line 13, and those are correct. And according to his amendment he has got an amendment to line 15, which I do not think is right.

Mr. HOGAN. Will the gentleman yield at that point?

Mr. RAILSBACK. Yes.

Mr. HOGAN. Counsel advised us that was a typographical error, and it should be line 16.

Mr. RAILSBACK. All right. With respect to line 17, I think line 17 should be line 18 and I think you also want to amend line 19.

Mr. HOGAN. I am confused by the gentleman's inquiry, unless our lines are not numbered the same.

Mr. RAILSBACK. Well, I find here if you look down at line 18 and 19, 19 is the one that is A2, that begins with A2, and I would think that you would want to—or am I wrong? Let me see.

Mr. SEIBERLING. 17. That is 17.

Mr. RAILSBACK. Line 16 and 17, I see. Yes, it is 16 and 17.

Mr. SEIBERLING. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I wish to offer an amendment in the nature of a substitute.

Mr. RAILSBACK. I do not think I have lost my time. I have not lost my time yet. I want to say personally, Mr. Chairman, that I do not

think the gentleman's amendment does any great disservice, as I understand it, and with the amendment that has been accepted by him which was offered by the chairman, I personally, personally do not have any trouble with his amendment.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I wanted to speak briefly to this and I do not belabor the point. But, if this committee is going to make its decisions on the basis of evidence, we must accept the evidence and then determine that the evidence is a fact. If we are going to have distinguished and able counsel, as they are, submit to us the facts, we might as well let them determine the entire conduct of this inquiry. I am willing to accept the evidence and then to make up my mind as to what evidence is a fact and should be a part of the Articles of Impeachment or should not be.

I do not think that I want to abdicate my personal responsibility as a Member of Congress, as a member of the Judiciary Committee, to accept as facts from anybody, from Mr. St. Clair, from Mr. Jenner, from Mr. Doar, especially from Mr. Garrison, Mr. Woods, from anybody you can think of. I am willing to accept the evidence, but I am not willing to accept the facts. And I think this committee will be doing itself a serious injustice to lay itself open to that obvious improvable charge. I do not think it will inhibit in any way the presentation of our impeachment staff's evidence, a summary of that evidence, an overview of that evidence, and an outline of that evidence. Any kind of delineation of evidence that you want to call it. But, I think it would be a serious mistake, not just a semantic mistake, but a serious mistake for this committee to say we are going to accept this statement of fact and keep referring to that. I think what we should do, and I was in favor of this before I heard of Mr. Hogan's interest, but I am in full support of his amendment and I think we should say a statement of evidence and I think that this committee then has the responsibility under the Constitution, under its delegation of authority by the House of Representatives, to determine which evidence is a fact, and to do otherwise is a serious error on our part.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman, I would suggest that, or would ask both Mr. Hogan and Mr. Brooks if they would be satisfied with the original version which read this way: "A Proposed Written Statement of Facts"? As a member of the subcommittee I am inclined to say that we committed error when we dropped the word "proposed," and I wonder if Mr. Hogan would be prepared to withdraw his "evidence" if we asserted the original statement as enunciated in the original script, "A Proposed Written Statement of Fact"?

Mr. HOGAN. Will the gentleman yield?

Mr. DRINAN. Yes.

Mr. HOGAN. No, I would not accept that, because I think it is important and I have said it many, many times previously that we make it eminently clear that we are the triers of the fact, not the staff.

So, "Proposed Statement of Fact" I do not think really accomplishes what the word "evidence" would.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. SEIBERLING. Well, Mr. Chairman, I was going to offer as a substitute for the gentleman's amendment just that too, and may I have the attention of the gentleman from Texas? I agree with the gentleman from Texas, but I think that there is a problem here because what we are going to have is not a statement of evidence but a statement, a proposed statement of fact. And the evidence is something separate which will be submitted in support of the proposed statement of fact. And, therefore, when I am recognized for that purpose I will offer an amendment to simply insert the word "proposed" in front of the word "statement" wherever it appears and in place of the gentleman's amendment.

Mr. KASTENMEIER. Would the gentleman from Ohio yield?

Mr. SEIBERLING. The gentleman from Massachusetts has the time.

Mr. DRINAN. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Well, I certainly will accept that amendment, and if the gentleman had not offered it, I would propose to do so myself. As I suggested earlier, we deleted the word "proposed" because we thought what the fears of the gentleman from Texas were, were self-evident, and that the impeachment staff could not make a determination prior for this committee.

However, it appears there are fears and so I suggest that the appropriate road to redress that problem is to reinsert, as the gentleman from Ohio will propose in his amendment, the words "proposed statement of fact."

Mr. DANIELSON. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. HOGAN. Mr. Chairman, I move the previous question.

The CHAIRMAN. The Chair is going to state that we are going to recess until 2:30 this afternoon in light of the quorum call. The Chair recesses the committee meeting until 2:30 this afternoon.

[Whereupon, at 12:10 p.m., the committee was recessed, to reconvene at 2:30 p.m.].

AFTERNOON SESSION

The CHAIRMAN. The Chair would like to announce there is a record vote and the committee will recess for 15 more minutes until they have had an opportunity to vote, and return in 15 minutes.

[Whereupon a brief recess was taken and the committee reconvened at 3:15 p.m.]

The CHAIRMAN. The committee will come to order.

I recognize the gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I would submit to the committee in further consideration of the author of the amendment, an amendment to the amendment which would read "a written statement detailing information believed by the staff to be pertinent to the inquiry" and it would put in the words "detailing information," and would strike "facts" in paragraph number 4 and it would read then, and copies are being prepared, and I am sorry I do not have them available, but they will be in about 2 minutes, it will read this way: "a written statement detailing information in paragraph form believed by the staff to be pertinent to the inquiry." It would also amend

Mr. Hogan's resolution, I mean amendment, and change the word "evidence" to "information" in each instance where he had the word "evidence."

Mr. HOGAN. Will the gentleman yield?

Mr. BROOKS. And I would ask, I would say that I hope that this will, and I will yield to my friend, I would hope that this will make very clear that the decision as to what is done in this matter will be resolved by the committee. I think it will give our staff an opportunity to present all of the material, evidentiary and otherwise, that we have, submitted in due order and that it will retain the concept of this committee making the decisions necessary.

And I yield to my friend from Maryland, Mr. Hogan.

Mr. HOGAN. I certainly agree with the comments of the gentleman from Texas because a number of us have been concerned for some time that the staff has given the impression that they are running this inquiry. And the committee members will recall previously I had taken exception to a statement appearing in our March 1 memorandum where it said, "the staff will decide in the next few weeks the areas of investigation to be continued" and I pointed out then it is not their function to decide anything. And that is the same basis for the amendment which I offered this morning.

But, as long as there is a consensus on the committee here with the point I was trying to make, that it is not the function of the staff to decide the facts, it is our responsibility, then I will be willing to accept the amendment offered by the gentleman from Texas.

But I want to make clear that the word "information" in this context certainly in no way should be misinterpreted as having any bearing whatsoever on the legal, material information which is comparable to a legal charge in a misdemeanor offered in a Federal criminal case.

Mr. BROOKS. It is not. It is intended not to to be a word of art used in criminal law. I appreciate the offer of the gentleman to accept my amendment and would ask the chairman to put the vote.

Mr. SEIBERLING. Well, Mr. Chairman, a point of information. We do not have copies of the amendment.

The CHAIRMAN. The amendment is now being distributed.

Mr. CONYERS. Would the gentleman yield to me?

Mr. BROOKS. If I have the floor, yes; I certainly would be pleased to.

The CHAIRMAN. The gentleman still has the floor.

Mr. BROOKS. I am pleased to yield to my friend, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I would like to indicate my support for this modification in the language. I think it is a very important one. I think it is significant, and I think it captured what has been already articulated by both the mover of this motion and the amendment and that is that we are going to now locate the decisionmaking authority on this undertaking where it belongs, in the Committee on the Judiciary. And it is for those reasons I support it.

You may recall that I took serious exception to that report by the staff in which we decided to halt the investigation of some 15 items. And enactment was undertaken without any known authority that I am aware of and I am very enthusiastically in support of this motion. as amended.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland as amended by the gentleman from Texas, Mr. Brooks.

All those in favor it——

Mr. HOGAN. Point of inquiry, Mr. Chairman. The chairman himself also amended my original amendment.

Mr. BROOKS. It is included in the written document.

The CHAIRMAN. I understand that is included in the written version that is before the members.

Mr. HOGAN. Fine.

The CHAIRMAN. And the question is now on the amendment. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and the amendment is agreed.

I would like to just make a short statement. I think that it is important that we put this in the context in which it belongs.

I hope that no one here is of the impression, especially members of the committee, despite the fact that there has been maybe some misunderstanding that the staff, which has been doing a remarkable job, has been attempting to run this committee. I think that this would be an unfortunate impression to be conveyed and I would hope that we recognize this. I am sure that neither Mr. Doar, nor Mr. Jenner, nor any other member of the impeachment inquiry staff has in any way sought or attempted to usurp the authority of the Chair and I would hope that the members of this committee would recognize that that is the case and this chairman certainly would be the last one in the world to delegate this judgment, this authority, to staff.

I recognize Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment offered by Mr. Danielson.

On page 3, in paragraph C2, line 4 thereof, strike "or the President's counsel." Line 3 thereof insert "or" after "committee."

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Members, the amendment strikes the clause "or the President's counsel" in subparagraph 2 of item C on page 3 of the proposed rules. The purpose of this as I stated in the general debate is to eliminate the President's counsel from full participation as though he were a party to a lawsuit in this proceeding. We are not just leaning over backward in this set of rules to provide the President and his counsel with a fair and full opportunity to appear, to attend, to audit, to suggest evidence, and to do many other things which are unprecedented in impeachment proceedings. Instead of just leaning over, I am afraid if we go along with this we are going to be lying down, prostrate.

I pointed out before, this impeachment inquiry is not a lawsuit, it is not a trial. It is not an adversary proceeding. The President is not

a party to this inquiry. He is the subject of the inquiry. The President's counsel has no standing before this committee to participate, as would an attorney before a court, in the proceedings which are going on here. Not at this time, at least.

And if and when there should be an impeachment by the House of Representatives, then, of course there would be a trial in the Senate and at that time the President and his counsel would have a full right to participate and his counsel would have a right to examine witnesses, to cross-examine and to do all of the things which are customarily associated with the work of counsel in a trial. But, that is not before this committee, not before this inquiry.

It was mentioned when the subcommittee had this matter before it that the President's counsel should have the same right to examine witnesses as should counsel for other witnesses.

That presumes the President is going to be a witness. If the President should appear as a witness then, yes; I would concede that since his status here would be that of a witness, he would have, his counsel would have the same right to object to the examination or the admissibility of testimony and evidence as would counsel for any other witness. But, until and unless the President becomes a witness then his counsel does not have that status and should not.

At the present time it is clear that the President's counsel is in defiance of this committee, of the Congress, of the Constitution, and of the American people. I assume that Mr. St. Clair is acting as all good counsel do and on matters of policy he is following the advice of his client. I respectfully submit that his counsel has no business in appearing as an adversary counsel in all of the matters which will take place before this committee. As was stated by one member this morning, I too, as an American, as a believer in fair play, as one who hopes that our traditions of American justice are carried out, feel that my amendment should be adopted because the American people too are entitled to fairness and are entitled to have the constitutional provisions for impeachment carried out to the letter by this committee.

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, thank you for recognizing me.

I feel very strongly about this particular provision, and I am very strongly opposed to the gentleman's amendment. We have acknowledged, I think, or many of us have acknowledged, and I have acknowledged, that some of the privileges that we have extended, we have seen fit to extend to the President and to his counsel, are just that. They are not rights, they are a privilege.

They are subject to really complete control of the committee and where we delegate the control to the chairman the chairman really has complete control subject only to being overridden by the members of the committee.

I suggest to my friend from California that if the President's counsel were to get arbitrary, were to raise a steady stream of objections, that that would not serve him very well in the eyes of the members of the committee. And I also want to point out that these rules are subject to being modified by the members of the committee, and, actually, there are even additional procedural rights given to the chairman to

exercise in his latitude subject to being overridden by the members of a majority of the committee.

Now, let me just say we are bending over backward trying to give the President and his counsel every opportunity to participate, not because we want to do him a big favor but because a majority of us are interested in getting to the truth of the whole Watergate affair and all of the other allegations that have been leveled against. I think, for instance, that there might arise an occasion when the President's counsel might genuinely, sincerely, and correctly be concerned that some witness that we decide to call may be going to testify to something which would be better testified to in executive session.

In other words, something defamatory, something demeaning, and I think it would be a shame if the President's counsel, at the proper point, could not raise an objection.

This, in my opinion, would do a great injustice to these rules. These rules are designed to be completely balanced. They leave control in the committee and control to a great extent in the chairman. To take out something as important as this particular provision I think would do a great disservice to the rules.

The CHAIRMAN. I recognize Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, I also am against the amendment. I think this amendment and others that will be offered imply that democracy and fair play can result only in unacceptable disruptions to this committee, that somehow Mr. St. Clair will virtually destroy the proceeding.

I do not really think the 38 lawyers here have that cynical view of due process. And as Mr. Railsback says, the time honored seeking of truth is through questions, through questioning witnesses. If so, let us go ahead and see if it cannot work in all of its ugliness. I cannot think it will happen. I am certain that it will not happen. I am confident that the rules presented by this subcommittee, chaired so ably by Mr. Kastenmeier, can handle this kind of a situation very well and quite properly.

Mr. Railsback points out and Mr. Danielson, my esteemed friend from California, that this is not a grand jury. Of course it is not a grand jury. No grand jury is elected like we are where certain members go on and become prosecutors in court. This is also not a trial that we are indulging in. This is a congressional hearing, something that has a long history, congressional hearings with some very good and some very bad aspects of it. This amendment, and the others that will follow, fly in the face of precedents. The counsel has made a brief summary of a number of precedents, and I will not go into them in great detail. But in a number of impeachments of the last 50 years, Judge Speer in 1914, the counsel for Judge Speer was present before the committee by courtesy of the committee and was permitted to cross-examine. Judge Wilfley in 1908 responded and counsel was permitted before the committee, but their rights did appear to include the cross-examination of certain witnesses which is something that we are not asking for here.

Attorney General Daugherty in 1922, he was represented by counsel and given broad rights to present evidence. Judge Dayton in 1914

and 1915, and I could go on in an overwhelming number of impeachments before the Judiciary Committee of the House and other committees, always there was substantial representation by counsel for the respondent.

This amendment, I am afraid, and the others that follow, would license historians to say to us you extended less than due process, you extended less due process to the President in this instance than you did to other respondents in impeachment proceedings. And I do not think that is acceptable. I think we at least should do as well as the precedents indicate.

The supporters of this amendment would infer that the chairman could not control the proceedings. As Mr. Railsback points out the rules, as promulgated by the subcommittee, have ample procedures for control. Every witness is subject to the rules of the chairman and subject to the gavel.

To our good civil libertarian friends here let me point out that for many years the American Civil Liberties Union has been advocating rules in the House and in the Senate allowing cross-examination. The ACLU says:

> Though cross-examination has not generally been recognized as a right or even a privilege by congressional investigative committees, it is absolutely necessary to prevent or expose unfounded charges which may ruin an individual's reputation forever. The little time consumed by cross-examination is a fair price to pay for the assurance that such injustice will be avoided.

And again may I point out that under the rules of the Kastenmeier subcommittee, cross-examination is not being provided for. Strict rules are applied.

In summary, I think that the rules as presented by the subcommittee comply with the precedents. They comply with the requirements of due process. They comply with the rules of fair play. They comply with procedures, time proven, to get at the truth, and that is what we are looking for.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I support this motion with some reluctance. I am a member of the National Executive Board of the American Civil Liberties Union. So, I come to this question very sensitive of the rights of a person to be represented by counsel.

But, at the same time I think the question is really how such representation will take place. Now, these precedents go all over the lot. None of them speak directly to this precise question that we have and I am very concerned that we do not write rules here that exceed our authority even under the rules and the rules that we have been granted to create the regulations under which we will proceed.

I think very definitely that we should limit the right of cross-examination.

Now, it has been suggested that there is no right of cross-examination. Is that correct? Then I will yield to the subcommittee chairman, or my friend Mr. Edwards because I am not sure what these rules provide for.

Mr. KASTENMEIER. The rules provide I say to the gentleman from Michigan, the rules provide for questioning by Mr. St. Clair, not for

examination or cross-examination, which have altogether different meanings. And this, may I say to the gentleman, may arise, discussion of this may arise somewhat later when an amendment to that effect is offered. So, under this proposal, Mr. St. Clair, under very carefully circumscribed circumstances has a right to question the witnesses, but not to cross-examine or to examine witnesses.

Mr. CONYERS. Thank you, Mr. Chairman.

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman——

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

As a member of the subcommittee, I want to try to lend some light to this, and I do think that the precedents are overwhelming that the lawyer for the President, for the respondent, cannot be placed at any disadvantage, that all of the latter practice of the century says that he must be, the accused or his counsel, must be permitted to explain, to present witnesses, to cross-examine.

I think therefore, that if we did place this particular restriction it would be, as I read the precedents, the first time that this has ever been done in American history in any impeachment and even if those precedents are not entirely clear, it seems to me we should recognize that the role of counsel has been enlarged in the last generation, both by the Canon of Ethics and by court decisions. I do not think that we can say that this is a grand jury and, therefore, counsel can be excluded.

We have not done that under C2 for members of the committee or counsel for the committee and I do not really think that you can place the President's counsel as a second-class citizen.

And I think in conclusion, that even if some difficulties do arise, even if some people feel that we have been overgenerous, it seems to me it is better that we are charged with making or allowing Mr. St. Clair to be the 39th member of the committee than with the charge that we have denied him those procedural rights without which he cannot fully represent his client.

I yield back.

Mr. MAYNE. Will the gentleman yield?

Mr. DRINAN. Yes. I will yield.

Mr. MAYNE. Well, I am a little uncertain as to the posture of the subcommittee. I thought I just heard the chairman and the gentleman from Wisconsin say that these rules, as proposed by the subcommittee, would not permit the President's counsel to cross-examine, where as the distinguished gentleman from Massachusetts has just pointed out how essential that privilege is, that it has been widely accorded, certainly in this century and that he strongly supports it. I want him to know that I certainly agree with him. But, I am frankly just dumbfounded by the statement of the gentleman from Wisconsin that his interpretation of these rules is that the President's counsel could not cross-examine. What is the point in being able to ask questions in a courtroom if you cannot cross-examine a witness?

Mr. DRINAN. If the gentleman will yield, will the gentleman from Iowa yield?

Mr. MAYNE. I am happy to yield back to the gentleman.

Mr. DRINAN. Under C2, it is my understanding that in the technical sense, neither counsel for the committee or counsel for the President may cross-examine. That will be restricted to the Senate where technically there is a trial, and that we are talking here about objections relating to the examination of witnesses or to the admissibility of testimony and evidence maybe raised by all parties of the hearing, by a witness, his counsel, a member of the committee, committee's counsel or the President's counsel. So, I think the answer is that under C2 that there is no cross-examination for any party involved.

Mr. DANIELSON. Will the gentleman yield?

Mr. MAYNE. Well, was not the gentleman also referring to paragraph 4, or did he mean to withhold comment on that?

Mr. DRINAN. Paragraph 4 is not in dispute in connection with Mr. Danielson's amendment. We may or may not have, or we will have amendments about that. That is not in issue at this moment.

Mr. DANIELSON. Will the gentleman yield?

Mr. MAYNE. I thank the gentleman.

Mr. DANIELSON. Will the gentleman yield?

Mr. DRINAN. Yes. I yield to Mr. Danielson.

Mr. DANIELSON. I appreciate your bringing this up. My amendment very simply and clearly pertains only to subparagraph 2.

I am not talking about subparagraph 4. Under subparagraph 4 the President's counsel is granted rather extensive rights of examination. My objection is only to including the President's counsel in subparagraph 2 for the purpose of making objections to the examination of witnesses or the admissibility of testimony and evidence and that is it. That is as far as it goes.

Under subparagraph 4 he is given rather broad latitude in examination of witnesses and he should be.

And I also would like to point out while I am at it that this has nothing to do with due process. What is due process under one circumstance is not exactly the same as what is due process under another circumstance. It depends upon the context. Due process before an inquiry, an investigative board, and a grand jury is quite different than due process in a criminal trial in the courts.

Mr. DRINAN. Would the gentleman yield?

Mr. DANIELSON. Yes, I will be delighted to.

Mr. DRINAN. How would you respond, Mr. Danielson, to the objection that under C2, if it is amended, amended as you would have us amend it, that the President's counsel is at a very serious disadvantage in relation to the members and their counsel, and to the witnesses and their counsel?

Mr. DANIELSON. I would respond that I disagree with the gentleman in the first place. In the second place he is not representing a witness unless the President is here as a witness. In that event of course, he would have the same rights as go to any other counsel for any other witness.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. Rangel.

Mr. RANGEL. I would like to continue this with Father Drinan because I think he called the President as one of the accused. We have

not reached that point, Father, and therefore, all of the counsel that you are talking about that people are entitled to is after they have been accused and I certainly would join in with you to see that the President is entitled to counsel if and when the case gets to the Senate.

My question is to Mr. Kastenmeier as to the reasons why Mr. St. Clair should be able to object to a question perhaps raised by a member on this committee? And do I understand that this is to protect the witness from defaming possibly the character of another?

Mr. KASTENMEIER. If the gentleman will yield, I think that would be one of the reasons. Did I understand him to say that we presume that Mr. St. Clair—yes, could technically I guess object to—there is no indication in that paragraph that Mr. St. Clair could object to a statement made by a member of the committee. Is that what you asked about?

Mr. RANGEL. Well, you could clear it up for me. Do you see in C2 the possibility of an objection by Mr. St. Clair to a question directed by a member of this committee to a witness?

Mr. KASTENMEIER. Yes.

Mr. RANGEL. I can see clearly where the witness, if it is not the President, I can see where a witness could have his counsel object to a question. But, it seems as I read C2, that Mr. St. Clair could object to a question directed by a member of this committee to a witness.

Mr. KASTENMEIER. Yes. He could under this paragraph.

Mr. RANGEL. Now, my question is who would Mr. St. Clair be protecting if that witness has his or her own counsel?

Mr. KASTENMEIER. He may be protecting the President.

Mr. RANGEL. Well, in this search for the truth, who would the witness be and how would Mr. St. Clair know that the President would need this type of protection?

Mr. RAILSBACK. Will the gentleman yield?

Mr. HUNGATE. Will the gentleman yield to me?

Mr. KASTENMEIER. I assume that Mr. St. Clair might well know the nature of the testimony to be adduced.

Mr. RANGEL. That is exactly my point, and that is why I support this amendment, that if Mr. St. Clair is called here to object and intimidate witnesses as we attempt to search for the truth, then it seems to me that he could protect the President without restricting the questioning of the committee. We have a chairman here, we have a ranking member. We have counsel to guide us in the questions that we should ask. And it seems to me that Mr. St. Clair should not be an additional burden of preventing us from getting the answers that we need from witnesses. We are not doing too well with the executive branch of Government and I hope we can do better with other witnesses.

Mr. HUNGATE. Would the gentleman from New York yield for a moment?

Mr. RANGEL. I yield to Mr. Hungate.

Mr. HUNGATE. I have reason to believe from amendments I think that will be proposed that there will be some effort to call let us say John Dean as a witness. Under this circumstance, as the rules are presently proposed would it appear that his counsel would not have a right to interject and cross-examine others but the President's would although a key point may be on credibility between those two?

Mr. RANGEL. Are you saying Mr. St. Clair could object to questions asked of John Dean?

Mr. HUNGATE. If under the rules as presently proposed, do you understand it so?

Mr. RANGEL. I understood yes, that the President's counsel could stop all of the questions.

Mr. HUNGATE. I would ask further if you think if Mr. Dean were called as a witness, would his counsel have the concomitant right that Mr. St. Clair has to object to other witness' testimony?

Mr. RANGEL. Mr. Dean would not have that right, or his counsel would not have that right.

Mr. RAILSBACK. Will the gentleman yield?

Mr. KASTENMEIER. If the gentleman would yield I would only respond by saying of course, any such objection is made subject to the rule of the chairman or by the committee and I have every confidence that the committee can cope with the situation and that the chairman can.

Mr. RANGEL. Well, I believe that. I have a lot of confidence in the Chair. But, my concern is that if a witness has to look at Mr. St. Clair to see whether he is going to object before he answers a question that the intimidation might be a deterrence to our line of questioning. He would have to wait until rulings come from the Chair.

I turn back the balance of my time.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I am in support of the motion of the gentleman from California. I believe that he ought to have the right to cross-examination but I am struck at the nature, the extensive rights that this provision gives him. Just as a matter of information, how will the counsel for the President participate? Will he be seated at counsel table? Are there any rights that he will possess less than the rights of Mr. Doar?

The CHAIRMAN. My understanding is that counsel, if these rules of procedure are to prevail, would be given the same right to sit at the counsel table.

Mr. WALDIE. Are there any rights that he would possess less than the right of a member of this committee?

The CHAIRMAN. I would think so. He would not have a right to vote on any question that may arise.

Mr. WALDIE. That is comforting.

Mr. KASTENMEIER. If the gentleman will yield?

Mr. WALDIE. Yes.

The CHAIRMAN. First of all, I think it has been stated, and I do not think it is necessary for the Chair to restate, but it is not a right but a privilege or a courtesy which is being extended to the President's counsel.

Mr. WALDIE. Well then, would it not be equally valid to simply say the President's counsel may sit in attendance at the committee hearings and will be accorded rights as he seeks them in accordance, in accord with the desire of the committee and spell them out no differently than that?

The CHAIRMAN. That is a question for the committee to determine.

Mr. WALDIE. And those rights may be more extensive than those set forth here and they may be less extensive, depending upon two things I would assume, the mood of the committee and the cooperation with the procedures as demonstrated by the President and his counsel. And it is that latter fact that gives me the most concern today.

I was a champion of the broad extensive rights of representation on the part of the President assuming that we were seeking truth and that would assist us in finding it. Last night and the day of response to the subpena I became disabused that the desire to find truth was shared equally by all participants to this hearing.

Mr. MCCLORY. Would the gentleman yield?

Mr. WALDIE. Therefore, I am less inclined to grant to the counsel for the President the extensive rights the President demanded in that amazingly arrogant speech on television the other night. Among his other demands he insisted that representation be given his counsel before this committee. It seems to me it is time now, Mr. Chairman, that this committee decide what it will do in that respect. And a broad, blanket acknowlegement that the President's counsel will have his requests for participation considered, and considered intently and sincerely, it would seem to me would comply with all of the requirements of courtesy and comity that we need extend at this moment.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I would like to respond to the gentleman from California.

First of all, there is a desire to spell out in advance as well as we can what procedures shall be followed, and what courtesies, or rights or privilege various participants shall have. I do not believe it can be kept so undetermined as the gentleman from California suggests and still have us hope to have a proceeding which the people will have some understanding of their roles, and that we can proceed on an orderly basis.

I subscribe to much of what the gentleman from California said with reference to last night. But, that is another matter. That is not the same matter. We should not respond to how we see Mr. St. Clair's role in terms of whether he has been cooperative in other respects. That stands on its own feet. We have the charge of being fair and we also have the charge of learning the truth.

And it is his participation in this connection that we provide for him.

I might also point out he does not have all of the rights of our counsel or other members of this committee.

We may delineate and limit and I would read number 4. "The President's counsel may question any witness called before the committee, subject to the instructions from the chairman——

Mr. DANIELSON. Would the gentleman yield?

Mr. KASTENMEIER [continuing]. Respecting the time, scope and duration of the examination." And in other respects throughout this document, you will see certain limitations placed on the President's counsel. He does not have the capacity to examine the evidence in the annex. He may not. He may not interrupt or object to the presentation of our counsel at the outset. And in other regards he is completely subject to the chairman and to this committee.

I think for these reasons the gentleman from California, Mr. Danielson's amendment ought to be rejected.

Mr. DANIELSON. Will the gentleman yield?

Mr. MCCLORY. Mr. Chairman?

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. The gentleman still has the time. Will the gentleman yield to the gentleman?

Mr. KASTENMEIER. I yield to the gentleman from California, Mr. Danielson. I have the time.

Mr. DANIELSON. I would just like to simply point out that the gentleman has been again misled by diverting to paragraph 4 and other paragraphs. The amendment reaches only paragraph 2, and very limited, very extensive within that limitation, right granted to the President's counsel. I concede that under one reason we should eliminate this from paragraph 2, which is the fact that in paragraph 4 we have given the President's counsel broad latitude in examination. My amendment simply prevents him from obstructing the proceedings.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, I do not think that we should be necessarily wedded to precedent in the Committee on the Judiciary, but certainly we should pay a certain amount of decent respect to them. After all, our predecessors who were members of this committee had some problems too, and did some very thoughtful work in this area. The last case we had of impeachment that went from the Judiciary Committee to the House and to the Senate for trial was that of Federal Judge Ritter in 1936. Chairman Sumners, I believe, of South Carolina was the chairman of the Judiciary Committee and he said, and I quote Chairman Sumners:

> We find it to be the purpose of the committee to hold the introduction of testimony and the proceedings fairly within the rules recognized in civil proceedings in court, but since this inquiry is primarily for the purpose, in the first instance, of familiarizing those who constitute the subcommittee with all the facts and in order to develop a record which in turn will permit the full Committee of the Judiciary, and maybe the Members of the House, that read the proceedings, to familiarize themselves with the facts, a good deal of liberty will be allowed in the introduction of testimony.
>
> Counsel for Judge Ritter will, of course, when they see fit, interpose objections when they feel such objections should be made.

Counsel for Judge Ritter responded, this is the lawyer for Judge Ritter:

> We appreciate the fact that in this type of proceeding we are permitted to appear here by courtesy of the committee, and we wish to assure you that we will not abuse the privilege or unnecessarily transgress upon the time of the committee. We will fully cooperate with you throughout the entire proceeding, and enable you to get to the truth, and in any way determine the truth of the matter brought to your attention.

Now, Mr. Chairman, I do not pretend that this is Mr. St. Clair speaking in this last quote. But, I do think that it is important to call to the attention of my colleagues the last precedent that we have and to my knowledge the only one where the matter went to the Senate.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, there is nothing lawyers love better than precedent. "President Grant," and I read from Forge of Democracy, "was harassed by a request from the House to submit information obviously intended to embarass him. He had followed the practice of taking extended vacations outside Washington, and the House asked him to list all the Presidential acts he had 'performed at a distance from the seat of government' with explanations of why he was absent from the Capital City. Grant already had become familiar with House investigations. In 1867, when he was still a general, he had been called to testify on the parole he had granted General Robert E. Lee and Lee's army at Appomattox. 'I will state here,' Grant said, in response to the hostile questions, 'that I am not quite certain whether I am being tried, or who is being tried by the questions asked.' In response to the demand for information he received as President, Grant replied that the request indicated the intent to impeach him. If this was so, he said, it violated the fifth amendment 'a constitutional guarantee which protects every citizen, the President as well as the humblest in the land, from being made a witness against himself.'"

I submit that that is more of a precedent at the stage at which we now are than one that actually got through the House and into the Senate, and I would inquire of Mr. Danielson or the chairman of the subcommittee if this hallowed precedent should find a 20th century echo would we still be blessed with Mr. St. Clair's assistance in searching for the truth?

Mr. KASTENMEIER. I am afraid that I cannot enlighten my friend on that point.

Mr. HUNGATE. I yield back the balance of my time.

The CHAIRMAN. The gentleman from Pennsylvania, Mr. Eilberg.

Mr. EILBERG. Mr. Chairman, I find myself somewhat torn on this question and could go either way. I think that I am impressed with the President's failure to comply and feel that we are dealing with an unworthy client insofar as his concern with this committee in our desire to obtain the truth. On the other hand, I am impressed with the arguments that have been made involving fair play, even to an unworthy individual, or one who has demonstrated unworthy conduct. I think the thing I want to do is ask you, Mr. Chairman, if you could give us some guidance, the chairman of the full committee, in terms of suppose we are confronted with obstructive tactics by Mr. St. Clair where there is an effort or an obvious intimidation of witnesses? I realize it is hard to construct precise actual situations, but can you give us any advice as to that?

The CHAIRMAN. Well, I am sure that the gentleman knows already the Chair would not tolerate any obstruction and I am sure that the committee would certainly support the Chair in that kind of a ruling. The Chair has already stated, I think when the Chair considered the question as to what participation the counsel to the President would be permitted to take in the proceedings and I think the Chair went as far, I believe, as counsel to the President should be permitted to go in the interest of fair play and that was to provide him with every opportunity that I think is consistent with the rules contained herein. And the Chair certainly feels that any ruling that he might make would be consistent with the rules that would be adopted here.

Mr. EILBERG. I will yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman——

The CHAIRMAN. I yield to the ranking minority member.

Mr. HUTCHINSON. I simply want to state, Mr. Chairman, that I agree with the statement that you just made. I am sure that the committee would not tolerate any obstruction. Our purpose is to seek the truth. And we would not want to have the right to object so used as to abuse the process or the progress of this committee.

Mr. KASTENMEIER. Mr. Chairman? Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is on the motion offered by the gentleman from California. All those in favor of the amendment please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. And the noes seem to have it and the noes have it, and the amendment is not agreed to.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I have an amendment at the desk at this time and I would like to offer my amendment No. 3, which is page 3, paragraph C4.

Mr. KASTENMEIER. Mr. Chairman, is it his intention to offer his five amendments in sequence at this time?

Mr. DENNIS. No, unless of course, if the chairman wants to recognize me for that kind of purpose. Actually, I was going to offer them seriatim, but I intended to offer No. 3, because it seems to be relevant to the discussion we have just been having. I have two that come after that in the bill and two that come before. As a matter of fact. But, I am only offering No. 3 at this time and I am perfectly willing to offer any number for which I may be recognized.

The CHAIRMAN. Well, I would think the gentleman will be recognized one at a time.

Mr. DENNIS. That is what I figured, Mr. Chairman.

The CHAIRMAN. And will the clerk read the amendment, please.

The CLERK [reading]:

Amendment offered by Mr. Dennis of Indiana.

Page 3, paragraph C4. In the first line of paragraph 4, strike out the word, "question," and insert in lieu thereof the words, "examine and cross-examine."

In the second line of subparagraph 4 at the bottom of page 3, strike out the words, "instructions from" and substitute therefore the words, "the rulings of."

At the top of page 4 in subparagraph 4 of paragraph C, place a period after the word, "member," in the first line on page 4 and strike out the balance of the first line. Strike out the word, "examination," in the second line; add the following additional sentence to said paragraph 4, "Such rulings shall be final unless overruled by a vote of a majority of the members present."

The CHAIRMAN. The gentleman from Indiana.

Mr. DENNIS. Thank you, Mr. Chairman. Mr. Chairman, and my colleagues on the committee, if this amendment is adopted, paragraph C4, which you will find at the bottom of page 3 and the top of page 4, it will read as follows:

The President's counsel may examine and cross-examine any witness called before the committee, subject to the ruling of the chairman or presiding member. Such ruling shall be final unless overruled by a vote of a majority of the members present.

Mr. Chairman, when I drew this amendment, it had a little less importance in my mind than it does now because in my view the word "question," for which I substitute "examine and cross-examine" is certainly broad enough to cover examination and cross-examination both, because they both fall within the broad term "question" in my humble judgment. But, the opinion has been expressed now that "question" means something different, although as far as I am concerned if you are dealing with a witness I do not know what you can do except examine or cross-examine. It seems to me that if you ask him a question you are doing one or the other almost necessarily. But, if there is any question, this would nail it down. I think the right of cross-examination is the really important matter here. I am very much gratified that the subcommittee has acknowledged the principle of participation by the President's counsel, but, if such participation is to be meaningful, and if it is to be in accordance with the precedents as cited by my friend, Mr. Edwards from California, it has to include cross-examination. That is mostly the purpose of a lawyer, being present in the courtroom. Now, I cannot imagine that we want to extend this privilege and that is what it is, not a right, a privilege, to the President's counsel to be present unless we want to make it meaningful and effective and unless we truly do want to use it as an engine to discover the truth.

Now, I have another amendment coming after a while in which I take up the matter of calling live evidence, witnesses, oral testimony. Certainly, there cross-examination becomes of greatest importance. Personally I am going to have to vote here on an impeachment resolution and so are all of us, and it is a very important vote. I want to know everything I can know about it. I do not know whether examination of the witnesses here will assist the cause of the President or hurt it. It might work either way. It is a two-edged sword. But, what this amendment does is provide that the President's counsel can do something useful to us after we bring him here. He can examine and cross-examine witnesses, subject to the ruling of the chairman, who will capably act the part of the court here and who can be overruled only by a majority vote of the committee. And that is exactly what this amendment does, all it does. It is not a partisan amendment at all. It is an amendment designed to help the members of this committee get the facts, which I think is what we want to do. And I certainly strongly commend it to all of my colleagues without regard to which side of the aisle they may be sitting on just as a matter of efficiency and fairness.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I would like to speak to the amendments, and they are, I can see, not partisan but rather procedural amendments. They are important amendments. Although I will not take all of my 5 minutes, I think in answering them, I recognize, Mr. Chairman, I think there are some 15 or 16 amendments pending, more since lunch, I understand and I appreciate that we must not prolong. However,

Mr. Dennis' amendment is important. What it presumes to do by substituting for the word "questions" or "questioning", may question any witness, may examine and cross-examine, has very special meaning. It should be pointed out that this amendment envisions an adversarial procedure that we have scrupulously avoided up to this point, and while up to this point we have conceded the President's counsel the right to question witnesses, subject to certain limitations, we do not presume that he shall, in an adversarial role, lead the witness, move to strike, or otherwise proceed as one would in a trial. As the gentleman from California, Mr. Edwards, has suggested, this is reserved to the Senate. Therefore, it would be not merely unnecessary, but wrong to use the words "examine" and "cross-examine" rather than the word "question."

Second, as to instructions from rather than rulings of, instructions from the chairman presumes that the committee and the chairman do control the proceedings and may instruct in advance Mr. St. Clair as to how he may proceed. However, "rulings from" contemplates that the chairman may only rule after the President's counsel has proceeded and, therefore, greatly limits the capacity of the chairman to control the proceedings.

These are the basic two reasons why in my estimation, amendment No. 3 of the gentleman from Indiana must be rejected. I would only, Mr. Chairman, recommend that perhaps counsel—I see Mr. Doar has gone. Perhaps Mr. Jenner might briefly comment on the meaning of examine and cross-examine in this context.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, and Mr. Kastenmeier. As all the committee knows, at the outset of the matter of the participation by President's counsel in these proceedings, it was my view and urging that the President's counsel be permitted to participate.

I strongly believed in that. You will find precedent, Mr. Edwards, also in the material to which you averted that the chairmen, the past chairmen of House inquiry, impeachment inquiry committees have stated on several occasions that wide latitude is to be afforded to counsel for respondents in the questioning and examination or questioning or examination of witnesses, that cross-examination in the sense that we lawyers understand it to be, that is as a word of art, is not to be permitted. In framing this material, Mr. Dennis, an effort was made to strike an even balance in that respect. The word question here is intended to mean a wide latitude of examination. The difficulty with using the word cross-examine, because it is a word of legal art, it was thought would import into the rules the right to ask exacerbating, leading questions, to make assumptions of fact, and make declarations and conclusions and to get into problems of the scope of cross-examination where they are limited to the direct or otherwise, whether to permit counsel, as we do in the trial of a case, to move to strike what is allegedly a nonresponsive answer and technically unless as you know, the witness under examination is a party, nonresponsive answers must be stricken. It was felt, Mr. Dennis, that this would afford what you wish, and the heart of what you are presenting, and maintain the dignity and the course of these proceedings, but afford to the fullest extent under the ruling of the Chair or comments of the committee

to the Chair, members of the committee and the Chair the fullest possible basis of inquiry on the part of Mr. St. Clair in questioning a witness.

The CHAIRMAN. Thank you.

Mr. DENNIS. Mr. Chairman, may I inquire of Mr. Jenner——

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I would like to have also Mr. Jenner's attention in respect to the present language recommended unanimously by the subcommittee. It is my own belief that there is not anything that would prevent the chairman under certain circumstances from permitting Mr. St. Clair to cross-examine. For instance, if he had a hostile witness.

Mr. JENNER. That is correct.

Mr. RAILSBACK. Is that correct?

Mr. JENNER. That is correct.

Mr. RAILSBACK. In other words, what you are saying is in the normal circumstances where you do not have, where you do not have a hostile witness, Mr. St. Clair would be permitted to examine or to question but I assume, Mr. Chairman, that in the event there was a very hostile witness that was not cooperating with Mr. St. Clair that if Mr. St. Clair asked the chairman for the right to cross-examine, that same right could be extended as would be extended under similar circumstances in a trial. Is that correct?

Mr. JENNER. That is correct. That is my understanding.

Mr. RAILSBACK. Well, if that is true, I personally am satisfied with the language as it is and that was my understanding as well.

Mr. SANDMAN. Would the gentleman yield?

Mr. RAILSBACK. Yes; I will be glad to yield.

Mr. SANDMAN. The thing I cannot understand is that you say that under section 4 on page 3 the chairman can allow the right to cross-examine. The amendment that the gentleman from Indiana has put forth makes it very clear that he shall have the right to cross-examine. Now, you have not raised any question against that, have you, Mr. Jenner?

Mr. JENNER. If I understand your question, sir, none of the counsel for the staff or for the committee has any objection or misgiving about permitting, the Chair permitting a witness to be cross-examined when the circumstances of need for cross-examination arise. That is, Mr. Railback has postured a——

Mr. SANDMAN. Yes, but are you saying——

Mr. JENNER [continuing]. Hostile witness.

Mr. SANDMAN. Are you suggesting he should not have the right to cross-examine?

Mr. JENNER. He should not have the right in the first instance always, except when the chairman should in turn deny that right to him to cross-examine.

Mr. RAILSBACK. If I still had the time and I think I still have the time and then I yield back.

The CHAIRMAN. Mr. Railsback still has the time.

Mr. RAILSBACK. Let me just say that I can see where situations could arise where Mr. St. Clair is not, he is not exactly examining somebody that is necessarily an opposing or a hostile witness and in

that instance he should examine that witness if that witness becomes hostile. I would hope that this committee would afford him the right to cross examine. That is what I am saying.

Mr. SANDMAN. Will you yield?

Mr. RAILSBACK. Yes, I will be glad to.

Mr. SANDMAN. It amazes me the credence that has been given to the case of Justice Douglas. Everybody likes to cite that when it suits their convenience. Now, he clearly says on page 2, the respondent and his counsel may attend every session at which evidence is taken or at which arguments are addressed to the subcommittee. Subparagraph 2 in bold print, the respondent personally and through counsel may cross examine all witnesses and call witnesses on his own behalf. Now, do you have any argument with this? And he cites a long line of precedent.

Mr. JENNER. If you do not mind, Mr. Congressman, I do not have any argument with Judge Rifkind on anything and that is Judge Rifkind's contention with respect to that particular proceeding.

Mr. SANDMAN. Is it not supported by a vast amount of authority?

Mr. JENNER. May I say, sir, I have read all of the authority that Judge Rifkind cited in support and I must respectfully say that I think that Judge Rifkind is one of the great lawyers of this country, but the precedents do not support the affirmative statement he makes. He is a great lawyer.

Mr. KASTENMEIER. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana.

All those in favor of the amendment please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The Chair is in doubt. All those in favor please raise their hands.

The Chair will count.

[Show of hands.]

The CHAIRMAN. All those opposed?

[Show of hands.]

The CHAIRMAN. A call of the roll is demanded.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. And the clerk will call the roll. All those in favor of the amendment will please say aye and all those opposed, no.

The CLERK. Mr. Donohue.

[No response.]

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. CONYERS. By proxy, no.
The CLERK. Mr. Flowers.
[No response.]
The CLERK. Mr. Mann.
Mr. MANN. No.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. No.
The CLERK. Mr. Danielson.
The CHAIRMAN. By proxy, no.
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
The CHAIRMAN. I have a proxy. No.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. No.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. No.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.

The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
[No response.]
The CLERK. Mr. Latta.
Mr. HUTCHINSON. Proxy. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. No. And the Chair has a proxy for Mr. Flowers. No. And Mr. Donohue is present. Mr. Donohue.
Mr. DONOHUE. Votes no.
Mr. WIGGINS. Mr. Chairman?
Mr. DENNIS. Mr. Chairman?
Mr. MARAZITI. Mr. Chairman?
The CHAIRMAN. Mr. Maraziti.
Mr. MARAZITI. I ask permission to cast my vote. Aye.
The CHAIRMAN. Mr. Maraziti votes aye.
The CLERK. Mr. Chairman, 15 have voted aye, 23 have voted no.
The CHAIRMAN. And the amendment is not agreed to.
Mr. DENNIS. Mr. Chairman?
The CHAIRMAN. Mr. Dennis.
Mr. Dennis, might I inquire, in light of the fact that the chairman of the subcommittee tells me that you have four other amendments and there are four amendments I notice at the desk, does the gentleman intend to take up fully 5 minutes in explaining each amendment? Otherwise I am going to have to recognize others.
Mr. DENNIS. Well, I have two amendments, Mr. Chairman, which are minor comparatively, modifications of the matter of the President's counsel. Therefore, more or less on the same subject, but they are different subjects. I do not think they would take long debate. Then I have two other amendments on wholly unrelated topics on which I would like to take a little more time.
The CHAIRMAN. Well, I recognize the gentleman.
Mr. DENNIS. I will handle it however the chairman wants. My theory now would be to take the two that we might call short amendments and then the others later.
The CHAIRMAN. The chairman recognizes the gentleman from Indiana.
Mr. DENNIS. I have an amendment at the desk, Mr. Chairman. My amendment No. 1, on page 2, paragraph 3B.
The CHAIRMAN. The clerk will read the amendment.
The CLERK [reading]:

Amendment offered by Mr. Dennis of Indiana. On Page 2, paragraph B3 in line 3 of said paragraph 3, strike out the word, "precise."
In line 4 of said paragraph B3, strike out the words, "precisely and in detail," and substitute for the matter so stricken the words, "generally and in summary form."

The CHAIRMAN. The gentleman from Indiana.
Mr. DENNIS. Mr. Chairman, this is a modest amendment which tightens up and in my humble judgment improves the language of

paragraph B3 regarding the rights extended to counsel for the President. We say here he shall be invited to submit written requests and precise summaries of what a witness would testify to if he has to call or asks to call a witness. I submit that written requests on summaries of what he would propose to show is quite adequate and that when you get to precise summaries it is too detailed and makes for too much argument. Again, we say here in the case of a witness he should submit precisely and in detail what the expected testimony of the witness would be if called. Now, I can readily imagine without any difficulty a situation where you could state generally and in summary form which is the language I propose, what a witness is expected to testify to. But, it might be quite difficult, maybe even impossible to say precisely, and in detail, because witnesses surprise you. And then we get into an argument it seems to me about whether the submission was sufficient and so on. So, I am just saying if he has a summary of what he proposes to show, and a statement generally in the summary form of what he expects to prove, that that is all he can fairly be asked to do, should be asked to do, and I offer the amendment as an improvement.

Mr. RAILSBACK. Would you yield?

Mr. DENNIS. I yield to the gentleman.

Mr. RAILSBACK. I thank the gentleman for yielding. And let me just say that the reason for having the language precise summaries and precisely and in detail is, as I understand it, and, Mr. Chairman, you can correct me if I am wrong but it was our hope that if it was detailed and precise enough, that possibly there could be, that an offer could be made in the nature of an offer of proof, which could be accepted and become a part of the evidentiary record. In other words, without having to go through calling a live witness. Is that right?

Mr. KASTENMEIER. If the gentleman will yield, that is my understanding.

Mr. DENNIS. I have the floor. I yield.

Mr. KASTENMEIER. Has the gentleman concluded?

Mr. DENNIS. Yes, I yield to the gentleman.

Mr. KASTENMEIER. Well, I would only say that furthermore this is still a factfinding exercise. This is not trial. We need precise and detailed information. We need to know this in advance. We have as a matter of fact on page 1 you will note been very clear about the detailed nature of our own staff report. We are not interested in generalized summaries in terms of what this committee is all about and in dealing with the President's counsel. This is part of what we require, and I would only say, Mr. Chairman, that counsel I think could further amplify this. Perhaps, Mr. Chairman, if the gentleman from Indiana would permit, Mr. Jenner might comment further.

The CHAIRMAN. The gentleman from Indiana still has the time.

Mr. DENNIS. If I still have the floor, of course I would be glad to hear from Mr. Jenner.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman. My position is not a happy one. I must respond professionally to this question. All of you know that in the course of litigation occasions arise in which witnesses who have relevant evidence, testimony to be adduced are not immediately

available. That is the normal circumstance and then counsel seeks delay and assigns a new day to afford the opportunity to produce that witness. It is usual and customary in all cases under those circumstances, and others I could cite that the court says if you will present a precise statement of what the witness will testify to, it may well be that opposing counsel will agree to accept the precise statement or in my judgment, in exercising my discretion in control of the courtroom, and the trial, will accept that statement as an evidentiary statement. The difficulty with the use of a word "general" or "summary" unless Mr. Dennis means the sort of thing I am really talking about anyhow, that you are not sufficiently informed frequently as to really what the thrust of the testimony of the witness is intended to be, for example, a general summary could be that Jones will appear and testify in favor of something or other, which does not help you any. It is really an argumentative, inclusitory statement. It could well be, Mr. Chairman and Mr. Dennis, that using both the word "precise" and the word "detailed" is somewhat on the restrictive side, but one or the other should be employed.

Mr. DENNIS. Mr. Jenner, if I may say so, of course I would agree with you if we were talking about an offer of proof. But, it does not seem to me that is exactly what we are doing here. All we're doing is making a general showing of relevance so that this committee can decide that this man has got something on a topic in which we are interested. And I do not see why there is any need for that purpose to make a detailed offer of proof as you might in a courtroom if the witness were permitted to answer. I offer to prove that he would testify so and so, and that is not the point. Here it seems to me all we need to do is to determine that here is something we are interested in.

Mr. BROOKS [presiding]. The time of the gentleman has expired. Are there any further comments?

Mr. KASTENMEIER. I move the previous question.

Mr. BROOKS. The gentleman has moved the previous question, and as many as are in favor of it vote aye.

[Chorus of "ayes."]

Mr. BROOKS. Opposed, no.

[Chorus of "noes."]

Mr. BROOKS. In the opinion of the Chair, the noes have it. The noes have it and the amendment is not agreed to.

The Chair recognizes the gentleman from Indiana for another amendment.

Mr. DENNIS. I offer my amendment number 2, page 3, paragraph B3 at the top of the page.

The CLERK [reading].

Amendment offered by Mr. Dennis of Indiana.

On page 3, paragraph B3, in the third line on page 3, insert the words, "or desirable," after the word, "necessary," in said third line.

In the fourth line at the top of page 3, strike out the word, "whether," and the words, "summaries shall be accepted." In the fifth line on page 3, strike out the words, "as part of the record or."

In the sixth line on page 3, strike out the period after the word "received", substitute a comma for the period and add the words, "as requested."

Mr. DENNIS. Mr. Chairman?

Mr. BROOKS. The gentleman is recognized for 5 minutes.

Mr. DENNIS. Mr. Chairman and members of the committee, I think that this amendment has a little more force and effect to it than perhaps the last one, a little more importance maybe, if you want to use that word. And I submit it to my colleagues' attention. What this does first and foremost is to give the committee an option when the President's counsel is making a request to call evidence, to grant that not merely if we think it is necessary, which is the effect of the present rule, but in any case where we think for any reason it is desirable. Now, it leaves it up to us whether we think it is desirable. All I am saying is we should not have to be tied down to a standard of absolute necessity. And then I go on to say that if we do think it is necessary or desirable, the additional testimony shall be received instead of saying that if we think it is necessary that then we go ahead and decide whether summaries shall be accepted as part of the record, or whether we will call additional testimony, and so on. I just say that if we think it is necessary or we think it is desirable we go ahead and receive it. It simplifies it and it broadens it.

Mr. BROOKS. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, striking of the language "summaries shall be accepted" as part of the record, I think this amendment must be rejected because with respect to all other information the committee must decide what goes in the record. This is important because the procedures are for handling impeachment inquiry material which were adopted in February by the committee provide only testimony, papers, or things that are included in the record will be reported to the House.

Mr. DENNIS. Would my friend yield briefly?

Mr. KASTENMEIER. Yes, I yield.

Mr. DENNIS. Does not the gentleman from Wisconsin think that under my version or without writing summaries for the record in here, that if that is the form in which this committee decided to go ahead and receive the evidence, that under our general rules and powers we can certainly do it that way, if that is the way we want to do it?

Mr. KASTENMEIER. It may well be the case. I would not say we could not. But, I think the language, whether the summary shall be accepted as part of the record, that a committee determination is necessary for our purposes and ought not be removed, as the gentleman proposes.

Mr. WIGGINS. Would the gentleman yield for a question?

Mr. DENNIS. I think, I am not sure who has the floor, but I certainly yield for a question if I have it.

Mr. WIGGINS. My question is directed to Mr. Kastenmeier. I am confused about the language of the subcommittee. It appears to me that there are two determinations to be made when a request for additional evidence is suggested by counsel for the President. The first determination is for the committee to decide if it is necessary and then, having made that determination, there is the second determination to be made and that is whether summaries shall be accepted in lieu of the additional testimony itself. Is that a correct reading of the proposed language?

Mr. KASTENMEIER. I believe it is. I yield to counsel for comment.

Mr. Woods. Gentleman, it was intended that that would be the result, that that is in effect an offer of proof and the offer could be accepted in the form in which the summary was presented or the committee might decide that it preferred to hear the testimony or other evidence itself.

Mr. Wiggins. And the gentleman from Indiana alters that procedure which we have agreed is the procedure recommended by the subcommittee by adding "or desirable" which interjects an additional element but it removes the second determination as to whether a summary might be accepted and we then decide whether to accept the testimony itself as distinguished from the summary? Is that your understanding. Really I ought to direct that to you, Dave.

Mr. Dennis. Well, the gentleman is correct, except actually we decide whether to accept additional testimony or evidence in some other form, because I leave that language in there. So, I think you could actually under that language use your summary if you really wanted to. Well, it would just read that if so the additional testimony in some other form shall be received as requested.

Mr. Kastenmeier. Well, I would submit and I would ask counsel to comment on that in any event, if that is what the import of the gentleman's amendment is, it is unnecessary at the very best and at worst it makes it difficult for the committee to determine whether in fact summaries shall be accepted as part of the record. Is that not a fair reading of the effect of the gentleman's amendment?

Mr. Woods. Yes. Congressman, it seems to me that the wording that was reported by the subcommittee makes it much clearer that the committee will have the opportunity to accept a summary as an offer of proof in lieu of taking the committee's time to receive the testimony itself.

Mr. Wiggins. Will the gentleman yield?

Mr. Dennis. I will yield to the gentleman.

Mr. Wiggins. I would just like to complete my thoughts. I do not like to oppose the gentleman from Indiana because I think he makes frequent valuable considerations to our committee. But I would like to have the assurance of the subcommittee chairman that the word "necessary" in his draft is not intended to mean absolute necessity but would include such factors as desirability in deciding that question.

Mr. Kastenmeier. I personally am disposed to agree with the gentleman. I think that the word "necessary" was used as a protection for the committee. But I would think a broad construction of the word is desirable.

Mr. Dennis. Mr. Chairman, if the gentleman thinks that, I cannot understand really why he objects to the word "desirable" because he is just saying what I am saying.

Mr. Wiggins. Well, I do not even know who has the time, but I am going to keep talking——

Mr. Brooks. The gentleman from Wisconsin has the time and yielded to you.

Mr. Kastenmeier. Does counsel care to comment on that?

Mr. Jenner. I share—I am pleased to have the opportunity to say that I share with Mr. Dennis the addition of the words "or desirable"

after the word "necessary" in line 3. It does afford the committee somewhat more flexibility to apply to standards and not be possibly placed in the position of what is the word "necessary" which might limit the discretion of the committee at some phase.

Mr. KASTENMEIER. Mr. Chairman, would Mr. Woods care to comment?

Mr. WOODS. Yes. I would like to say that the amendment really involves two separate questions and one to which Mr. Wiggins addressed himself, the meaning of the word "necessary." Certainly in drafting this, "necessary" was not intended to have a literal absolutely essential interpretation, and it was meant to mean necessary in the sense of what would be an appropriate record in the committee's determination. And my comment earlier, was not meant at all to be addressed to the addition of the words "or desirable" which it seems to me were within the original meaning of the word "necessary" but rather with the remainder of the amendment.

Mr. KASTENMEIER. I having the time I would comment further then, this confirms my own point of view, one that it is probably not necessary to have the words "or desirable," but "or desirable" is not antithetical to the meaning of the statement and whether it reads is necessary and close "necessary" is understood to have a broad construction, or whether one desires to have the words "or desirable," is not of grave importance as far as I am concerned. And if he would offer an amendment to include only the words "or desirable" it would be acceptable as far as I am concerned.

Mr. SEIBERLING. Would the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Ohio.

Mr. SEIBERLING. In other words, what you are saying is that the word "desirable" is not necessary but it is desirable?

Mr. BROOKS. Mr. Kastenmeier?

Mr. KASTENMEIER. Mr. Chairman.

Mr. HUNGATE. Mr. Chairman, I would ask to be recognized.

Mr. BROOKS. Mr. Hungate.

Mr. HUNGATE. I would like to inquire of the gentleman from Indiana first if he could agree to amending the amendment so that it said "necessary or desirable" and the rest go by the wayside, or can he do that?

Mr. DENNIS. Well, I suppose I could do that, but in sitting here thinking about it——

Mr. HUNGATE. Mr. Chairman, may I proceed? I want to be sure I understand Mr. Jenner's comment earlier. And as I understood you, Counsel, you thought that might even be somewhat helpful? I am only talking about adding "or desirable" after the word "necessary."

Mr. JENNER. Yes. I do think it would be helpful because it adds another element of discretion that the committee may find desirable to use.

Mr. HUNGATE. Well, Mr. Chairman——

Mr. DENNIS. Will the gentleman from Missouri yield?

Mr. HUNGATE. I yield to the gentleman from Indiana.

Mr. DENNIS. I like to be a semireasonable gentleman occasionally; and while I think really my amendment as proposed is the best form,

I will accept the gentleman's suggestion, if the chairman of the subcommittee, Mr. Kastenmeier, will agree, and amend my amendment accordingly to leave in the words "or desirable" and strike the rest of the amendment.

Mr. KASTENMEIER. If the gentleman from Missouri will yield?

Mr. HUNGATE. I yield.

Mr. KASTENMEIER. I would be pleased to agree to that.

Mr. BROOKS. Is there objection to the amendment by Mr. Hungate to the amendment by Mr. Dennis? If not, the Chair hears none, and the amendment is agreed to and is now in order. And the question is now on the amendment of Mr. Dennis as amended to be adopted. And as many as are in favor vote aye.

[Chorus of "ayes."]

Mr. BROOKS. Opposed, no.

[No response.]

Mr. BROOKS. The ayes have it, and the amendment as amended is agreed to.

Mr. DENNIS. Mr. Chairman?

Mr. BROOKS. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, as I said——

Mr. BROOKS. You have two more.

Mr. DENNIS. And as I said to the gentleman from New Jersey when he was in the chair, they are on other unrelated matters to the previous amendments and they could logically I think come at the end, so I will be glad to defer until we reach the end of the bill if that is the best.

Mr. BROOKS. The Chair recognizes the gentlewoman from New York, Ms. Holtzman, for an amendment which she has at the desk.

Ms. HOLTZMAN. To clarify matters, the amendment is to paragraph C2A, page 3. While I voted against Mr. Danielson's amendment because I think the President's counsel should have the right to object, I also feel——

Mr. BROOKS. Will the gentlewoman desist for a moment? Did the clerk read the motion, or rather did the clerk read the amendment?

Will the clerk read the amendment?

The CLERK [reading]:

Amendment by Ms. Holtzman.

On page 3, after the word "member" on line 5 of paragraph C2, strike the period and insert the following: "except that any objections raised by the President's counsel shall be made only after the examination of the witness has been completed (but before the witness has been discharged, if the President's counsel desires to make an objection at that time), and shall be in writing unless the committee otherwise determines."

Ms. HOLTZMAN. May I be recognized?

Mr. BROOKS. The gentlewoman is recognized for 5 minutes in support of her amendment.

Ms. HOLTZMAN. I will try to be very brief. I feel that while the President's counsel ought to have the right to object to examination and to testimony, that that right of objection ought to be done in such a way that it does not interfere with the orderly presentation of evidence to this committee by a witness. And so what my amendment does is that it preserves all of the objections that the counsel wishes to make but allows the counsel to make them only after the witness has completed the testimony. Therefore, the committee would have the benefit

of whatever objections counsel has and in time to reexamine the witness if the committee wanted to do that. But, we would not be engaged in the possibility where members' time would be interfered with by objections by President's counsel or where the orderly presentation of the evidence could in any way be interfered with.

I think we are concerned about seeing that the evidence is presented as orderly as possible. The witness' counsel could of course object to questions and preserve the rights of the witness but the objections of the President's counsel to whether or not this is hearsay or whether the committee ought to consider the evidence, can be just as well received by the committee after the witness finishes his testimony. And I do not think in any way that this would undermine the right of the President to have effective representation, but it would do so consistent with the interest of the committee in orderliness and in the orderly presentation of the witness' testimony.

Mr. McCLORY. Would the gentlelady yield for a question?

Ms. HOLTZMAN. I will be delighted to yield.

Mr. McCLORY. As I see this rule in C2 it says that objections relating to the examination of witnesses or to the admissibility of testimony. Now how in the world could we object to the admissibility of testimony if the objection could not be raised until after the testimony has already been received?

Ms. HOLTZMAN. Well, I think if the President's counsel has objections to the admissibility of testimony, the committee is in the position where we are not really acting as a jury. We are in the position of a judge, and we can hear the testimony and it has the benefit of President's counsel's objections to it after we hear it, and we can discount it, and we can discount it at that point and we can ask further questions about it. It would not be—I would not be opposed to allowing questions to be raised by the President's counsel before the witness would be examined. But I do have objection, and I am concerned about the interruption of the orderly examination of the witness by the President's counsel. That is the purpose of this amendment.

Mr. McCLORY. If the gentlelady will yield further, do you not feel that the chairman could regulate the orderliness of our proceedings without tying him down in this kind of a restrictive language?

Ms. HOLTZMAN. To answer the question, to answer the question, there is nothing to prevent the President's counsel from standing up and saying I object consistently as the proceedings go forward. This is going to be televised. This is going to be before the Nation. I think, I certainly think that we ought to have the benefit of objections of President's counsel, and the substance of them, and be able to act on them. But, I do not think we need to have these objections during the witness' examination, during examination of the witness, during my examination of the witness and the like.

Mr. DENNIS. Would the gentlelady yield?

Ms. HOLTZMAN. I will be happy to yield to my friend from Indiana.

Mr. DENNIS. I thank the gentlelady from New York and I have fought and you have fought many a good battle side by side on the Subcommittee on Criminal Proceedings striking blows for liberty and the rights of man and so on and so on. And I am really shocked almost to see my good friend suggesting that it does a man much good

to jump up and send a letter around to the judge a week after he has been killed by the testimony and object to it. I think the gentlelady knows better than that and I am surprised at her, really.

Ms. HOLTZMAN. Mr. Dennis, I would like to respond to that. The admissibility of testimony before this committee, presumably the only ground for objection would be on the ground of whether or not it is an objection as to hearsay and the committee could make a judgment whether or not to listen to this. And, if we do hear it, that is OK. I do not see how the President's counsel or the President is in any way prejudiced by having to wait until he raises his objection. In fact, I would have no objection to allowing him to raise a question before the witness testified, but I do object to having the orderly procedure and examination of the witness interrupted by questioning which could be either deferred to the beginning or deferred to the end of the examination of the witness.

I yield back the balance of my time.

Mr. BROOKS. Mr. Cohen is recognized.

Mr. COHEN. Thank you, Mr. Chairman.

I would like to speak in opposition to the amendment. The subcommittee did consider this fact and I would suspect that any of the witnesses who were called before the committee to testify will probably have the benefit of a counsel and I think the President's counsel would be in an untenable position to constantly be interposing objections to evidence, admissibility, relevance, and so forth when counsel for the defendant would not be, or the witness would not be doing the same thing. I think if that were the case and as pointed out it is going to be televised, I think that the counsel would be characterized as obstructing the course of the investigation or the inquiry and really think that the gentlelady's fears are much more imaginary than real under the existing circumstances. And so I urge my colleagues to vote against the amendment.

Ms. HOLTZMAN. Would the gentleman yield?

Mr. COHEN. Yes, I will.

Ms. HOLTZMAN. I am glad you raised a question about imaginariness, because I was very disturbed to read yesterday that Mr. St. Clair admitted that he had made no effort to clarify the inaudible aspects of these so that this committee could get the benefit of their best efforts. The White House did not make their best effort to comply even within their higher ranks.

It is also disturbing that Mr. St. Clair made an offering to this committee at an earlier stage of tapes in response to three or four items and we have never seen those tapes because we issued a subpena. And I am deeply concerned in fact with what has appeared to be an effort on the part of the White House counsel to use less than good faith with this committee, and to be less than fair with this committee and that is precisely my concern, because I do not want to see the examination that we are going to be conducting which is of the most serious and solemn kind, turned into a circus.

Mr. COHEN. What I am suggesting to the gentlelady is exactly the opposite, that these witnesses will be before us at this table in all probability with their own counsel, and I think it would come through very clearly to the American public if Mr. St. Clair were to engage

in this sort of conduct, which is inconsistent with representing his client. So I do not think under those circumstances we should adopt your amendment.

Mr. KASTENMEIER. Mr. Chairman?

Mr. BROOKS. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. I reluctantly oppose the amendment by Ms. Holtzman. It is well constructed and, indeed, I think it might be held in the back pocket of somebody on this committee. But I too am inclined to at least proceed on the notion that the objection can be handled in an orderly way and that the Chair does possess powers to obviate the use or abuse of these objections. And in the event that objections become an impediment to a fair and expeditious proceeding and the Chair is frustrated in his efforts to control such behavior then I think that the proposal of Ms. Holtzman can be considered by the committee. But, until that point is reached, I think it is a considerable limitation which we place on the President's counsel that he shall only after a witness has been fully examined, only then may he interpose an objection.

Mr. CONYERS. Mr. Chairman?

Mr. KASTENMEIER. For that reason I must respectfully oppose the amendment.

Mr. BROOKS. Mr. Sarbanes, the gentleman from Maryland.

Mr. SARBANES. Would the gentlelady from New York accept an amendment that made it clear that an objection could be interposed prior to the commencement of the examination of the witness or after such examination has been completed? In other words, it would allow the President's counsel prior to the start of the witness to object. In other words, that would be to this witness being heard for some reason, for some valid reason, or at the end then to present to the committee his reasons for objecting to the admissibility of consideration of the testimony and evidence?

Ms. HOLTZMAN. I would be happy to accept the gentleman's amendment because it clearly is the intent here which is not to interrupt the process of examination, but to allow objections to be heard either prior to the time the witness speaks or after the examination has been concluded. So, I will be happy to accept the amendment.

Mr. MCCLORY. Would the gentleman yield?

Mr. BROOKS. Is the gentleman——

Mr. SARBANES. Mr. Chairman, I ask consent that the amendment offered by the gentlelady from New York be amended in line 2 to strike out the words "only after" and insert in lieu thereof "either prior to the commencement of," and in line 3 after the word "witness" insert the words "or after such examination," so that it would read "except that any objection raised by the President's counsel shall be made either prior to the commencement of the examination of the witness or after such examination has been completed."

Mr. BROOKS. Is there objection? Pardon me, Mr. McClory.

Mr. MCCLORY. Reserving the right to object I would just like to make this comment. I do not think we should adopt an amendment or amendments to amendments which are based on the assumption that our rules are not going to be complied with, or that our rules are going to be abused, or that the chairman is going to be incapable

of applying the rules in a manner which is going to result in an orderly procedure.

I can conceive in this case for instance that perhaps just after testimony commences and a witness is introduced that it may occur to counsel or a member of this committee or someone that we should object to the testimony for any number of reasons, and yet the testimony has already begun. And I do not see any reason why we should make it so restrictive as to deny the right to interpose an objection.

Mr. SARBANES. Well, I think the gentleman's argument of course goes to the substance of the amendment. And I would like in view of the fact that the offerer of the amendment is willing to accept that alteration to at least have that done and speak to the substance of that amended proposal.

Mr. BROOKS. Is their objection?

Mr. MCCLORY. I object, Mr. Chairman.

Mr. BROOKS. As many as are in favor of the amendment to the amendment——

Mr. HUNGATE. Mr. Chairman? Mr. Chairman?

Mr. SARBANES. I offer it as an amendment to the amendment.

Mr. HUNGATE. Mr. Chairman, may I inquire, does this still require it to be in writing or did you eliminate that requirement?

Mr. SARBANES. No; I did not.

Mr. BROOKS. The amendment of Mr. Sarbanes to the amendment of Ms. Holtzman is the question and as many as are in favor of the amendment vote aye.

[Chorus of "ayes."]

Mr. BROOKS. Opposed, vote no.

[Chorus of "noes."]

Mr. BROOKS. In the opinion of the Chair the ayes have it. Please have a show of hands. As many as are in favor of the amendment please raise their right hand.

[Show of hands.]

Mr. BROOKS. Or left hand.

As many as are opposed to the amendment?

[Show of hands.]

Mr. BROOKS. Thirteen in favor and 11 opposed, and the amendment to the amendment is agreed to.

Mr. MCCLORY. Mr. Chairman, I ask for a rollcall.

Mr. BROOKS. Would the gentleman consider that we will have the amendment——

Mr. MCCLORY. All right, I will withdraw my request.

Mr. BROOKS. Mr. Hogan, the gentleman from Maryland.

Mr. HOGAN. I reluctantly speak in opposition to the gentlelady from New York's amendment and I have several objections to it. No. 1, the practicality of imposing upon the President's counsel the necessity for putting his objections in writing, when he is not going to have access to the facilities necessary to achieve that end, it is bad enough for members of the committee in offering their amendments to get things in writing. Second, I think the amendment as amended is worse now than it was in its original form because I can

anticipate a situation whereby the President's counsel would be surprised by a witness and his testimony and would not have enough information, knowledge to object to that until he had heard it.

But, my general objection is I think best illustrated by an observation which I recall my professor of evidence used to use in commenting upon the problem in a jury trial where damaging evidence is introduced and then the judge tells the jury to disregard it. And he likened that to injecting a red hot poker into a cavity of the body and then telling the victim that it did not hurt. I think basically that is what we have here. If the counsel cannot object initially then all of the damage is going to be done before he ever has an opportunity to object.

Mr. BROOKS. Are there any further questions?

Mr. KASTENMEIER. Mr. Chairman?

Mr. BROOKS. Mr Kastenmeier.

Mr. KASTENMEIER. I move the previous question.

Mr. BROOKS. The motion——

Mr. WIGGINS. May I just ask a couple of things?

Mr. BROOKS. Why, of course. Would you desist for just a moment and we will recognize the distinguished gentleman from California, Mr. Wiggins.

Mr. WIGGINS. I thank you for the kind consideration by my eloquent friend from Texas. I voted to support the amendment by Mr. Sarbanes because I thought that it modestly cleaned up an otherwise pretty bad amendment. This does not mean however, that I support the amendment and indeed I do not. I think it is important for the members to recognize that we have two classes of counsel under this amendment. We have counsel for the witnesses who are permitted the full right to object and without the procedure imposed upon counsel for the President. And then we have a special class, the counsel for the President, where he is required to interpose objections only at a certain time and to do so in writing. I take it that if he were to make a written objection that the members would like to read it. I would like to read it. And if our purpose is to expedite proceedings, I suggest that the procedure if adopted will considerably delay as counsel prepares his written objections, prepares adequate copies to circulate them and permitting the committee to consider those objections or the rulings thereon.

In any event, all things considered, Mr. Chairman, the procedure, which is well intentioned, will delay our proceedings, will put the President's counsel in a second-class posture which should not be supported by our committee. And I urge that the amendment as amended be rejected.

Mr. SARBANES. Would the gentleman yield?

Mr. WIGGINS. Of course. I will yield to whomever requests it.

Mr. SARBANES. I would like to respond just to the substance of it, since before I was primarily concerned with the amendment, I think of the gentlelady from New York of course as to the writing requirements and the provision is unless the committee otherwise determines which therefore makes it possible for the committee to dispense with that requirement and leave it within the control of the committee to accommodate to the factors which the gentleman from California

has just underlined with respect to either delay or whatever other circumstances it may require to hear objections orally rather than in writing.

And I think the gentlelady from New York has offered an amendment which gives to the President's counsel, with respect to every witness that comes before us, a role, and I would say that it is a category superior to that of the other counsel which the gentleman from California was referring to and preserves to him that role if the President should be before us and allows him to object prior to a witness being heard at all or subsequently to register objections to the testimony and insures, insures that we need not have a situation in which the questioning either from members of the committee or from counsel are constantly interrupted. It seems to me an eminently sensible proposal in terms of safeguarding the process we will follow.

Mr. KASTENMEIER. Mr. Chairman?

Mr. BROOKS. Would the gentleman desist? Mr. Hungate, the gentleman from Missouri has one comment that he wants to make.

Mr. HUNGATE. Mr. Chairman, I think the amendment is "helpful" but I shall vote against it because of the written requirement. I think that is too great a burden.

Mr. KASTENMEIER. Mr. Chairman, I move the previous question.

Mr. BROOKS. The previous question is ordered, and as many as are in favor of the amendment by the gentlewoman from New York, Ms. Holtzman, vote aye.

[Chorus of "ayes."]

Mr. BROOKS. Opposed, no.

[Chorus of "noes."]

Mr. BROOKS. In the opinion of the Chair the ayes have it.

Ms. HOLTZMAN. Rollcall.

Mr. BUTLER. Rollcall Mr. Chairman.

Mr. BROOKS. A rollcall is demanded indignantly, and as many as are in favor of the amendment of the gentlewoman will vote aye when their names are called and vote no those that are opposed. And the clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. BROOKS. Aye by proxy.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. CONYERS. Aye by proxy.

The CLERK. Mr. Flowers.

Mr. BROOKS. Aye by proxy.

The CLERK. Mr. Mann.
Mr. BROOKS. Aye by proxy.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. BROOKS. Aye by proxy.
The CLERK. Mr. Drinan.
Mr. BROOKS. Aye by proxy.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. BROOKS. Aye by proxy.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SANDMAN. No by proxy.
The CLERK. Mr. Sandman.
Mr. SANDMAN. No.
The CLERK. Mr. Railsback.
Mr. COHEN. No by proxy.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. No.
The CLERK. Mr. Mayne.
Mr. HUTCHINSON. No by proxy.
The CLERK. Mr. Hogan.
Mr. HOGAN. No.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. No.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. LOTT. No by proxy.
The CLERK. Mr. Moorhead.
Mr. HUTCHINSON. No by proxy.

The CLERK. Mr. Maraziti.
Mr. MARAZITI. No.
The CLERK. Mr. Latta.
Mr. HUTCHINSON. No by proxy.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
Mr. BROOKS. The clerk will report the vote.
The CLERK. 17 voted aye, 21 voted no.
Mr. BROOKS. 17 aye, 21 no, and the amendment is not agreed to. The amendment is lost and the Chair recognizes Ms. Holtzman for her next amendment.
Ms. HOLTZMAN. Well, Mr. Chairman, in view of that vote I will not offer the other amendments I had prepared, except that I would like to ask the chairman, in view of this, in the construction of his right to instruct the counsel for the President in questioning of the witnesses whether he feels that he has adequate right to instruct the counsel with regard to the manner in which the investigation is conducted, and if he feels that he does, then I will withdraw my amendment that I had proposed in that vein. Can counsel assure me that that is the case?
Mr. WOODS. In my opinion it is.
Mr. MCCLORY. Mr. Chairman, I would like to have the question stated once more. I do not know what kind of a commitment we are after here. Could I hear the question again?
Ms. HOLTZMAN. Mr. Chairman, I have an amendment which would insert the word "manner" on page 4 of the procedures but I am willing to withdraw that amendment if my understanding is correct that the chairman can issue instructions with regard to the manner in which the questions are posed.
Mr. WOODS. And I stated that it was my opinion that it does give the Chair that authority.
Ms. HOLTZMAN. Then I will withdraw my amendment. I have no other amendments.
Mr. BROOKS. The gentleman from Indiana.
Pardon me, Mr. Fish. Did you have an amendment?
Mr. FISH. No amendment, but I would like to be recognized.
Mr. BROOKS. The gentleman is recognized.
Mr. FISH. Thank you very much, Mr. Chairman. I would just like to raise a question here of the chairman of the subcommittee. It concerns me on page 3, C3, which starts, "the committee counsel shall commence the questioning of each witness." We had a lot of discussion earlier about the role of Mr. St. Clair in questioning of witnesses and, while I favor Mr. St. Clair's presence, I feel that we have, in our counsel for the staff, and as our minority counsel, two of the ablest trial lawyers in the United States who are fully able to conduct examination of the witnesses. Mr. Kastenmeier, was it your intention here where it says: "committee counsel shall commence the questioning," that they would be given enormous latitude in which questions might well last for hours or even days, if, in their opinion, this was necessary before there was any questioning by members of the committee?
Mr. KASTENMEIER. I am sorry, because of the noise in the chamber I was not able to hear the gentleman's question. Would my friend from New York restate his question?

Mr. Fish. Yes. I am referring to C3 on page 3. It starts off: "Committee counsel shall commence the questioning," and I am really interested in whether the subcommittee had in mind that the major burden of the questioning of the witnesses would fall on our able committee counsel and minority counsel as I believe it should?

Mr. Kastenmeier. Yes. That is precisely what we had in mind. There was some discussion of actually trying to curtail extensive examination of witnesses by members and other than the committee counsel but that was not acted on. However, it is contemplated that the committee counsel will bear the burden of the examination or questioning of witnesses and while members at this point, members always have a right, but we make it clear that the examination starts with committee counsel, and that committee counsel is prepared in a special way to question the witnesses and that is the best proceeding as far as learning the truth as far as the proceeding is concerned.

Mr. Fish. Thank you, Mr. Chairman.

Mr. Wiggins. Mr. Chairman?

Mr. Chairman, I have an amendment at the desk.

The Clerk [reading]:

Amendment by Mr. Wiggins.

Page 2. To be added to the end of paragraph A3. "All such testimony, papers and thing examined by members of the committee pursuant to this subparagraph shall be subject to the procedures for handling impeachment inquiry material adopted by the committee on February 22, 1974, until such time as such testimony, papers and things be introduced as evidence before the committee."

Mr. Wiggins. Mr. Chairman?

The Chairman. Mr. Wiggins.

Mr. Wiggins. If I may be recognized, the general outline of the procedures under which this matter shall be commenced is that first we shall receive a proposed statement of information, and thereafter the committee members will have access to the material in our files whether or not that information will ever be introduced in evidence. The material in our files is raw data, I understand, containing materials which perhaps will never be offered because it does not bear directly upon any impeachable misconduct. It may contain material which is unreliable, or which we believe is not true. I think that our raw data probably contains material which is irrelevant and would not be introduced under any circumstances. The purpose of my amendment, Mr. Chairman, is to insure that the rules of confidentiality which we have adopted will apply to each member as they go over to review all of this material in our files. Now, obviously the reason for such a limitation is first, that it is very prejudicial to the respondent that information which may never appear before this committee should promptly get in the public domain as a result of a review by members of the committee. Second, it is prejudicial to the orderly presentation I believe of our case by counsel to have potentially everything that he knows in the public domain in advance of the time that it is presented.

Now, Mr. Chairman, I wish it understood that even though the amendment speaks to the rules of confidentiality applying up to the time that the information is introduced, that at the time of the introduction perhaps other rules would be applied at that time. For example, if the evidence is introduced in executive session, of course, the members would be bound by the orders of the Chair concerning material

received during that executive session. If the material is never introduced, then the rules of confidentiality would continue to apply. I hope the members can see the kind of mischief that the present language invites, unless it is refined to insure that these rules of confidentiality continue to apply. I will yield to the gentleman from Arkansas.

Mr. THORNTON. I thank the gentleman for yielding. I would like to ask if it is not—and I would like to thank the gentleman for yielding—I would like to know—if I can locate a microphone—to ask if it is not the intention to bind all of those persons who might receive information under the provisions of this paragraph?

Mr. WIGGINS. Yes, indeed. It is directed to the members because the proposed rules before us refer to the members having access.

But, my intention is that material which is never going to be before this committee should not be in the public domain to prejudice our proceedings.

Mr. THORNTON. Further then, that paragraph has been previously amended by Mr. Hogan, as amended by the chairman to permit certain members of the full committee staff to also have access to this information and I wonder if you could consent to an amendment to your amendment to add the words, "or members of the staff" following the word "committee" on line 2?

Mr. WIGGINS. Certainly, That is wholly consistent with my objective, and I would consent to such an amendment.

I will yield to the gentleman from New York.

Mr. RANGEL. Would the gentleman yield? I do not think I take issue with your amendment, but I have some questions. Most of the rules of confidentiality have been broken by the White House. Would there be a general release when, in fact, the information has first been broken say in a press conference by the President or his counsel?

Mr. WIGGINS. Well, no. I think in response to the gentleman that that will require an amendment to our rules of confidentiality. If we are going to, in effect, make exceptions to this material which has already been in the public domain, we perhaps ought to do so by amendment to our rules of confidentiality.

My intention is that those rules, whatever they may be, and however they may be amended, should apply with respect to our members going over to see, going over and seeing raw, unevaluated, perhaps irrelevant data in our files.

Mr. RANGEL. Let me be more specific. On the materials that we recently received from the President, that is in the public domain now.

Mr. WIGGINS. Yes.

Mr. RANGEL. If, in fact, we hear other evidence which supplements this, which deals with the very same conversations that we are reading, would that be covered by your amendment?

Mr. WIGGINS. Well, my amendment does not speak to the problem of hearing evidence. It merely is involved in the matters preceding the hearing of evidence. If evidence is actually before this committe——

Mr. RANGEL. I did not make my question clear.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. RANGEL. May I be recognized, Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. We have these transcripts, and assuming, as counsel has pointed out, we also have evidence held by committee that would clarify much of the problems that we are having in keeping up with this, as relates to the clarification of certain conversations, would you hold that to be under the rules of confidentiality, even though the basic document is in the public domain?

Mr. WIGGINS. Well, if the material is in our possession, and is being now held pursuant to those rules of confidentiality, then I would not expect the members to breach those rules following their review in private of the material in our file.

Mr. RANGEL. Yes, because it is very confusing, and we all want to do the right thing, and I am just saying that where someone has started a sentence and did not finish it, and our tape finishes the sentence, then are we bound by the rules of confidentiality as it relates to the completion of the sentence?

Mr. WIGGINS. Well, you are really asking me about the scope of the rules of confidentiality. I frankly, if I had my druthers, would say that it should not be for individual members to issue press releases clarifying the President's submission, but rather that the clarification should come by evidence before this committee, and at the time it is before this committee, if it is a public hearing, then all the public learns our version of the truth at the same time.

Mr. RANGEL. My last question is this certainly would not restrict us from asking a question, the basis of which we received from our briefing, if we wanted to ask a witness a question? We would not have to get any clearance in order to ask a question, would we?

Mr. WIGGINS. That is not my intention. There ought to be free opportunity to examine, cross-examine insofar as we have the privilege.

Now, I am talking about a prerelease of information by the members which may follow their review of information now being held by our staff.

Mr. RANGEL. Would you consider amending this to make it very clear that what you are talking about is a member releasing this information to the general public, rather than as vague as it appears to be here? I could support that.

Mr. WIGGINS. I am sympathetic with the object.

Mr. RANGEL. Well, I am just concerned by inadvertently breaching this rule because of all of the gaps in the transcripts. I am concerned, and, hopefully, we will be able to get some holes filled.

Mr. WIGGINS. Well, let us not fill them by press release.

Mr. RANGEL. No. If you could put something together in there indicating that we should not put out a release on it, and should not talk with reporters about it, I could support the amendment. But, it is just hard with all of these conversations to recognize where they all had been filled, and where the gaps existed previously.

Mr. WIGGINS. Well, I find it very difficult to achieve the objective which the gentleman seeks, and which I generally support by my amendment. The confidentiality rules can be breached and breached in many ways, and I would hate to start listing the ways in which it is possible.

Mr. RANGEL. I yield back my time.
Mr. KASTENMEIER. Mr. Chairman?
Mr. MCCLORY. Mr. Chairman?
The CHAIRMAN. Ms. Holtzman.
Ms. HOLTZMAN. Thank you, Mr. Chairman.

I want to speak in opposition to this amendment because we already have a provision in the procedures for handling impeachment inquiry material right before us, and I would like to read the language of that, and I would also like to ask Mr. Wiggins why he departs from that language on page 1, paragraph 4, where it says before the committee is called upon to make any disposition with respect to the testimony, papers, or things presented to it, the committee member shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the inquiry staff. No member shall make any of that testimony for those papers or things public unless authorized by a majority vote of the committee, a quorum being present.

Now, as I understand your amendment, you would amend that procedure by saying that a majority vote of the committee could not permit the matters to be made public. It would only be made public if it were introduced into evidence. Now, what does it mean to have things introduced into evidence when we are having, for example, a statement of information presented to this committee? I wish the gentleman from California would clarify that point.

Mr. WIGGINS. Well, please be assured that this committee can do what it wants, and if a majority of this committee wishes to abolish the rules of confidentiality, or modify them in any way, it can. I am not in any way trying to prevent the majority for doing in the future what whatever it may thing is best under the circumstances.

Ms. HOLTZMAN. Well, what does the gentleman mean, however, with respect to the language "until such time as such testimony, papers, and things be introduced as evidence before the committee"?

Mr. WIGGINS. Well——

Ms. HOLTZMAN. How would that happen in an information presentation when we are not dealing necessarily with things being introduced into evidence in a formal, legal sense?

Mr. WIGGINS. By that language I was simply trying to make it clear that when the evidence is before this committee that the members have a full right to ask any questions, to call upon any information in their possession without reference to the rules of confidentiality. Now, if that evidence, however, should come in in the executive session, which a majority of this committee has agreed to, then, of course, it could be bound by the rules of the executive session, but not by the rules of confidentiality.

Ms. HOLTZMAN. But suppose, Mr. Wiggins, that material is included in a statement of information as opposed to being introduced as evidence. Then I have tremendous trouble with your amendment.

Mr. WIGGINS. I am finding it difficult to understand the circumstances under which the lady is——

Mr. SARBANES. Would the gentlelady yield?

Ms. HOLTZMAN. I will be happy to yield to Mr. Sarbanes.

Mr. SARBANES. I fail to understand why the existing procedure for handling impeachment inquiry material does not fully cover the

eventualities which the gentleman from California indicated he was trying to direct his amendment to. No member shall make any of that testimony or those papers or things public unless authorized by a majority vote of the committee, a quorum being present. And it seems to me that does impose upon each member of this committee a limitation that can only be lifted upon a majority vote of the committee, quorum being present. I think certainly the circumstance or situation that the gentleman outlined at the beginning as he presented his amendment is fully covered by the existing provisions of our proceedings.

Mr. WIGGINS. Would the gentleman yield?

Mr. SARBANES. I do not have the time.

Ms. HOLTZMAN. I have the time and I will be happy to yield.

Mr. WIGGINS. Yes. I was concerned when I drafted this amendment as to whether or not it was necessary. I was concerned that possibly the existing rules of confidentiality covered the eventuality which I was concerned about. But, given the language in this new proposal on which the committee would vote, I felt that it was absolutely essential to make it clear that these rules do apply, and that the later vote did not, by implication, amend the earlier one. And so I erred on the side of caution and safety by making it clear that these rules of confidentiality do, in fact, apply.

If, in fact, everyone agrees that these apply, then I, of course, would have no reason in making my motion. But, I feel that an ambiguity existed.

Ms. HOLTZMAN. I yield back the balance of my time.

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I think the gentleman from California just pointed out that if he thinks the members believe that, in fact, the procedures we have before handling the impeachment inquiry as laid out in No. 4 apply, then we do not have to consider the amendment and the gentleman would be willing to withdraw it. And I personally feel that they do apply. I think that we are covered under that, and with that in mind, I would hope that the gentleman from California would, in a sense, withdraw his amendment with the understanding that, in fact, every member of this committee understands that under No. 4 the material is before the impeachment inquiry staff and the rule would apply.

Mr. WIGGINS. If the gentleman will yield to me, if I am given that assurance, if there is no misunderstanding about it, if that is the understanding of the Chair and the ranking member, then my amendment is simply surplusage, and I would be happy to withdraw it.

Mr. HUNGATE. Mr. Chairman, I have some questions because I am troubled by some of the publicity that has been going out. We have transcripts here. "I think that," and this is Haldeman, "the Bureau ought to go to Edward Bennett Williams and question him, and have him tied up for a couple of days." The President: "Yeah. I hope they do. Someone should talk turkey to Patman."

"Jerry Ford is not taking an active interest. Stans is going to see Jerry Ford."

"Rothblatt is laughing." This is Dean. "He is quite a character. He has been getting into the sex life of members of the Democratic National Committee."

Now, are we bound by the rules of confidentiality on that once this happened, or are we not?

Mr. WIGGINS. Are you reading from the President's submission?

Mr. HUNGATE. I am, sir.

Mr. WIGGINS. I am comforted, sir, and I would think not with respect to that. You are reading something in the public domain that has not been received so far as I know, subject to the rules of confidentiality.

Mr. HUNGATE. And then will the President's counsel and the President himself, if present, be bound by our rules of confidentiality if they attend? Can we bind them?

Mr. WIGGINS. I think the answer is obvious, but I will let the chairman answer it.

Mr. HUNGATE. I appreciate obvious answers.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I would expect the chairman would ask the President's counsel if he was invited to come the first morning if he had read and considered the rules of confidentiality, and if he would, in accepting the invitation of the committee to be present, if he would agree to be bound by the rules of confidentiality. And if his client, the President of the United States, would agree to be bound.

The CHAIRMAN. Well, the Chair would want to state in addition to that, it would seem to me that if this committee has extended itself to give, in the interest of fairness, opportunity, privileges, and indeed, all of the courtesies that one feels are necessary in order to conduct a fair inquiry, that the counsel to the President would accede to being bound by the rules of confidentiality.

Mr. HUNGATE. I yield to the gentleman from Maryland.

Mr. SARBANES. Mr. Chairman, I just want to add to that I understand the President's counsel under these rules will sit in executive session. Is that correct?

Mr. JENNER. That is correct.

Mr. SARBANES. Now, I understand that our counsel have been prohibited by the rules that we have adopted from discussing these matters with the press or appearing on television and radio, interview shows. I understand the President's counsel last night was on national television conducting an interview, and am I correct that our counsel has been prohibited from doing any of that sort of activity?

The CHAIRMAN. Our counsel is.

Mr. JENNER. We so understand.

Mr. SARBANES. That is what I understood. Now, the President's counsel is going to attend executive sessions and so forth and so on, and aside from this he is going to be able to walk out of this committee room and go on national television news shows and conduct his press conferences.

The CHAIRMAN. I do not know how we can restrain him. But it would appear to me that the counsel to the President should again understand the rules of confidentiality.

Mr. SARBANES. Could I ask the subcommittee chairman, who has presented these rules to us for adoption here, on the role of President's counsel, as to whether consideration was given by the subcommittee with respect to the obligations assumed by the President's counsel in

terms of public dialog and public expression with respect to his participation? Was that considered by this subcommittee?

Mr. HUNGATE. I will yield to the gentleman from Wisconsin for a response.

Mr. KASTENMEIER. It was not considered in detail, but to the extent that it was, it was my understanding that the President's counsel, when he submits to the jurisdiction of the committee, for those purposes he would be bound.

I yield to counsel, Mr. Doar, for further application.

Mr. DOAR. Well, since the counsel is here, as a matter of grace and not as a matter of right, and if he agreed to the rules of confidentiality, and he then went out and breached the rules, the committee could withdraw the invitation. That is the power that the committee has over the counsel to the President.

Mr. HUNGATE. Mr. Chairman, I think this is, indeed, a most serious matter, and the committee should consider that it is offering this right, this grace, and privilege in the interest or producing the truth and fairplay, but that we have the reputations of many innocent peoples to be considered. And I think the committee did a good job and a good bipartisan job in adopting the rules of confidentiality. And I think we should guard them jealously.

Mr. MEZVINSKY. Will the gentleman yield?

Mr. HUNGATE. Mr. Mezvinsky, I yield.

Mr. MEZVINSKY. I am very concerned about this, because at one time, we had the counsel concerned not only with being counsel, but also being the lobbying arm for the White House, and I am concerned as to his ability not only as to making statements on TV, but also dealing with certain Members of Congress who are not on this committee. I think it is very significant, so I would ask counsel as well as the chairman, do you think it is important, and can we spell out that if we are doing this by a matter of grace, and by courtesy, should we, and would you recommend that we spell it out in these rules that we are considering after this time, and are we able to do that?

Mr. EDWARDS. Mr. Chairman?

Mr. MEZVINSKY. Mr. Jenner or Mr. Kastenmeier?

Mr. EDWARDS. Mr. Chairman?

Mr. KASTENMEIER. Well, if you are posing a question to me, while it is possible for us to do so, I think Mr. Doar gave the answer. That is to say, Mr. St. Clair would be here, his presence would be at the grace of the committee, if he would violate what we would consider committee rules in the proceedings, it seems to me he could forfeit his further rights to appear in behalf of the President, and the chairman would be in a position to assert that as a condition or, without necessarily it being a part of the rules.

I would just yield to Mr. Doar.

Mr. DOAR. I would agree with that.

Mr. SARBANES. Mr. Chairman?

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. May I expand? Then there is no technical objection then that if he agrees to come before this committee as counsel for the President, and we allow him that opportunity, that there would

be no technical objection for us to include that in the rules, that as a matter of grace, by his appearance before this committee, he will be bound by our rules of procedure concerning confidentiality? And if there is no objection to that on a very technical ground, then I would be prepared to submit an amendment to that effect.

Mr. EDWARDS. Mr. Chairman?

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. Mr. Chairman, Mr. Wiggins asked for an assurance from you and the ranking minority member, Mr. Hutchinson, that those rules of confidentiality adopted by this committee would apply to the hearings which will be conducted also. I did not hear any such assurance made by the two of you. I am prepared to support the amendment of the gentleman from California, if he does not get that assurance, because it does appear that the fact that the President released information which this committee would have kept confidential, that crept in a feeling which some members of this committee have, that somehow that released us from our own rules of confidentiality, which in my judgment was not the case.

The CHAIRMAN. The Chair will state, and the Chair has stated before, publicly, that the Chair feels bound by the rules of confidentiality, that the Chair understands that until the committee would release or waive these rules of confidentiality, that the Chair would be bound. And I would hope that the ranking minority member would also respond and so I give the gentleman from California my assurance in that direction.

Mr. HUTCHINSON. Mr. Chairman, I have always supported that until this committee directed otherwise, that the rules of confidentiality which we adopted on the 22d of February apply, and continue to be strong and effective and I would insist that they be so respected.

With regard to whether the President's counsel should be bound as a condition, a precedent to his appearance here, to these rules of confidentiality, I have always supposed that that would be demanded of him. I can not conceive of the committee permitting his appearance and participation except on an agreement that he too will be bound by our rules of confidentiality.

Mr. HOGAN. Mr. Chairman?

Mr. EDWARDS. Mr. Chairman, I really think we have pursued this issue long enough. The issue has been cleared, and I wonder if the gentleman from California, Mr. Wiggins, will withdraw his amendment?

Mr. WIGGINS. Yes. If I can be recognized, and I have the assurance now of the ranking member and the chairman, and hearing no objection from the members, I take it we all agree that we shall be bound by these rules of confidentiality with respect to material to which we have access as a result of the adoption of these rules. And accordingly, with that understanding, Mr. Chairman, I would withdraw my motion.

In doing so I want to make an observation, however, that there is a hole in this whole thing. I am told that for the first time the regular committee staff, as distinguished from the staff of the so-called impeachment committee, will have access to this information as well. And it is not my understanding that those rules applied to the regular

committee staff. And if so, I take it to be only an oversight that we ought to address ourselves to.

The CHAIRMAN. Only as designated, however, by the chairman and the ranking member.

Mr. WIGGINS. And I am sure you will impose those rules on them.

Mr. MCCLORY. Mr. Chairman, could I——

Mr. WIGGINS. And I will withdraw my motion, and I would ask unanimous consent to do so.

The CHAIRMAN. Without objection, the motion is withdrawn.

Mr. MCCLORY. Mr. Chairman, it is on the same issue, but there is a point that I would like to make. As you know, Mr. Chairman, I did direct a letter to you earlier proposing that the rules of confidentiality be amended to include counsel for the President. That proposal was made on the basis that we would receive tapes from the President, and that they would be received under our rules of confidentiality, with the right of the President's counsel to participate in the screening or in the elimination of such irrelevant material as might not be appropriate for the impeachment inquiry.

That, of course, appears to be moot because the tapes have not been delivered, as I hoped they might be. Nevertheless, I would hope that if we receive additional materials that there might be some kind of an understanding. For instance, if we are able to receive some of the memoranda or other materials of that nature as a result of conferences between counsel, that it might be understood that that kind of participation by counsel for the President would be appropriate as well under our existing rules where our counsel and the chairman and the ranking minority member are limited in the first instance so far as the secret material or private material is concerned.

The CHAIRMAN. I think the gentleman is addressing himself to a matter that is not properly a consideration at this time. I think that that is a matter that for the present is moot, although I think we ought to address ourselves to it in the evenuality that we may be provided with further materials and there are further requests.

But, at the present time, I think I want to recognize the gentleman for a further amendment.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I have an amendment No. 4 which would be an additional paragraph G on page 4 of the rules.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment offered by Mr. Dennis of Indiana.

Resolved that the following additional paragraph be added to the Impeachment Inquiry Procedures of the Committee on the Judiciary.

G. Members of the committee shall have the right to question witnesses appearing before the committee. Such questioning shall be under the 5-minute rule, and time may be extended by unanimous consent, by the ruling of the chair, or by majority vote of the committee.

Mr. DENNIS. Mr. Chairman.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, in this amendment I really assert an inalienable right, because I believe every member of this committee by being a Member of the Congress, and a member of this committee, does have an inalienable right to question witnesses, which could not

be taken away from him, so perhaps in that sense the amendment is not necessary. But, I feel that it is advisable to reiterate a sound principle once in a while and that this is such an occasion, and I certainly do not think that any member here wants to vote against this amendment and deny for himself that right, or that would be a catastrophe.

Now I feel that the right should be exercised with restraint. I do not think members should feel a compelling urge to question, unless they have something they really want to ask and think it material. And I also think they ought to wait until counsel is finished, because quite often counsel will take care of their needs if they will just give them a chance. But, I do think it is wise to reiterate the fact that in the end, if counsel have not satisfied us, and we have some reason, that we do have the right to participate, as has always been the case throughout history, and in many impeachment inquiries, and all other inquiries. And I assert our right again in this amendment.

Mr. SMITH. Would the gentleman yield?

Mr. DENNIS. I yield to the gentleman.

Mr. SMITH. I would like to say I support the gentleman. The rules of procedure as written do not specifically give that right and while the gentleman I am sure is correct that committee members always have this right, I think it is a good idea to spell it out in the rules, so that there will be no question about it.

Mr. DENNIS. I think the gentleman, and I yield to the gentleman from Wisconsin, if he wishes.

Mr. KASTENMEIER. Well, Mr. Chairman, I appreciate the gentleman from Indiana yielding to me.

Actually, I only oppose the amendment because, and the gentleman himself has said it, it is unnecessary. It is a restatement, as I understand, of the rules of the House, and unless the subcommittee undertook to attempt to modify that rule, which I think would be very hard to do without going to the Rules Committee, or through some other procedure, that rule has guaranteed to each member that right, and to merely state it in what we have tried to keep relatively simple in terms of procedures is really unnecessary, and cluttering up something. As members of this committee, we know that in hearings we are entitled to 5 minutes. There is a 5-minute rule which will apply.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers?

Mr. CONYERS. Briefly, I oppose the motion for yet another reason. It is not really accurate for us to say that this right is so inalienable. It is curtailed frequently, both on the floor and in committee. We have already done it at least once today here, and there may be occasions when we may not be able to afford 38 members 5 minutes to examine one witness, or extended by unanimous consent. So, why should we kid ourselves or the record otherwise.

I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Indiana.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?
[Chorus of "noes."]
The CHAIRMAN. The noes appear to have it.
Mr. DENNIS. Mr. Chairman, I will ask for a rollcall. If this committee really wants to vote that they do not have the right to do this, let them do it.
The CHAIRMAN. The clerk will call the roll. All those in favor of the amendment please say aye and those opposed, no.
The CLERK. Mr. Donohue.
The CHAIRMAN. Mr. Donohue, proxy, no.
The CLERK. Mr. Brooks.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. No.
The CLERK. Mr. Edwards.
[No response.]
The CLERK. Mr. Edwards.
Mr. KASTENMEIER. I have his proxy. Proxy, no.
The CLERK. Mr. Hungate.
Mr. HUNGATE. No.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. CONYERS. No by proxy.
The CLERK. Mr. Flowers.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Mann.
Mr. MANN. No.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. No.
The CLERK. Mr. Seiberling.
[No response.]
The CLERK. Mr. Seiberling.
[No response.]
The CLERK. Mr. Danielson.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Drinan.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
[No response.]
The CLERK. Mr. Owens.
The CHAIRMAN. Proxy, no.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. No.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. COHEN. Proxy, aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. HUTCHINSON. Proxy, no.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. HUTCHINSON. Proxy, no.
The CLERK. Mr. Rodino.
The CHAIRMAN. No. the clerk will report the vote.
The CLERK. Ten having voted aye, 26 voting no.
The CHAIRMAN. And the amendment is not agreed to.

But, the Chair would like to state that the Chair continues to adhere and will adhere, and must adhere to the rules of the House. And the rules of the House and the rules of the committee provide for the members to be protected at all times and they will have that right under the 5-minute rule.

Mr. DENNIS. Mr. Chairman?

Mr. MCCLORY. Mr. Chairman?

Mr. DENNIS. I appreciate that assurance from the Chair, and I am very glad to have it. And I certainly believe that that right exists, as I said at the beginning. But, I also say that I never expected this committee to sit here and vote that it was a nonentity. I really am surprised.

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, I have an amendment which I wish to offer. It was an amendment designated by, which Mr. Railsback intended to offer, and he is not here, and I agreed to offer it in his stead.

The CHAIRMAN. The clerk will read the amendment.

Mr. MCCLORY. On page 2, paragraph B.

The CLERK [reading]:

On page 2 in paragraph B, after the word "evidence" and in lieu of the period insert the following: "after opportunity for the following has been provided."

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, this is, I am sure, just a clarifying amendment to make absolutely certain that following the presentation to the committee by the committee counsel, and the question is asked to whether the desires to receive additional evidence, will be determined after these other things have occurred, which are delineated under paragraph B. It really adds the words "after opportunity for the following has been provided." In other words, the committee will determine question of additional evidence after those things have occurred.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I have not had an opportunity to assess the effect of this amendment. I would ask the counsel at the table if they have any objection, or whether they see any adverse results of accepting this amendment?

Mr. DOAR. No, there is no objection, and there is no adverse result in our opinion.

Mr. JENNER. We think it is inherent, but it might be spelled out.

Mr. KASTENMEIER. In which case, Mr. Chairman, on behalf of the subcommittee, I would have no objection to accepting the amendment.

Mr. MCCLORY. If there is no objection, Mr. Chairman, I move the adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[No response.]

The CHAIRMAN. The ayes have it and the amendment is agreed to.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I have an amendment No. 5.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment offered by Mr. Dennis of Indiana.

Resolved that the following additional paragraph be added to the Impeachment Inquiry Procedures of the Committee on the Judiciary.

H. The following individuals (because of their apparent information regarding the alleged Watergate "coverup," and particularly regarding the alleged payment of $75,000 to William O. Bittman, attorney for Howard Hunt, allegedly on the evening of March 21, 1973) shall be called before the committee as witnesses, and shall be examined and cross examined by the committee and its counsel, and by counsel for the President of the United States. John Dean, H. R. Haldeman, John Erhlichman, John Mitchell, Paul O'Brien, Fred LaRue, Manyon M. Millican, the person who allegedly went out to dinner with LaRue and Millican on the evening of March 21, 1973, William D. Bittman.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I reluctantly make a point of order against the amendment of my friend from Indiana, Mr. Chairman. The amendment is not in the nature of a procedure of the committee, but rather a direction in terms of specifics of individuals to be called to testify. That list of individuals on the factual allegations in connection therewith is cited in this proposed amendment and is not procedural in character. It has to do with the investigation, the policy matters with respect to judgments as to what individuals are called, and this is not a matter of the procedures of the committee. I respectfully make a point of order against the amendment.

Mr. DENNIS. Mr. Chairman, may I be heard on the point of order?

The CHAIRMAN. The gentleman is recognized.

Mr. DENNIS. I thank the Chairman.

Mr. Chairman, we are dealing here with the paper headed "Impeachment Inquiry Procedures." Now, I submit that the question of how we proceed, what type of evidence we call, whether oral or otherwise, what witnesses we call while, of course, it will lead to substance, definitely deals with our procedure from this point forward. And, therefore, it is relevant and appropriate here.

I point out further that whether or not it is ruled germane here for this purpose, as I submit that it is, that this is a matter of the highest importance which has got to be faced, and faced at an early date if we are to finish this inquiry with any reasonable speed.

I point out further that this is a matter which goes right to the crux of this whole inquiry. It is a two-edged sword. It could benefit the President of the United States. It could damage the President of the United States. But, I have got to vote here, and you have got to vote here, and I feel that we have got to have these people before this committee in order to do our job here. And whether it is satisfied on a technical question tonight or not, it is not a subject which ought to be set aside on a technical basis. It is a matter that we ought to decide in this committee and do so promptly, because I cannot imagine conducting this inquiry without calling these individuals.

The CHAIRMAN. The Chair is prepared to rule on the point of order, and the Chair recognizing the interest of the gentleman from Indiana in wanting to assure that all pertinent information and testimony comes before this committee, knows that this right will be protected when and if there is occasion and there is justification within the purview of the committee to call the individuals for testimony. This relates to particular instances, specific items that may develop during the course. They may never develop. The rules of procedure are to relate to general rules as to the conduct of the inquiry generally, and not to specific situations. And, therefore, I sustain and rule in support of the point of order, and rule against the gentleman from Indiana.

Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I have an amendment at the desk and ask the Clerk to read it.

The CHAIRMAN. The clerk will read.

The CLERK [reading]:

Amendment offered by Mr. Hutchinson.

At the bottom of page 4, add the following new paragraph:

"H. For purposes of hearings held pursuant to these rules a quorum shall consist of 10 members of the committee."

Mr. HUTCHINSON. Mr. Chairman.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. The rules of the House permit standing committees to determine a quorum for hearing purposes as a number less than a majority of the full committee. I recall during the confirmation hearings in connection with the nomination of the Vice President, Mr. Ford, that on one evening particularly, we found that it was very difficult to maintain a quorum of the full committee here. That is to say, more than half of the 38 members. Even today. And, of course, this is a meeting, and so this is not a very proper illustration. But, even today at one time in this meeting there was on the floor of this committee a simple quorum of the comimttee. If one more member had absented himself, then it would have been in order for any member present to make a point of order against a proceeding, because of a quorum not being present.

As I say, when we look at hearing procedures in the Congress, it is quite common to have a quorum be defined as a number less than a full majority of the committee.

The CHAIRMAN. Would the gentleman yield?

Mr. HUTCHINSON. Yes.

The CHAIRMAN. I would like to commend the gentleman for being alert to what I think is a necessary amendment to the rules of procedure, because it would be in the interest of expediting this inquiry to assure that we can go forward with less than the quorum that is now required of the committee as such. And I think that the gentleman's amendment, as a rule of procedure, would not only be in order, but would be absolutely necessary and essential and I support him wholeheartedly.

Mr. HUTCHINSON. I thank the chairman for his support.

The rationale for choosing the number 10 in this proposal was that in our subcommittee structure we have either 9 or 10 members in a full committee, and I think that for hearing procedure purposes, that if we have the equivalent of a full subcommittee on the floor at any time, that that would be sufficient. Now, I do not suggest that members are going to be absenting themselves unnecessarily in the midst of these very important hearings. I am not suggesting that at all. But, I am suggesting that we have, through experience, we already know that it is very possible that there can become times when you do not have 20 members on the floor. And to reduce it down to 10, I think, is very reasonable.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Very briefly, I should add that the subcommittee did not presume to determine what number less than the full quorum should constitute a quorum for purposes of these hearings.

Personally, I find the gentleman from Michigan's proposal that 10 constitute a quorum completely acceptable. We have all been through the experience at the floor proceedings, and I would hope that the full committee can accept his amendment.

Mr. MAYNE. Mr. Chairman?

Mr. MANN. Mr. Chairman?

The CHAIRMAN. Mr. Mann.

Mr. MANN. Mr. Chairman, I speak in opposition to the amendment. We are entering the evidentiary or factfinding stage of this inquiry, and to even consider the possibility that less than half of the jury should be, or a quorum, or less than one third of the jury should be a quorum for the receipt of facts, to me, if such a situation occurs, then the committee should not be sitting and receiving evidence. I feel that a simple majority quorum as provided by the rules is the better part of wisdom, and I would be confident that the committee will be able to fill that quorum.

The CHAIRMAN. Would the gentleman yield?

Mr. MANN. Yes.

The CHAIRMAN. The gentleman recognizes that if this inquiry were ever to reach the stage that articles of impeachment were voted, and the articles would be considered by the House, that the same rules would apply as to what constitutes a quorum under the impeachment proceedings in the House and it seems to me that if the House has not provided otherwise, and that we do know that the Constitution does provide for the question of impeachment, and the Founding Fathers did not see it in their wisdom to do other than to still maintain that a quorum is what is necessary to conduct the hearings, and at that stage, until the vote is reached, that that would be a majority of the House, and then it would seem to me that in the interest of expeditiousness, expedition, we ought to adopt this amendment.

Mr. WIGGINS. Mr. Chairman?

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I oppose the amendment. I am not at all persuaded that expedition is the highest value here that we ought to consider. I rather think all of us would be very derelict in our basic responsibility if we did not recognize that the role of this committee in the impeachment proceeding is unique and it imposes an almost awesome responsibility upon us. And simply to argue that 10 of our number is adequate to listen to the evidence in a matter of this importance, I find to be repugnant. Indeed, I thought that perhaps my friend from Michigan would suggest that a greater number than one-half would be necessary to maintain a quorum in this case, rather than less.

I suppose I could tolerate a majority, but I cannot tolerate less than one-third for the purpose of receiving this evidence and ruling thereon. And I therefore oppose the amendment.

Mr. DENNIS. Will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from Indiana.

Mr. DENNIS. I would like to associate myself with the remarks of the gentleman from California and the gentleman from South Carolina.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I simply wanted to oppose the amendment with these other people that articulated so well, and I do not think it is necessary for me to repeat it.

The CHAIRMAN. Mr. Mayne.

Mr. MAYNE. Mr. Chairman, I thank the chairman for yielding, and I really was not very much opposed to this amendment until I heard

our distinguished chairman's argument, which seems to me to be completely unacceptable, unless I do the chairman an injustice. It seems to me that he is suggesting that we should rely on the full House, which would have the protections of the regular quorum to correct any mistakes which less than a regular quorum would make here in the committee. I believe we in the committee have a responsibility to decide this question of whether or not impeachment lies rather than to assume that the committee will take any such action, and then rely on the full House to correct our mistake.

The CHAIRMAN. Will the gentleman yield?

Mr. MAYNE. I am happy to yield to the chairman.

The CHAIRMAN. The Chair did not mean to suggest in any way that we were going to rely on the full House to protect this committee. This committee can, I am sure, do what is just and will do what is right and will protect this inquiry as to its fairness. But, I would, I would call the attention of the gentleman from Iowa to the fact that this inquiry could have gone forward, if many members would have a mind to have it go forward with whatever number might have been designated by the Chair, and a committee of 7, and this has happened in the past where recommendations have been made with a committee of 7 members, of 11 members, and I think the highest was 12 members when impeachment was considered. And I think, therefore, that while this may be an inquiry concerning the possible impeachment of the President, it would seem to me that we could still go forward and be deliberate about it, and yet be expeditious with 10 members.

Mr. MAYNE. I yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding. And it is difficult to be opposed to the amendment offered by the ranking Republican, supported by the chairman, but I do think that this amendment flies in the face of the direction that counsel has been moving in the last few years since the recent legislative Reorganization Act, I think of 1971, where the record votes in committees are now a matter of record, and a lot of other inducements to members being present and structured in that legislation. And if I could address myself to the chairman's latest comment, of course the fact is that we do not have a subcommittee of 7, or 9, or 11. We have 38 that are totally responsible, and I for one think we have waited a long time for this presentation, and that we should plan to be here.

Mr. HUTCHINSON. Will the gentleman yield?

Mr. FISH. Certainly I yield.

Mr. MAYNE. I yield.

Mr. HUTCHINSON. I would like to remind the committee that this proposal that I have offered does not prevent any member of the committee from coming and being here, and the fact of the matter is, we expect everybody to be here most of the time. But, it has been our experience, it was our experience in the Ford hearing, that at one time there we almost had to discontinue hearings that day, or that evening, because we could not maintain quorum. We just had a bare quorum for a long time, and we were very apprehensive that somebody was going to leave.

Now, there is one other argument or matter that I want to bring to the committee's attention, and that is this: I am informed that the Supreme Court has held, the Federal courts at least have held, that in a

legislative hearing where less than the stated quorum is present, you can state whatever amount constitutes a quorum, but if there is less than the stated quorum being present, then the courts would not enforce perjury against a witness who testified before a committee with less than the stated quorum. In other words, if you want to maintain, if you want to say, say in order to have this hearing legally constituted, you have to have 20 members of this committee right on this podium at all times, then that is all right. But I am inviting your attention to the fact that it is at all times, and sometimes you might be embarrassed by it.

The CHAIRMAN. The gentleman's time has expired.

Mr. KASTENMEIER. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it.

Ms. HOLTZMAN. Rollcall on that, Mr. Chairman.

The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll. Those in favor will please respond by saying aye, and those opposed, no.

The CLERK. Mr. Donohue.

The CHAIRMAN. Aye by proxy.

The CLERK. Mr. Brooks.

The CHAIRMAN. Aye, proxy.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

The CHAIRMAN. Proxy, aye.

The CLERK. Mr. Waldie.

Mr. CONYERS. No, proxy.

The CLERK. Mr. Flowers.

The CHAIRMAN. Proxy, aye.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

The CHAIRMAN. Proxy, aye.

The CLERK. Mr. Drinan.

The CHAIRMAN. Proxy, aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.
Ms. JORDAN. No.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
The CHAIRMAN. Proxy, aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. No.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. COHEN. Proxy, aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. No.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. No.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. No.
The CLERK. Mr. Moorhead.
[No response.]
The CLERK. Mr. Moorhead.
[No response.]
The CLERK. Mr. Maraziti.
Mr. MARAZITI. No.
The CLERK. Mr. Latta.
[No response.]
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The clerk will report.
The CLERK. Nineteen voted aye, seventeen have voted nay.
Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. The amendment is agreed to.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne?

Mr. MAYNE. I would like to state that I was persuaded by the eloquent statement of the gentleman from Michigan, Mr. Hutchinson.

The CHAIRMAN. There being no further amendments before the Chair, the question now occurs on the rules and procedures as amended,[1] and will all those in favor of adopting the rules of procedure as amended, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[No response.]

The CHAIRMAN. The ayes have it.

Mr. HOGAN. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. With reference further to the discussion about confidentiality, would the Chair advise me if the rule of confidentiality prohibits the majority and minority counsel from making speeches on the subject of impeachment and engaging in off the record discussion with representatives of the media?

The CHAIRMAN. The rules of confidentiality have already been stated, and they govern the members of the staff as well.

Mr. HOGAN. Well, would the chairman respond to my inquiry? May the minority and majority counsel make speeches on the subject of impeachment?

The CHAIRMAN. The minority and majority counsel could not respond, except here, and those are the committee's rules on confidentiality, and they will be adhered to.

Mr. HOGAN. Are they not able to make speeches on the subject of impeachment?

The CHAIRMAN. Outside?

Mr. HOGAN. Yes, outside of the committee room?

The CHAIRMAN. I do not know that anyone is bound outside of the committee room to make any speech that one might make. That would be impeding the right of a person's freedom of speech.

Mr. HOGAN. Well, talking about what goes on here, might be rules——

The CHAIRMAN. The rules of confidentiality, if I might reply to the gentleman, will relate and refer strictly to the matters that are discussed here, and to those things that are under consideration and relate to the rules of confidentiality. Beyond that, they do not relate.

And there being no further business before the Chair, the Chair would declare the meeting adjourned.

[Whereupon, at 6:15 p.m., the committee was adjourned.]

---

[1] See "Appendix VI.—Impeachment Inquiry Procedures," in book III, "Impeachment Inquiry."

IMPEACHMENT INQUIRY

THURSDAY, MAY 9, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 1:05 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; and John A. McCahill, assistant special counsel.

The CHAIRMAN. The meeting will come to order. Three months ago the House of Representatives considered H. Res. 803. The resolution read as follows:

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

The House adopted that resolution by a vote of 410 to 4. We are proceeding under the mandate of that resolution.

I do not need to stress again the importance of our undertaking and the wisdom, decency, and principle which we must bring to it.

We understand our high constitutional responsibility. We will faithfully live up to it.

For some time we have known that the real security of this Nation lies in the integrity of its institutions and the trust and informed confidence of its people. We conduct our deliberations in that spirit.

We shall begin our hearings by considering materials relevant to the question of Presidential responsibility for the Watergate break-in and its investigation by law enforcement agencies. This is one of six areas of our inquiry. We expect to continue our inquiry until each area has been thoroughly examined.

First, we will consider detailed information assembled by the staff. This consists of information already on the public record, information developed in executive session by other congressional committees, information furnished by the Federal grand jury of the District of Columbia, and other information.

After today the committee will meet regularly, 3 days a week, for all-day sessions beginning next Tuesday at 9:30 a.m.

The chairman will, as circumstances dictate, be ready to notice such business meetings as may be necessary.

During the initial presentation, special counsel and minority counsel will explain and summarize the materials.

Our proceedings are governed by the rules of confidentiality that the committee adopted on February 22, and the rules of procedure adopted May 2. The committee has the power to modify or change these rules during the course of the hearings.

Some of the materials which the committee will consider have been held confidential by the staff, by Mr. Hutchinson, and myself. This material includes tape recordings of conversations among President Nixon and his key associates. We will listen to these recordings during these hearings.

After the Judiciary Committee has had the opportunity to consider this material it will decide if and when, in the national interest, this material should be made public.

The Judiciary Committee has determined that President Nixon should be accorded the opportunity to have his counsel present throughout the proceedings. Mr. James St. Clair is present today. After the initial proceedings are completed, Mr. St. Clair will be afforded the opportunity to respond to the presentation, orally or in writing, as determined by the committee. He and his assistant understand the committee's rules of procedure and the committee's rules of confidentiality, and they are bound by those rules.

Our proceedings will be conducted under the Rules of the House of Representatives. Technical rules of evidence do not apply. We are governed by the Constitution of the United States which vests the sole power of impeachment in the House.

A brief report of the day's proceedings will be issued at the end of each day's hearings.

I recognize the gentleman from Michigan, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Today the committee starts consideration of the most awesome power constitutionally vested in the House of Representatives. During the past four months this committee's impeachment inquiry staff has been assembling information under the committee's direction and counsel will now present to the committee the information assembled.

The power of impeachment is one of those great checks and balances written in our Constitution to ameliorate the stark doctrine of the separation of powers. But impeachment of a President is most drastic,

for it can bring down an administration of the Government. The Constitution itself limits the scope of impeachment of a President to treason, bribery, or other high crimes and misdemeanors.

A law dictionary published in London in 1776 defines impeachment as—

> The accusation and prosecution of a person for treason or other crimes and misdemeanors. Any Member of the House of Commons may not only impeach any of their own body but also any Lord or Parliament. And thereupon Articles are exhibited on behalf of the Commons, and managers appointed to make good their charge and accusation; which being done in the proper judicature, sentence is passed. And it is observed that the same evidence is required in an impeachment in Parliament as in the ordinary courts of justice.

That definition of the term fairly exhibits, I believe, the understanding and meaning of the founders of this Republic when they wrote into our own Constitution the sole power of this House to impeach the President of the United States. The standard it imposes is a finding of criminal culpability on the part of the President himself, measured according to the law.

I trust that the members of this committee embark upon their awesome task each in his own resolve to lay aside ordinary political considerations and to weigh the evidence according to the law. I trust that each of us is resolved during this inquiry, schooled, skilled, and practiced in the law as each of us is, to perform as a lawyer in the finest traditions of the profession.

And in the view of the enormity of the responsibility cast upon us, I trust that in the days and weeks ahead each of us will according to the dictates of his own conscience, seek the guidance of that Divine Providence which can be with us all and be everywhere for good, and which has so blessed this Nation and its people throughout our history.

The CHAIRMAN. I recognize the gentleman from Massachusetts, Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, as I understand it, the impeachment inquiry staff has received a wide variety of material which has, up until now, been subject to the requirements of confidentiality. Included in this class of confidential material are documents which have been received from grand juries as well as materials developed by other congressional committees in executive sessions.

Under the circumstances, Mr. Chairman, it is my opinion we should not make all this material public today. Therefore, I move that during this initial phase of the presentation the committee go into executive session pursuant to rule 11, clause 27 of our House rules. That rule provides that if evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, the committee shall receive such evidence or testimony in executive session.

Mr. MCCLORY. I second the motion.

The CHAIRMAN. The motion has been made and seconded.

Mr. CONYERS. May I be recognized, Mr. Chairman?

The CHAIRMAN. The motion, I might advise the gentleman from Michigan, is not a debatable motion.

Mr. CONYERS. This motion—well, point of order, Mr. Chairman.

The CHAIRMAN. The question is on the motion——

Mr. CONYERS. Mr. Chairman, point of order.

The CHAIRMAN. Since the question is not one that is debatable, the Chair will put the question to the committee. All those in favor——

Mr. CONYERS. Mr. Chairman, point of order. Mr. Chairman.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CONYERS. Is the Chair suggesting that a motion of this importance and magnitude, with no more than being stated and seconded, cannot be considered by the members of this committee gathered here for the purposes of an impeachment hearing?

The CHAIRMAN. Is the gentleman stating a point of order——

Mr. CONYERS. Yes.

The CHAIRMAN. Or is he inquiring of the Chair? The Chair has already ruled that the motion is not a debatable one in accordance with the rules of the House, rule 11, 27M, and therefore, unless the gentleman is ready to state that he has an argument to support his point of order, the Chair is ready to present the question on the motion.

Mr. CONYERS. I ask for a rollcall vote, Mr. Chairman.

Ms. HOLTZMAN. Parliamentary inquiry.

The CHAIRMAN. The lady will state it.

Ms. HOLTZMAN. Thank you.

Did I understand the gentleman's motion was to close the hearings and receive this portion in the executive session for the first phase, or only this meeting, this session, this hearing session?

The CHAIRMAN. For the initial phase of the hearing.

Ms. HOLTZMAN. I thank the Chairman.

Mr. SEIBERLING. Mr. Chairman, a point of order.

As I understand the House rules, we must vote at each session of the committee whether the committee shall be open or closed. Is that correct? Therefore, we are really only voting on today's session?

The CHAIRMAN. This, as the Chair will again state, the session that would be closed, of course, would relate to today, and at any subsequent time the Chair could entertain another motion. But, the motion that is put to the Chair at this time is a motion to close this hearing in order that we hear this initial presentation in accordance with rule 11, 27M, which suggests that where there is the possibility that any information may tend to degrade or defame that the session be an executive session. Therefore——

Mr. SEIBERLING. Well, Mr. Chairman, if I may pursue this inquiry just a little bit, it is my intention to support the motion. However, it is my understanding of the rules that at the next session of this committee, if it is to be a closed session, a similar motion will have to be made and approved and that at each subsequent session which is desired to be closed?

The CHAIRMAN. The question, the question that the gentleman is propounding suggests that we will be continuing and we are going to be continuing this hearing. We will be recessing from time to time.

Mr. SEIBERLING. But each day, I mean at each day's session, at the start of each day, a similar motion must be approved, as I understand the rules.

Mr. MCCLORY. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MCCLORY. Is it not the rule of the House that we are bound by and we do not need any motion, we do not need any action by this committee? All we have to do is comply with the rules of the House, which is what the chairman is suggesting in the action we are taking at the present time.

Mr. RANGEL. Parliamentary inquiry. Parliamentary inquiry.

The CHAIRMAN. The gentleman is absolutely correct.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. I will recognize the gentleman from New York for a parliamentary inquiry.

Mr. RANGEL. Mr. Chairman, under this motion, on the requirements of confidentiality, does the staff of the President of the United States, who are now present, are they governed by these rules?

The CHAIRMAN. The Chair has already stated that the counsel for the President and his assistant are governed by the rules of confidentiality and the rules of procedure.

Mr. WALDIE. Mr. Chairman, parliamentary inquiry.

Mr. Chairman, do I understand since there is no access on the part of the committee to the materials, do I understand that the Chair is representing to the committee that these materials do, in fact, tend to degrade or defame?

The CHAIRMAN. The Chair is stating that in accordance with the rules, all that has to be suggested in the motion is that they may tend to defame or degrade, and not that there is a finding of fact.

Mr. WALDIE. Well, may I ask if the Chair is suggesting that the materials may tend to degrade and defame?

The CHAIRMAN. The Chair is merely acting on the motion of the gentleman from Massachusetts.

Mr. WALDIE. Then may I make the parliamentary inquiry to the gentleman from Massachusetts?

Will the gentleman from Massachusetts——

Mr. DENNIS. Point of order.

The CHAIRMAN. Parliamentary inquiry will not be directed to anyone else but the Chair and the gentleman recognizes that. However, I would state to the gentleman that the gentleman has already been told that this is the rule and that there is no need that there be a finding of fact. Therefore, the gentleman's inquiry is out of order and the Chair now puts the question.

Mr. WALDIE. Rollcall, Mr. Chairman.

The CHAIRMAN. The rollcall vote is demanded. However, in accordance with the rules of the House, one-fifth of the members would have to support a request for a rollcall.

All those in favor of asking for a rollcall by record vote please raise their hands.

[Show of hands.]

The CHAIRMAN. One-fifth of the members, a sufficient number, has voted in the affirmative, and a rollcall is demanded, and the clerk will call the roll.

All those in favor of closing the hearings please say aye and all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Eilberg.
Mr. EILBERG. No.
The CLERK. Mr. Waldie.
Mr. WALDIE. No.
The CLERK. Mr. Flowers.
[No response.]
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. No.
The CLERK. Mr. Rangel.
Mr. RANGEL. No.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. No.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The CLERK. Mr. Chairman.
The CHAIRMAN. The clerk will report the vote.
The CLERK. 31 members have voted aye, 6 have voted no.
The CHAIRMAN. And the motion is agreed to. And the Chair will now announce that the committee will go into recess until the television cameras and other equipment which is not allowed, and persons not permitted during the course of the confidential hearings will be removed from the room.
[Whereupon, at 1:27 p.m. the session was recessed.]

IMPEACHMENT INQUIRY

Executive Session

THURSDAY, MAY 9, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 1:40 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Joseph A. Woods, senior associate special counsel; Bernard W. Nussbaum, senior associate special counsel; Richard Cates, senior associate special counsel; Evan A Davis, counsel; Fred H. Altshuler, counsel; Robert J. Trainor, counsel; Stephen A. Sharp, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order.

While the books are being distributed, the Chair would like to first welcome Mr. St. Clair, counsel to the President. And Mr. St. Clair will be given an opportunity to introduce his assistant to the committee. I would also ask Mr. Doar to present to the committee the other members of the staff whom the committee may not easily identify or recognize.

I would like to state, first of all, that, Mr. St. Clair, I am sure that you recognize that under the rules of confidentiality our committee members are precluded from discussing any of the materials that are confidential to it, even with members of their own staff, and this has been a rule that has been adhered to.

The committee prides itself on having been able to retain its confidentiality, and I would hope that we recognize, of course, that the counsel is counsel to the President and must communicate with the President, of course, and I am sure Mr. McCahill, who is your assistant, does. But, I would hope that Mr. St. Clair recognizes that he will be requested and will be expected to comply with the rules of confidentiality insofar as those materials are concerned.

Mr. ST. CLAIR. I do, Your Honor. Mr. Chairman, excuse me.

The CHAIRMAN. Thank you very much.

Mr. ST. CLAIR. I would like to introduce my associate, Mr. James McCahill, for whom I will vouch will comply with the rules of this committee.

The CHAIRMAN. Thank you very much.

And Mr. Doar, will you kindly first present the members of the staff. I think that we have not had an opportunity to meet each of them that is here now.

Mr. DOAR. Mr. Chairman, sitting with me at the counsel table today is, on my left, Mr. Evan Davis, and behind, the committee knows Joseph Woods, Fred Altshuler, Robert Trainor, Bernie Nussbaum, Richard Cates, and Steve Sharp.

These members of the staff will be with us today and assisting in the presentation.

The CHAIRMAN. Mr. Jenner?

Mr. JENNER. Thank you, Mr. Chairman.

Mr. Doar has introduced the members of our staff as well at the same time.

The CHAIRMAN. Thank you very much.

And the Chair would also like to state that during this initial phase of our presentation, and in accordance with the rules of procedure, the counsel, Mr. Doar and Mr. Jenner, will make their presentation. And during this time there will be no interruptions. The presentation will be made until it is completed. I would hope that the members recognize that this is in the interest of orderly and more efficient procedure.

Mr. Doar, will you kindly proceed.

Mr. DOAR. Mr. Chairman, members of the committee, first I would like to take a few minutes to explain to you the notebook procedure or method that we are going to use to help the committee examine the materials that have been assembled by the inquiry staff during the past 4 months. The first notebook that I would like to call your attention to is an index to the investigative files. Under the rules of the committee, this index is made available to the committee members, but to no one except the committee members.

For that reason, Mr. St. Clair did not receive this notebook. This index lists in an organized way all of the material which the committee staff has assembled. I should say that we had to cut off several days ago with respect to indexing, and so I cannot represent to you that it is 100 percent current. It is not. But, we will be supplementing this index for you at intervals during these proceedings.

This index is divided into five sections. And on the initial page of the index there is an explanatory section explaining how it is to be used. Now, it is from this index that the committee members could see what material we have presented to the committee, and what material we have in the files that has not been presented. For example,

the documents and testimony related to the six areas of investigation are subdivided so if you wanted to look, for example, and to see what materials we had on agency practices, you could go to a section in the book, in the index to agency practices, and run through that with respect to all of the materials that we have collected over in the library. The same is true with respect to the other areas under investigation.

We have obtained these materials from the Senate select committee principally, from other congressional committees, from the Central Intelligence Agency and from the executive branch departments and from Federal agencies.

The second section deals with materials which we have received from the White House. This includes Presidential tapes, White House files regarding political matters, ITT, dairy price supports, the activities of the plumbers, the files received from the executive branch agencies through the White House. It also includes certain handwritten notes of, for example, the President and H. R. Haldeman for meetings on particular days.

The third section deals with court transcripts.

The fourth section deals with Senate select committee public testimony. In that regard we have arranged to have all 9 volumes of the Senate select committee public hearings, and these 13 volumes distributed to you at your offices so that you would have that available. It also includes the executive session testimony before congressional committees other than the Senate select committee.

We will have, members of the committee, two or three persons available at all times at the office who can explain to you exactly how this index is to be used; or if you have any questions about it, so that any time you have a question, if you call Barbara Fletcher, we will have people available to answer your questions and make the material available, and provide ready access to anything that we have in the files at whatever time any member of the committee decides to examine it.

Mr. SEIBERLING. May I ask a question at this time?

The CHAIRMAN. No. There will be no questions asked. The proceedings will continue uninterrupted.

Otherwise we are not going to have an effective, orderly proceeding. So the gentleman will defer his question.

Mr. SEIBERLING. Does this include questions as to whether this is subject to the rules of confidentiality?

The CHAIRMAN. We stated that these are materials that are subject to the rules of confidentiality.

Mr. SEIBERLING. Thank you.

Mr. DOAR. Without turning to the notebook for a moment, to discuss the content of the notebook, I would like to explain just the way the notebooks are organized. In the beginning of each notebook is a set of paragraphs, set of statements of information, detailed in paragraph form, covering the material, evidentiary material covered in the notebook. For example, in this notebook today there are 20 paragraphs, and each of the paragraphs contains annotations which refer to testimony, memorandums, or documents that establish or tend to establish a statement of information contained within a paragraph. And then these are all keyed to numbered paragraphs.

At the start of every evidentiary paragraph, the statement of information is repeated so that you don't have to turn back. If you are more comfortable taking the first part of the notebook and keeping it separate and adding to it the additional paragraphs as we proceed through the remaining books, that will not handicap you in using the large notebook at all because you will have the same statement of information at the head of each section.

For example, section 1, section 2, section 3, and so forth. Each paragraph, members of the committee, and it is annotated through a decimal system, 1.1,[1] 1.2, 1.3, 1.4, to testimony and to documents that are found behind the paragraph 1 or the Roman numeral or the number 1, and the 1.2, as you can see, and 1.3 is typed in, in the markers that divide the subsections.

That briefly is how we would propose to organize the initial presentation.

Next Tuesday we will be giving to you two notebooks that have, I think, 55 paragraphs, and included in that there will be, I believe, three times when we will ask the committee to listen to recorded conversations. The following day there will be one or two more books, and there will be a number of recorded conversations.

That would be on Wednesday of next week.

At the time that the recorded conversations are played, when we come to that point, because as I say, what we do here is approach this chronologically, and we start with December 2, 1971, and we run forward from December 2, 1971, in one phase of our initial presentation, and ultimately we will reach May 9, 1974.

There will be a notebook with respect to the whole question of the tapes and the tape recording system that was installed at the White House.

That briefly is the way we would approach each day's presentation. And I think that as you get into the books, that if you have any questions about them, members of the staff, after the session or between sessions, will be available to answer those questions and explain any particular point, look into further things about which you may have a question.

And now, prior to going into the book, I thought it might be useful for the committee if I summarized certain background information.

And I have prepared a memorandum here called "Background Information," and with your permission, I would like to summarize it briefly.

On January 20, 1969, Richard Nixon was inaugurated as the 37th President of the United States. On that day, 81 persons were sworn in as members of his staff. H. R. Haldeman was appointed as Assistant to the President. John D. Ehrlichman was appointed counsel. From that day until May 19, Mr. Haldeman, who worked with President Nixon since 1956 in the political campaigns, acted as President Nixon's chief of staff. He was in charge of the White House operation. He worked directly for the President in implementing his decisions and directions. He directed the activities of the appointments secretary, the White House staff secretary. He received copies of memorandums and letters written by senior staff assistants to the President. He established

[1] NOTE.—The tab numbers cited throughout the three volumes of executive sessions refer to paragraphs in previously printed publications of the Committee on the Judiciary entitled "Statement of Information" consisting of 12 books containing 21 separate volumes and "Statement of Information Submitted on Behalf of President Nixon," 4 books, all released by the Committee on the Judiciary during July and August, 1974.

and approved, subject to the final approval of the President, of course, the White House budget. He had no independent schedule. His schedule was that of the President.

During the reelection campaign, the President's campaign organization reported to Mr. Haldeman, and the reporting method was through his assistant, Mr. Strachan. We received from the White House a number of so-called political matters and memorandums that we will call to the committee's attention, some of them today. And Mr. Haldeman would review these memorandums and take action on them as he saw fit, implementing President Nixon's direction in the final analysis.

Now, Mr. Haldeman had a number of people working for him. He had two young men, a man named Lawrence Higby and Gordon Strachan who were really what you might call his special assistants. Bruce Kehrli was also directly under Mr. Haldeman, who operated what was known as the staff secretary system in the White House.

President Nixon is a very disciplined President. He likes order and his system of management of the White House clearly reflects that. That will be apparent, members of the committee, as you go through these hearings.

As I say, Gordon Strachan became Mr. Haldeman's special assistant. I have heard it said that every President would want a H. R. Haldeman, and every H. R. Haldeman would want a Gordon Strachan.

The next man on the page is Alexander Butterfield. Alexander Butterfield went to UCLA with Mr. Haldeman. I think they were in the same class. Their wives were good friends and fraternity sisters at college. Mr. Butterfield was an Army-Air Force Colonel in Australia when President Nixon was elected and he received a call from the Hotel Pierre, I believe, in New York and was asked to join the administration as Mr. Haldeman's right-hand man. And he joined the administration on the first day, January 21, 1969.

Initially he served as Mr. Haldeman's right-hand man. But then in November 1969, he took the job of really managing President Nixon's daily schedule. Not his schedule for 2 weeks in advance, but his schedule on a particular day. You all, I am sure, know who Mr. Butterfield is. He is the man who testified about the fact that there was a tape recording system installed and operative in the Oval Office and in other offices of the White House. This system was, as he explained it, was a voice activated system, which means that whenever one person talked, within the room, that this recording, the tape recording system went on and recorded that conversation. That was true except for the Cabinet Room where there was a control on the system.

There was a control in Mr. Butterfield's office and there was a control beneath the desk where President Nixon sat in the Cabinet Room. That is my understanding. So, in the Cabinet Room that tape recording system could be turned on and off. But, with respect to the other places where the system was established, it was voice activated and it ran all of the time.

There were two tape recording machines installed in a room I believe in the basement of the Executive Office Building. And these flipped from one to the other on a time-activated system, so that if you ran one 6 hours, not 6 hours of conversation, but 6 hours of time on one tape recording, it flipped over to the other tape recording and ran for the next 6 hours.

It did not flip at the end of the time when the tape ran out but it rather flipped at the end of a particular time period.

Mr. Butterfield was one of the few people that was familiar and was aware of the tape recording system and is prepared to testify that on several occasions that he checked it to establish that it was operative. Mr. Butterfield reported to Mr. Haldeman. He functioned as Mr. Haldeman's deputy in handling the flow of paper and people in and out of the President's Office.

Mr. Butterfield submitted his resignation at the close of President Nixon's first administration and his resignation was accepted and he was appointed thereafter as Administrator of the Federal Aviation Administration, where he now holds that position.

Dwight Chapin, who had known Mr. Haldeman previously, had worked for President Nixon 2 years before the 1968 election, joined the White House in 1969 and he served as President Nixon's appointments secretary. What he really scheduled was not the daily schedule, but the schedule for the following week or 2 weeks. He was in charge of what was called in the White House the big trips. That is the trips where President Nixon went out of town, and he reported again directly to Mr. Haldeman, and at times to the President. He left the White House and he entered private business in February 1973.

Stephen Bull joined the White House and worked under Mr. Chapin in the scheduling office, and he then in 1973 was appointed a Special Assistant to the President, and assumed additional responsibilities for implementing his schedule, and is still working for President Nixon. Stephen Bull is the man who sits outside of President's Nixon office, the Oval Office, and ushers people in to see President Nixon for his daily appointments.

Hugh Sloan joined the administration on January 20, 1969. He worked under Chapin planning the President's appointments and travel. All of the President's invitations came to Mr. Sloan. His office was in the Executive Office Building and he would review and, of course, have to prepare regrets on most of the invitations, and then he helped coordinate travel. He left the White House in March 1971 to join the President's reelection campaign organization. And then he resigned as treasurer of the Finance Committee To Re-Elect the President on July 11, 1973.

John Dean was hired by Mr. Haldeman as counsel to the President in July 1970. He succeeded John Ehrlichman as counsel, but within the White House structure he reported to Mr. Haldeman. And he assisted Mr. Haldeman in gathering information on political matters of interest to the White House. On certain domestic matters Mr. Dean reported to Mr. Ehrlichman. Mr. Dean left the White House on April 30, 1973.

In October, Fred Fielding was assistant to Mr. Dean and he became his principal deputy. Mr. Klein was the communications director and, while his office was not in the chain of command as it was thought to operate within the White House structure, he reported to Mr. Haldeman, and at some time, the exact time of which I don't remember, Mr. Magruder, who came to work at the White House, he was hired by Mr. Haldeman and selected by Mr. Haldeman was named deputy

director of communications. And he went to Mr. Klein's office to manage and handle the day-to-day communications for the director communications office in the executive branch. He resigned in 1971 to work in the President's reelection campaign organization.

He later became deputy director. He was a public relations man.

The next man I want to mention to you is Herbert Porter. Porter was offered a job by Magruder, and then he worked there for a while and then when Magruder went to the Committee To Re-Elect the President, Porter went with him.

Charles Colson joined the staff on November 6, 1969. He was a special counsel to the President. It was understood that he reported to Mr. Haldeman, and he was in charge of special interest groups, the big groups, the dairy industry, the labor unions, and other large special interest political groups.

On some matters Mr. Colson reported directly to the President.

On March 10, 1973, Mr. Colson resigned.

Fred LaRue was a special consultant to the President. He served without pay. He was there sometime in early 1972 and he later resigned and went to work for the Committee To Re-Elect the President.

John Ehrlichman was appointed counsel to the President, but he reported primarily to Mr. Haldeman. On November 4, 1969, he became assistant to the President for domestic affairs and the chief assistant for all domestic matters. He advised the President on those matters. When the Domestic Council was established with a separate budget on July 1, 1970, he assumed the job of its Executive Director.

On January 20, 1973, he resigned that position. On January 20, 1973, the start of the second Nixon administration, he became one of the four general assistants to the President, along with Mr. Haldeman, and he worked there until May 19, 1973, following President Nixon's announcement of his resignation on April 30.

Now, the people on the White House staff that worked under Mr. Ehrlichman's supervision were Mr. Egil Krogh. He came to the White House as a staff assistant to Mr. Ehrlichman. He was then appointed deputy assistant to the President for domestic affairs. He reported to Ehrlichman and was in charge of or worked on law enforcement activities—the FBI, drug enforcement, internal security matters.

In 1971, pursuant to instructions from President Nixon, Mr. Krogh organized the White House special investigation unit known as the Plumbers. He worked there until December 1971. In January 1973 he was appointed Under Secretary of Transportation.

In 1969, David Young came to the White House as assistant to Henry Kissinger, and in July he was transferred, July 1971—excuse me—he was transferred to Mr. Ehrlichman's staff and assigned to work for Mr. Krogh in the Plumbers unit. He worked there until January 1973, when he was appointed to the staff of the Domestic Council. He left the White House in March 1973.

Gordon Liddy became a member of the special investigation unit in mid-July 1971. Mr. Ehrlichman authorized his appointment. He was placed on the payroll of the Domestic Council. He worked for Krogh until he resigned in mid-December 1971. He then became counsel to Creep and he moved there to become counsel for the finance

committee for Creep until he was asked to resign on June 28, 1972, when he refused to answer questions submitted to him by the Federal Bureau of Investigation.

This was in connection with the Watergate break-in.

In July 1971, Howard Hunt started to work at the White House as a consultant. He had been recommended by Colson. He initially worked under Colson's supervision. He was assigned to the Plumbers unit where he worked under Krogh. He has a background of some 20 years in the Central Intelligence Agency.

In late 1968, Edward Morgan worked for Mr. Ehrlichman to coordinate some of the President's personal affairs, and he worked on those personal affairs until he left the White House in January 1973.

On April 8, 1969, John Caulfield, former New York City policeman, detective, was hired by Ehrlichman. He worked as a liaison man with Federal law enforcement agencies and completed certain investigative assignments given to him by Mr. Ehrlichman and by Mr. Dean. In March 1972 he left the White House to work for CRP. On April 28, 1972, he accepted a position in the Treasury Department and in July 1972 he became the acting assistant director for Enforcement of Alcohol, Tobacco, and Firearms Division of the Internal Revenue Service.

The last man that I would like to call the committee's attention to today is Anthony Ulasewicz. He is a retired police detective from New York City who was authorized by Ehrlichman to work under Caulfield to carry out investigative tasks by the White House. He was not directly employed by the White House, but he received his assignments through Caulfield and was paid by Herbert Kalmbach, the President's personal lawyer, from July 1969 through 1972 and worked with Kalmbach from June 1972 through September 1972.

Now, the other background information that I wish to give the committee is President Nixon's campaign organizations that were organized for the election campaign of 1972. President Nixon and Attorney General Mitchell in March 1971 discussed the need to set up an organization independent of and outside of the Republican National Committee. Two White House assistants, Hugh Sloan and Harry Flemming were the initial staff at this citizens organization.

At Mr. Haldeman's recommendation, Magruder, the man Mr. Haldeman had brought to the White House, was reassigned in May 1971 and assumed the position of acting campaign director. In September, a second campaign organization was formed, and the Finance Committee was created with Mr. Sloan as its chairman. There was a dissolution of a couple of committees, and new names were organized, and Mr. Stans became chairman of that committee, and Mr. Sloan as treasurer.

In March 1972, Attorney General John Mitchell resigned and became campaign director of CRP. On June 30, Mr. Mitchell resigned and Clark MacGregor became the director of CRP.

The information that we will furnish to you during the course of these hearings will establish that the White House staff was active in the formation and operation of these organizations. I will say more about that as we go into the proceedings today. And there were other people operating and supervising and directing, especially Mr. Haldeman, CRP's campaign activities. That, I believe, summarizes the

background information that I wanted the committee to have, save for one fact mentioned on page 14, that beginning in 1969 Herbert Kalmbach, the President's personal lawyer, became trustee of the surplus 1968 campaign funds, which were augmented from time to time by additional contributions. These funds were maintained by Kalmbach and dispersed with Mr. Haldeman's approval. And in February Mr. Haldeman directed that the major portion of the funds be transferred to the Finance Committee for the Re-election of the President.

Now, if I could just do one or two more things before getting into the charts or into the books. I would like to just put on the board for the committee—I believe that this might help the committee members to see this. This is President Nixon, and I am setting forth what I believe the information that we will present to you will reflect was his organization of his White House staff. His chief of staff was Mr. Haldeman and under Mr. Haldeman, reporting to Mr. Haldeman, was Butterfield, who was in charge of administration and the Secret Service and some other assignments. And then Chapin and Colson. These do not mean that the chain goes up through there, members of the committee. It means that each one of these people reported to Mr. Haldeman and Mr. Dean.

Now, in addition to these people, these are Mr. Haldeman's special assistants, Higby, Strachan, Kehrli. These were young men and, as I say, special assistants to Haldeman.

Now, over here on this side, which is not relevant to this particular part of the inquiry is the National Security Council and Mr. Kissinger and congressional relations and Mr. Timmons, Mr. Harlow and several other people. And then here was a box that was for international trade and Mr. Flanigan operated that box, but in truth, he really reported to Mr. Haldeman or Mr. Ehrlichman.

But, under Mr. Ehrlichman and the Domestic Counsel was Mr. Krogh and then Mr. Morgan, the man that worked on personal finance matters for the President, and then Mr. Liddy and Mr. Hunt, and they were working in the Plumbers unit.

Now, at some times Mr. Hunt and Mr. Liddy worked for Mr. Dean or did carry out some things for Mr. Colson. But, this was the way the White House was structured, the organization, the structure.

Now, with respect to Mr. Klein or Mr. Burns, or someone like that, it has been said that those gentlemen could be gone for 60 days and the White House operation would run just the way it was run here—just the same. It was very tight, a military staff organization, directed by Mr. Haldeman under the President's direction. I think the information that we will develop will show that the President spent most of his free time with Mr. Haldeman. We do not have all of President Nixon's appointment calendars, but I think there will come strong evidence that that was the fact. Mr. Haldeman, as I say, was the implementer of the Presidential decisions of President Nixon. It was President Nixon's habit to get to work at a regular time in the morning to meet with his staff before 10 o'clock, to have appointments from 10 until 1 o'clock and then to have lunch and take a nap. And then to start with appointments about 3 o'clock until 6:30. And then he would go either to the White House or over to the Executive Office Building for dinner where he would work in his suite over at the Executive Office Bulding.

As I understand it, the Executive Office Building had a large suite of two rooms. That was again taped or set up to record conversations. And the President worked in the Executive Office Building suite on many occasions, particularly on evenings.

Now, it was at this suite that the President worked on the 15th of April when the tape ran out during the conversation that he had with Mr. Kleindienst at about 2 o'clock that afternoon. And because this system was such that it did not trigger on until 12 o'clock that night, the mechanism did not record for that period.

The CHAIRMAN. Have you a mike that you can use?

Mr. DOAR. I just have one more diagram. I will talk up in a louder voice. I apologize. I thought that it might be that the members of the committee are more familiar than I am with the White House layout around the President's office, but just for purposes of illustration, this was the Oval Office where President Nixon operated and carried on the business of the President of the United States. Stephen Bull sat out here [indicating].

Now, there was a small office over here where the President ate lunch and where he took his nap. And then here was another office. And until November 1969, Mr. Haldeman had this office. He got too busy taking care of President Nixon's daily calendar, and so he brought his friend, Mr. Butterfield down, and Mr. Butterfield had this office until he resigned from the administration.

Next to Mr. Butterfield was Rose Mary Woods and her assistant. Her name escapes me right now. And then over here was Mr. Haldeman's office. There was Mr. Higby and two secretaries were there—just outside Haldeman's office.

After President Nixon came into the White House, he remodeled the Fish Room and the Roosevelt Room and he had a conference room, as I understand it here. And then next to him was Mr. Chapin and their secretaries right here.

Now, down this hall was Mr. Harlow and Mr. Timmons, and then Mr. Kissinger had a suite over here. That was the organization of the main floor of the White House. This hall was connected up so that there was an entrance to the Oval Office. And, as I say, Mr. Butterfield had this system that he could throw the switch for the taping in the Cabinet Room. But, in the other places the system worked automatically.

I believe that there was also a system in the White House at that time that indicated where President Nixon was at all times, and that through a system of lights Mr. Butterfield could know exactly where the President was, whether he was in the residence or whether he was at the Executive Office Building, or in the Oval Office or the Cabinet Room.

That, members of the committee, is the background information I wanted to give to you this afternoon, and with your permission I would like to turn directly to book I.

Paragraph 1 presents this information to the committee.

Members of the committee, I would like to say one thing about the political matters memorandum.

The CHAIRMAN. Excuse me, Mr. Doar, might I suggest that it would be helpful to the committee members if you were to prepare for the

committee members those charts, and I think the committee members could make use of them during the course of their deliberations. Is it possible that the staff could prepare them?

Mr. Doar. Yes, we would prepare them and it may well be that the committee would want to have testimony from a witness with respect to all of this, too, at some later period. We are prepared to bring whatever detailed information is helpful, and we will do that, Mr. Chairman.

I want to apologize to the committee for the fact that they are copies, Xeroxed copies of these political matters memoranda. Now, between September 1971 or August 1971; and September 18, 1972, 28 of these political memoranda were prepared by Mr. Strachan for Mr. Haldeman. There was a memorandum on April 4 which Mr. Strachan testified before the Senate subcommittee that he destroyed after the Watergate break-in. And a memorandum prepared on March 30 and which was destroyed after the Watergate break-in. That leaves 26. We will furnish 21. The representation was made by Mr. St. Clair and Mr. Buzhardt that that was all of the documents that could be located in the White House. These are not Xeroxed copies of the originals, but they are Xeroxed copies of copies. And we asked the White House attorneys if we could Xerox the originals so that they would be more legible for the committee. And the White House was not able to locate the originals. It may be those originals—it may be that at some time during the hearings that upon a further search one or more of those political matters memoranda, the originals might be located and it would make it somewhat easier for the committee to examine the material.

As I say, these memoranda were 28 in number and they were reports to Mr. Haldeman about the campaign activities of Creep, and I would like to call or skip ahead if I could, to 5.2 in the book to indicate what Mr. Haldeman's testimony is, the evidence is that——

The Chairman. Excuse me, Mr. Doar. May I just interrupt. If it is at all possible, if you might, during the course of your presentation to the paragraphs, would it be possible for you to advise if any portions of the paragraph of information is controverted and, if so, in what respect?

Mr. Doar. Yes, I will.

The Chairman. Thank you.

Mr. Doar. I want to say to the committee that we have followed the practice with respect to documents that we present, of presenting to you the entire document, although only a portion of that document is relevant. But, all of the document is presented to you and we will either make or call your attention to the relevant portions.

With respect to the recorded conversations, we will also, except in a few instances, present the entire recorded conversation and where a part of that is not presented, that will be shown and that will be initially determined by the chairman and Mr. Hutchinson and, of course, any committee member would be free to examine the whole conversation at our office. It is only in a very few instances. But, as I say, these political matters memorandums sometimes are 8 or 10 pages long, and they are not all relevant. But they do indicate, I think, and as I say there are 28 of them, and we have not submitted them all to

you today, or I mean 21 of them, but they do indicate that Mr. Haldeman ran the 1972 political campaign.

If you look at 5.2 on page 5, and just look at Mr. Haldeman's comments to Mr. Magruder on that page, and I am referring now to 5.2, page 5, you will see that there is a check after each item. Mr. Strachan's testimony was that when Mr. Haldeman considered an item he indicated that he had given it consideration by a check in the left-hand margin. The small writing on the left-hand margin is not Mr. Haldeman's. It is either Mr. Higby's or it is Mr. Strachan's implementing decisions that had been made in response to this reporting system from Creep.

You will see under 9, Mr. Haldeman has written "no, do it in small groups."

Under 11, he has written "utterly ridiculous".

Under 13 he has written, "right".

And if you turn to the next page, and I will read it to you. "Magruder and Colson are increasingly at odds. The most recent dispute concerns the line as to whether Muskie should be personally attacked on his war stand." I will not read the whole thing. Mr. Haldeman writes "this is not acceptable. Colson is acting under expressed instructions. Tell Magruder to talk to me if he has a problem. H." H is Haldeman. The members of President Nixon's staff followed the practice of signing their memorandums with one initial. Butterfield was B. Haldeman was H. Ehrlichman was E, Strachan was S, and so forth.

Now, going back to the beginning of the memorandum and discussing the information that we think pertinent to this part of the inquiry.

On the political memorandum of December 2, Gordan Strachan reported to Mr. Haldeman on activities relating to the President's reelection campaign. In his political matters memorandum on that day, he reported that Mr. Liddy had been assigned to the reelection campaign.

You will remember that Mr. Liddy was one of the Plumbers and he was going to be general counsel. His assignment was going to be political intelligence. He was going to work with Mr. Dean on the political enemies project and he was also going to work on legal matters.

There is an indication, a reference there, to Sandwedge. That was a former, another plan that had been developed earlier by Caulfield, but Mr. Mitchell had not approved it. It had some sophisticated capability or capability for electronic surveillance, a black bag operation. It never became operative.

The paragraphs behind, if you turn now to 1.1 and you turn to page 3, and the first paragraph of page 4, at the bottom you will see where it says "John Dean" and we have just quoted in our statement of information exactly what that paragraph says. It identifies Liddy, Krogh, Sandwedge, political enemies, political intelligence and Caulfield.

The testimony in the other paragraphs—for example, if you turn to 1.2 and you look at the testimony on page 2448, just to run down that page briefly, if you see where we marked a bracket, we have tried our best to give the committee a fair and accurate picture of the testimony.

If you see that on the third paragraph, the second paragraph under Mr. Strachan's testimony, that paragraph reads:

These memorandums would summarize the information that I have accumulated from the politically active people on the White House staff, Mr. Colson, Mr. Dent, information I have accumulated from 1701 from the various State organizations, he had quite an interest.

Then if you run down further, 1701 was the Committee to Re-Elect the President. That was the shorthand word for 1701.

If you run down further there, you will see what I told you, reported to you about how Mr. Haldeman operated, where Mr. Strachan said:

Well, he would always read with a pen, and he would write his comments beside them or check the item as he read each particular paragraph. Occasionally, he would write his views on political matters memo, the paragraph that dealt with a particular subject.

Then Mr. Strachan went on that if Haldeman had a disagreement, he would send memorandums to John Mitchell, Attorney General, or on occasion to Jeb Magruder, "or make a note to me that I should contact a particular individual about something." Then Mr. Strachan would prepare for Mr. Haldeman talking papers, briefing papers, for Mr. Haldeman to use in connection with the 1972 campaign.

Now, Mr. Davis has called to my attention that on page 5 of the political matters memorandum, there is an indication that, you see there, to indicate the detail of supervision that Mr. Haldeman exercised with respect to the campaign. Mr. Magruder is over at 1701 and he received a copy of the news summary. He needs another copy for Harry Flemming and Ken Reitz.

The CHAIRMAN. Excuse me. Where are you?

Mr. JENNER. Paragraph 1.2.

Mr. DOAR. I am on 1.2, page 5—no, 1.1, page 5.

Mr. Magruder now receives a copy of the news summary. He says he needs another copy for Harry Flemming and Ken Reitz. Mr. Haldeman cancels that news summary, and Mr. Davis points out that if you go through some of the later political matters memorandum, Mr. Magruder protested and Mr. Haldeman reinstated the news summary.

I mention that only to give you an idea, as I say, of the detailed reporting and the detailed direction that came from Mr. Haldeman.

The next paragraph, paragraph 2, reports information with respect to the fact that Mr. Haldeman approved Gordon Liddy's transfer to the committee, and he approved an increase in salary of $4,000 per year which was an exception to the rule that no White House employee would receive—this is in paragraph 2. Excuse me, I'll go a little slower.

Mr. JENNER. The white insert marked 2 in the material that follows.

Mr. DOAR. This is a statement of information with respect to the fact that Mr. Liddy was transferred to the Committee To Re-Elect the President. As I say, Mr. Liddy heretofore had been a member of the Plumbers unit with Mr. Hunt, Mr. Young, and Mr. Krogh, and he moved over to the Committee To Re-Elect the President at an increase of $4,000 per year; an exception to the rule that no White House employee would receive a salary at CRP higher than he had received at the White House.

Mr. Jenner calls to my attention to tell the members of the committee that one matter that comes at issue is when Mr. Liddy went off the payroll—when Mr. Hunt went off the payroll of the White House and went over to the Committee To Re-Elect the President. On Monday, we had some materials reflecting and dealing with that matter. As I say, Hunt and Liddy worked together on a number of political matters and other matters for the White House.

The next paragraph, paragraph 2.1, is again a political matters memorandum. Again I have submitted to you the whole document. I again apologize, because you cannot read the entire Xerox, but you are able sometimes to read it.

The reference, the relevant portion is on page 5, and if you look there, page 5 of 2.1, you will see that the second sentence reads:

Liddy is paid $26,000 by the Domestic Council; Bud Krogh has been urging Ken Cole to raise his salary, but nothing happened during the freeze. Krogh talked to the Attorney General and recommended that Liddy receive an increase.

If I can make out this writing on the left hand margin, I am satisfied in saying that it appears that it was not Krogh that talked to the Attorney General, it was Liddy that talked.

"No," it says, "no, Liddy talked to the Attorney General." I think that is Higby's initial below that.

Turning now to paragraph 3, we begin to recap some matters that are already in the public domain. There is no need to go into them in any great detail. They involve the so-called Liddy plan. The first plan was discussed at a meeting in the Attorney General's office between Dean, Magruder, Liddy, and Mitchell, and the Attorney General rejected the proposal.

One point that we think, of information, that is relevant, was that the plan contemplated the use of electronic surveillance of political opponents, and other illegal activity.

There was no discussion, Mr. Davis reports to me, about the matter of illegal entries at that meeting.

The Attorney General made a point in his testimony that there was a difference between electronic surveillance and illegal entry. Sometimes you would have to have illegal entry to accomplish the electronic surveillance; sometimes you do not.

Mr. Seiberling. Mr. Chairman, I have not the faintest idea where we are.

Paragraph 3 of what?

Mr. Doar. Paragraph 2.

Mr. Jenner. It is the white sheet——

Mr. Seiberling. Could we call this tab 3 to distinguish from other paragraphs within the document?

Mr. Doar. All right, I will. Tab 3.

Now, turning to 3.1, we just set forth Mr. Mitchell's log for you. Paragraph 3.2, we set forth Mr. Magruder's testimony. On page 788, you will notice, three-quarters of the way down the page, Mr. Magruder testifying that "All three of us were appalled at the proposal."

Now, on the next, 3.2, Mr. Mitchell's testimony in which he discusses that he rejected the plan, testifies that he rejected the plan.

Then 3.4, is Mr. Dean's description of the plan.

Then we turn to tab 4. Tab 4 is the second meeting in the Attorney General's Office with respect to the Liddy plan.

I think that the information that I wish to call to your attention is that Mr. Magruder testified that the plan involved wiretapping, photography, and that there was an attempt to discredit O'Brien. Mr. Dean corroborated this.

Mr. Mitchell testified on the other hand that he violently disagreed that the Democratic National Committee should be a target. But some of the people that were at the meeting identified three targets for the electronic surveillance—Larry O'Brien's office, the Democratic Convention Headquarters in the Fontainebleau Hotel, and the office of Henry Greenspun, the editor of the Las Vegas Sun. As I say, the Attorney General denies that there was a discussion of specific targets.

At the end of the meeting, Mr. Dean said, "This sort of thing should never be discussed in the Attorney General's office."

Mr. Dean said this sort of thing should never be discussed in the office, and he should take it away and go back and get rid of it.

Following the meeting, Mr. Dean reported this to Mr. Haldeman.

Again in the paragraphs beneath tab 4, you see the proof of the fact that there was a meeting. You have the testimony of the people who were at the meeting describing what took place, the testimony with respect to the wiretapping, photography, the targets, and Mr. Mitchell's testimony that that was not discussed, that he opposed the plan.

You will see on 1612 Mr. Mitchell's testimony—this is 4.4— when he said, "The fact of the matter is that Dean, just like myself,"—I am reading on page 16.

The CHAIRMAN. Go a little slower, Mr. Doar. Otherwise, we are not going to be able to follow you.

Mr. DOAR. And now, members of the committee, on 4.4, on pages 1611 and 1612—and I am directing your attention to 1612, where Mr. Mitchell said in his second paragraph there:

> The fact of the matter is that Dean, just like myself, was again aghast that we would have this type of presentation. Dean, as I recall, was not only aghast at the fact that the program had come back again with electronic surveillance, perhaps the necessary entry in connection with it—I am not sure that entries were always discussed with electronic surveillance, because they are not necessarily synonymous. But Mr. Dean was quite strong to the point that these things could not be discussed in the Attorney General's office. I have a clear recollection of that.

Now, members of the committee, we come to 4.5, and we have the first document that we received from the grand jury.

The grand jury testimony, the grand jury material that was presented to us consisted of an index, a two-page statement, first, requesting that the materials be furnished to the House Judiciary Committee. This was the two-page statement that Judge Sirica permitted Mr. St. Clair to examine. Then there was a 50-page index. This index was divided into four sections, and within each section was a method of presentation of material, information, quite similar to the method that we are using in presenting this information to you—statements of information were contained on separate pages in this index and they were annotated to either grand jury testimony and/or transcripts of recorded conversations.

We were furnished dictabelts of the President's recollections of events of a particular day. When there was the transcript of a recorded conversation, the disk of the recorded conversation, and parts of this index referred to particular pages in the transcript.

In other words, if the subject matter of the particular paragraph related to, let us say, the payment of money, that was then annotated to pages 35 to 42, for example, of a particular transcript of a recorded conversation on a particular day.

Then, as I say, in addition to that where the testimony was cited of a witness for this committee, excerpts of testimony of witnesses before the grand jury were included; and then, finally, there were certain Presidential statements included in a section of the grand jury report.

We are going to present to the committee for its views a complete set of Presidential statements next Tuesday for your use.

Initially, we will not index them, but as soon as we are able to, we will index those by subject matter so that you can refer to particular matters that were discussed in particular Presidential statements. This material came to us in a large brown briefcase similar to the one that I was carrying here today and, as I say, it contained transcripts of 19 recorded conversations, tapes of 19 recorded conversations and testimony of grand jury witnesses. But not all of the testimony; only matters relating to the matters that the grand jury thought were relevant to this inquiry.

Some of the recorded conversations did not relate to the Watergate matter. We received recorded conversations for other periods, and that is part of the matters that will be presented to the committee.

Now, John Dean's testimony before the grand jury sets forth again his testimony with respect to the plan that was discussed, the targets, and so forth, the charts—that is, the meeting on February 4, and it is largely cumulative of the testimony before the Senate Watergate Committee.

Turning then to page 5, I would like to read tab 5 to you.

In February 1972—this is tab 5—H. R. Haldeman directed that $350,000 in cash in campaign funds be placed under his unquestioned personal control. The money was picked up by Gordon Strachan, Haldeman's assistant, in early April 1972. Strachan, in turn, delivered it to Alexander Butterfield, a deputy assistant to the President. Butterfield delivered the money to a personal friend for safekeeping. This fund was maintained substantially intact until after the November election.

The committee will recall that Butterfield was Mr. Haldeman's friend, the Air Force colonel who came from Australia, who took the job as No. 1 assistant to Mr. Haldeman, then moved into the office next to President Nixon and supervised and coordinated President Nixon's daily schedule.

Strachan brought the money over to Butterfield at his office. They counted it. Butterfield said he had a friend that would be willing to serve the administration, and serving the administration meant to take this money and put it in a safety deposit box, cash, and be available to go on trips if cash was needed quickly, for polling or some other expenditures, for advertising or something, where they needed

to get the money out fast. That was the explanation made for the placing of the money outside of a regular bank account.

Mr. Haldeman and Mr. Strachan referred to this as the green, and throughout the political matters memoranda, when they talk of cash, they talk of green. This fund was substantially intact until after the November election. Then it was returned from Mr. Butterfield's friend, Lilly. He got it out of the safety deposit box, and delivered it to Mr. Butterfield over at the Marriott Hotel.

Mr. Butterfield went back to his office, went down to tell Mr. Strachan's secretary to tell Mr. Strachan he wanted to see him when he got there. Mr. Butterfield came back up to his office, and Mr. Strachan came up to Mr. Butterfield's office and he delivered the money to Mr. Strachan. This was after the election.

Tab 5.1. You will see the Strachan memorandum, and you will see Mr. Haldeman writing on the bottom of the memorandum, "Make it 350 green and hold for us."

The third from the bottom line says that only the 230 green will be held under Kalmbach's personal control, and there is a circle there and 150 added up above and the note, "Make it 350 green and hold for us."

On page 2, and I just pass by this because it was not relevant to this particular part of the inquiry, you will note there the paragraph at the top referring to Kalmbach, Jacobsen, and dairy commitment. There is a discussion of whether or not Kalmbach should be involved in the milk project because of risk of disclosure and the handwritten comment, "I'll discuss it with the Attorney General."

Turning now to 5.2, Strachan and other political matters memorandum.

Before I go to that, in paragraph 2, there is written that the money was placed under Mr. Haldeman's unquestioned personal control, it say that "Mr. Kalmbach cleared with the Attorney General and Stans the 350 in green."

We have interviewed Mr. Kalmbach. Mr. Kalmbach denies that. He denies that he was the person that participated in this. You will see his testimony that he knew about it—I believe his testimony is here—yes, his testimony is here: but he denies having any discussion about the transfer of this money.

Tab 5.3 is Mr. Haldeman's explanation of the need for the $350,000 for special private polling, apart from regular polls that were conducted by the committee.

Mr. Davis calls my attention to 5.2 and if I could turn you back to that, on the first page of 5.2, you will notice item 6 of the first page of 5.2, which reads: "Kalmbach granted a full-time gardner at San Clemente a $25 per month raise, bringing his monthly salary to $539."

Now, Mr. Haldeman's explanation was that this $350,000 was used for private polling, and he didn't want to keep such a large amount of cash; he didn't think it should be in the physical custody of a member of the staff, and he never saw or handled that currency.

Then Mr. Stans' testimony that he recalls that the money was transferred. There does not seem to be any doubt about that.

Mr. Sloan's testimony at 5.4, 5.5, 5.6. Tabs 5.4 and 5.5 is cumulative.

Tab 5.6, Gordon Strachan relates the transfers I described to you of the money to Butterfield and to Lilly.

Now we come to Kalmbach's testimony, and as I say, he recognizes the fact that this was transferred. It was transferred just around the time of great rush, around the 7th of April or a few days after that, just at the time that the new election campaign laws went into effect.

Mr. Davis calls my attention to 5.1. I'll ask you to turn back to 5.1 at the bottom of the page where there is a statement that any polling would be paid for by the regular Nixon Finance Committee.

Now, moving on to item 6——

The CHAIRMAN. You are talking about tab 6 now?

Mr. DOAR. Tab 6, yes.

Tab 6 reads as follows: Prior to March 30—there is a strong inference that it was in the month of February—Charles Colson met with Gordon Liddy and Howard Hunt, who had served with Liddy, in a Plumbers unit. Colson telephoned Magruder and he urged Magruder to resolve whatever it was that Hunt and Liddy wanted to do and to be sure that he had an opportunity to listen to their plans. This is a reference to the Liddy plan.

Underneath that tab, 6.1, is President Nixon's statement about the Plumbers. I'll not pause on that now.

Tab 6.2 is a memorandum from Mr. Colson. I think that it is significant, or that the committee would want to know that the memorandum was not a contemproraneous memorandum but it was prepared on June 20, 1972, 3 days after the break-in. I think it is fair to say that the committee may want to look into this, that there was some scurrying around within the White House to try to confirm or establish the fact that Howard Hunt had left the White House in March.

Mr. Colson does, in this memorandum, recall this conversation, where he called Magruder.

Tab 5.3 is Howard Hunt's testimony—that is 6.3, excuse me. And Hunt going back to the back of the room and Hunt saying that after Liddy got through—that is page 3684, the second page of Mr. Hunt's testimony, where he says, picking up at the middle of the page: "After the meeting, did you have a conversation with Mr. Liddy?"

Mr. Hunt answered: "I did."

> What did Mr. Liddy tell you?
> He said "I think I may have done us some good."
> What was your interpretation of that message?
> I realized he was speaking with Mr. Colson about the Gemstone operation.

The Gemstone operation is the bugging of the Democratic National Headquarters, at the Watergate.

Tab 6.4 is a confirmation of that conversation by Mr. LaRue's testimony before the Senate Watergate Committee.

Tab 6.5 is Mr. Magruder's recollection—this is at page 793 in 6.5. He says:

> Well, Charles Colson called me one evening, asked me in a sense would we get off the stick and get the budget approved for Mr. Liddy's plans, that we needed information, particularly on Mr. O'Brien.

Then we turn to tab 7.

This is a significant date. Mr. Mitchell, Mr. Magruder, Mr. LaRue, Mr. Haldeman, President Nixon, were at Key Biscayne, and for the

third time, Liddy's intelligence gathering plan, budgeted for $250,000, was again discussed. Electronic surveillance was specified in the budget. There is a dispute as to whether or not John Mitchell approved the plan; that is, whether he approved the entry into the Democratic National Committee Headquarters, the Fontainebleau Hotel. Mr. LaRue testified, as I am reading from Tab 7, that Mitchell stated that they did not have to do anything on the plan at that time.

Mitchell testified that he rejected the plan. However, after the March 30 meeting, Mr. Magruder asked his assistant, Robert Reisner, to tell Liddy that his proposal had been approved, and Reisner telephoned Liddy and conveyed Magruder's message.

Robert Reisner was in Washington working at 1701 and I think what is important here is that everyone at the meeting agrees that Mr. Mitchell was reluctant about this.

Mr. Magruder said that when they put papers in the file to discuss with Mr. Mitchell, they put the Liddy proposal at the bottom of the items that were to be discussed about the campaign because they hoped to be able to discuss it after Mr. Flemming had left the meeting.

Mr. LaRue testified that the plan outlined a plan for electronic surveillance.

Now, turning to 7.6, this is the testimony of Fred LaRue before the Federal grand jury over a year ago, April 18, 1973.

I think that testimony should be reviewed for you.

Mr. LaRue was asked: "Did there come a time when you visited Key Biscayne?"

Mr. LaRue says: "Yes, sir, I think in the latter part of March, accompanying the Mitchells to Key Biscayne for 10 days or two weeks."

Then the testimony goes on. There is a discussion about the substance of the discussion, the budget and so forth, and the fact that the memo that was discussed with respect to the Liddy plan was discussed—and I am now over to page 11 of the testimony—was discussed when Mr. Flemming was not there. He says:

> Was Mr. Flemming present when that memo was discussed?
> No, he was not.
> How was that arranged?

Mr. LaRue says: "The next morning when he came over, I asked Magruder what in the world was this electronic surveillance."

LaRue says, "This was the first knowledge I had of any such course of contemplated action." And Magruder says the memo required action.

LaRue said:

> I don't want to bring this up with Mr. Flemming. I've got it on the bottom of the stack. When we get through with everything else, we can maneuver Mr. Flemming out of the room and take this matter up.

Then on the next page, he was asked what in substance was said at the meeting and by whom. He says:

> To the best of my recollection, the memo was given by Mr. Magruder to Mr. Mitchell. He looked over at me and asked if I had seen it and I said I had. And he said, what do you think?

LaRue said, "I don't think it is worth the risk."

Mr. Mitchell sat there a few minutes, or a few seconds, and said, "Well, we don't have to do anything on this right now." That was the end of the meeting.

Tab 7.7 is Jeb Magruder's testimony, again over a year ago, before the same grand jury.

He relates on page 23 that there were some 30 decision papers for Mr. Mitchell for discussion. He tells about the Liddy plan and he tells about, on page 24 at the bottom, the proposal included basically wiretapping of the Democratic National Committee at the Watergate, possible surveillance electronically of the Democratic National Committee Headquarters, possible electronic surveillance—

We were getting to realize that Mr. Muskie was failing, and if so, if there would be someone else, we didn't have a specific individual in mind.

He was asked the size of the budget and he testified that it was approximately $250,000.

Then the question was put to him:

All right, and did you at that meeting discuss with Mr. La Rue and Mitchell the various pros and cons with respect to that budget?

And he said:

Yes, Mr. LaRue had been aware of Mr. Liddy's proposals but not in the depth that we had because he had not attended those past meetings. Mr. LaRue had some misgivings relating to the project, namely the possibility of limited information and that, of course, this was illegal. I think we all agreed that there were potential problems in dealing with Mr. Liddy because of his stability. Basically, we did agree to affirm the projects because we felt that there were enough individuals that were interested in this information and we thought that there possibly could be some use put to this information by ourselves as well as other individuals.

He says, "Now, after the meeting, did you report the results?"

Then he relates how he called Mr. Reisner and called him to go over the discussions.

Then we have Mr. Reisner's testimony in August of last year. You will see on tab 7.8 at the bottom of the first page, he said:

Mr. Magruder, some time within the 2 weeks in April, some time—I am vague about it—but I place the time at the beginning of April, that part of the message to Liddy was to tell him to get going within 2 weeks. I passed that message on. I have the feeling that 2 weeks, that I was thinking in terms of 2 weeks would be the first 2 weeks of April.

Then he says Magruder stopped in his office and said, "Call Liddy and tell him it's approved. Tell him we want to get going in the next 2 weeks."

There was after—on the next page, you will see, this is after his return from Key Biscayne. And he was asked if he called and gave the message from Key Biscayne and he says he thinks he called but he does not recall him giving that message.

Then he relates to the reference to Gordon Liddy, I think on the 30th of March is the time when he saw him.

You will see on the bottom of page 41 where he looks at his desk calendar that he had there before the grand jury and he says:

Your entry on Thursday, March 30, indicates that Magruder had either before leaving or from Florida had asked you to get Mr. Liddy to call him there.

Then he goes on to talk about the 31st. The question is asked him on page 42:

On the 31st, I note that there is an entry that just says "Key Biscayne." Does that indicate where Mr. Magruder was?

Yes, it does.

Is there also mention of Mr. Liddy on the 31st?

Yes, there is a column in that log that I used just to note the things that were coming up, because there was a lot of activity and a lot of interruptions, just so I didn't forget about them, that I had been asked to do. In that column, which I think means there was an interruption, there is the word, "Gordon Liddy." Then it says next to him "give answer." I believe what that refers to is Mr. Liddy must have stopped by my office and he said he talked to Magruder yesterday, I need an answer, or I'm waiting for an answer, or something like that.

Then it reads on following that:

Did you, you did in fact give Mr. Liddy an answer?

Yes.

Except he said:

I don't recall being called by Mr. Magruder and asked to give Liddy an answer.

The question is, it is your recollection he was in the doorway when you asked him? What was Liddy's reaction to your saying, it's approved, get started in the next 2 weeks?

So then Reisner goes on and relates the conversation at that time.

Now we turn to tab 8. This is the table that relates——

The CHAIRMAN. Mr. Doar, let us take a recess for 10 minutes.

[Recess.]

The CHAIRMAN. The committee will come to order.

Mr. Doar, will you able to advise us as to the approximate time the rest of the presentation for this afternoon will take?

Mr. DOAR. I would think, Mr. Chairman, it would be a half hour. It seems that, seeing the book, it would be much longer than that, but after I get past this, the matters are of general public knowledge, so we can go through the last four of five tabs rather quickly.

The CHAIRMAN. Thank you. I wanted to know so that the members could make their accommodations accordingly.

Mr. Doar.

Mr. DOAR. It was suggested to me, Mr. Chairman, that I point out to members of the committee that on certain executive session testimony, you cannot make out the testimony.

Where there is an illegible page of testimony, we have reproduced it so it has been typed over and there is a notation that it is retyped in the front of it. The reason for that is that that testimony was in blue ink and it just does not Xerox successfully—there are illegible pages, but we have recopied those from the original. But we have included the illegible page so that the committee can see a copy of the documents from which we got the material.

It has been suggested that it might be well for awhile that Mr. Davis read a few of the paragraphs and then I comment on the pertinent matters in the paragraph. If that is all right with the committee, I would like to try that.

The CHAIRMAN. Mr. Davis?

Mr. DAVIS. This is tab 8.

On March 31, 1972, Gordon Strachan reported in writing to H. R. Haldeman in a political matters memorandum that Magruder had reported that C.R.P. "now has a sophisticated political intelligence gathering system, including a budget of $300,000." Strachan attached tabs to the memorandum including a tab referring to the political intelligence reports on Senator Humphrey's Pennsylvania campaign organization by a source identified as "Sedan Chair II."

On or before April 4, 1972, Strachan prepared a talking paper for Haldeman's use during a meeting with Mitchell scheduled for April 4, 1972, at 3 p.m. The talking paper included a paragraph relating to the intelligence system, raising questions as to whether it was adequate and whether it was "on track."

As indicated below in paragraph 9, both the political matters memorandum and the talking paper were destroyed following the break-in at the Watergate offices of the DNC.

Mr. Doar. The testimony that supports the information in that paragraph is contained in the back-up material. We will move on to paragraph 9—tab 9.

Mr. Davis. This is tab 9.

On April 4, 1972, from approximately 3 p.m. until approximately 4 p.m., Mitchell and Haldeman met in Haldeman's White House office. Haldeman has testified that he does not believe political intelligence was discussed at the meeting. From 4:13 p.m. until 5:50 p.m., Haldeman and Mitchell met with the President. Haldeman testified that his notes of this meeting indicate a discussion of the "ITT-Kleindienst" hearings, and the assignment of regional campaign responsibility and do not indicate a discussion of intelligence.

Haldeman later returned to Gordon Strachan the talking papers specified in the preceding paragraph. It was Haldeman's practice to indicate on the talking paper, agenda matters that had not been discussed. In this instance, there was no such indication with respect to the agenda items covering political intelligence. Strachan has testified that on June 20, 1972, shortly after the break-in at the DNC headquarters, in the Watergate Office Building, he showed Haldeman the political matters memorandum referring to the sophisticated intelligence gathering system and other extensive materials from Haldeman's files, and that he was instructed by Haldeman to clean out the files. Strachan immediately destroyed the political matters memorandum, the talking paper he had prepared for the April 4, 1972, meeting between Mitchell and Haldeman, and other sensitive documents.

Haldeman has testified that he has no recollection of giving Strachan instructions to destroy any materials.

Mr. Doar. Members of the committee, this is an important date. The committee recalls that Strachan was Haldeman's special assistant, worked for Haldeman, since the beginning of the Nixon administration, and Mr. Haldeman testified that he didn't recall giving any instructions to Mr. Strachan to destroy any materials, although Mr. Strachan unequivocally says that he did, in fact, destroy the political matters memorandum that he prepared on March 30.

Tab 9.1 is the log of Mr. Haldeman's contacts with the President on that day and it reflects that the President met with Mr. Haldeman at 4:13 to 4:50. Mr. Mitchell was there with him and then again at 6:03 to 6:18. We have no reason to believe that this meeting took place other than in the oval office. It would have been the President's practice and habit to be in the oval office during that time.

If you will look at the next mark, 9.2, you will see "John Mitchell's Office." He left this office for Mr. Haldeman's. We don't know where Mr. Mitchell came from but he left his office at 2:45 and he returned at 5.

Tab 9.3, and this came from the grand jury, is Mr. Haldeman's calendar for that day. It reflects that Mr. Mitchell came to Mr. Haldeman's office down the hall from the President's office at 3 o'clock and that then at 4 o'clock, Mr. Haldeman is in the President's office and, as the log indicates, Mr. Mitchell was there with him from 4:13 until 5 o'clock, somewhere like that—4:50.

The other tabs under 9.4, 9.5, and 9.6—deal with Mr. Haldeman's testimony. I would like to call your attention to 9.6, which is the testimony of Mr. Haldeman. He says: "I think the effort to bring in my April 4 meeting with John Mitchell as in some way significant with regard to intelligence is a little far-fetched. By his testimony, Strachan doesn't know what was discussed at that meeting. All he says that is in routine fashion he put an item on the talking paper regarding the adequacy of intelligence. As a matter of fact, the meeting with Mr. Mitchell that day was in connection with the meeting of Mitchell and me with the President. My notes taken at the meeting with the President indicate the discussion covered "the ITT-Kleindienst hearing and a review of Mitchell's plans for assigning regional campaign responsibilities to specific individuals. They indicate no discussion of intelligence."

I pause, members of the committee, to remind you that on April 19, I sent to Mr. St. Clair a letter in which I asked him if he would give to this committee a relevant conversation of the meetings between the President, Mr. Haldeman, and Mr. Mitchell, on April 4, 1972, from 4:13 to 4:50, and between the President and Mr. Haldeman from 6:03 to 6:18. I respectfully suggest that the materials that the committee has heard today, the pertinence of that material, support the necessity for my requesting that the committee consider the issuance of the subpena to the President for the production of those recorded conversations.

I recognize that the committee cannot act on that request at a hearing but I would hope that there would be an opportunity for the committee to consider that matter at the earliest convenience.

The CHAIRMAN. The Chair will, at the appropriate time, and in accordance with the statement already made, notify the committee as to meeting dates for the purpose of considering those items.

Mr. DAVIS. The next tab is tab 10.

On or about April 7, 1972, Gordon Liddy showed a budget of $250,000 to Hugh Sloan, treasurer of the Finance Committee to Re-Elect the President. Liddy told Sloan that he would be coming back to Sloan in a day or two to pick up the first cash payment which was to be $83,000. Sloan telephoned Magruder who authorized Sloan to disburse to Liddy the $83,000 requested. Magruder told Sloan that Magruder was to approve all subsequent disbursements of money to Liddy.

Mr. DOAR. The only matter that I wish to call to the committee's attention with respect to this tab, is that the testimony of Sloan is to the effect that when Liddy had this conversation with him, he never handed the document, which was the budget, to Sloan. He just never let it out of his hand. He just held it out and told Sloan about it.

Tab No. 11.

Mr. DAVIS. On about April 7, 1972, Sloan met with Maurice Stans, Chairman of FCRP. Sloan told Stans that Magruder had approved

a cash disbursement of $83,000 to Liddy. Stans met with Mitchell to confirm Magruder's authority to authorize the requested disbursement. Mitchell told Stans that Magruder had the authority to authorize expenditures to Liddy. Stans then met with Sloan and confirmed Magruder's authority to approve the disbursement of funds to Liddy.

Stans has testified that when asked by Sloan the purpose for which the money was to be expended, he replied, "I don't know what is going on in this campaign and I don't think you ought to try to know."

Mr. DOAR. Mr. Davis has given you Stans' version of the conversation. Sloan's version, while substantially the same, is a little different. Sloan testified that Mr. Stans said to him, "I don't want to know, and you don't want to know."

Tab 12.

Mr. DAVIS. On or about April 12, 1972, Gordon Liddy gave James McCord, security consultant for CRP, $65,000 for purchasing electronic equipment and for related purposes.

Mr. DOAR. Tab 13.

Mr. DAVIS. Tab 13. In April 1972, Assistant to the President H. R. Haldeman, met with Gordon Strachan and instructed Mr. Strachan to contact Gordon Liddy and advise him to transfer whatever "capability" he had from the Presidential campaign of Senator Edmund Muskie to the campaign of Senator George McGovern. Strachan met with Liddy in Strachan's White House Office and told Liddy of Haldeman's desire to have Liddy's "capability" transferred from the Muskie campaign to the McGovern campaign.

Haldeman has testified that he does not recall giving Strachan that instruction.

Mr. DOAR. Tab 13.1. This is Gordon Strachan's testimony with respect to this particular incident. I think it is worth pausing and reading from it. I am reading now at 13.1, page 2455. It reflects Mr. Strachan, and Mr. Haldeman's relationship and their method of operation.

Mr. STRACHAN. Yes. Mr. Haldeman called me up into his office. I carried a clipboard and he told me to contact Mr. Liddy and tell him to transfer whatever capability he had from Muskie to McGovern with particular interest in discovering what the connection between McGovern and Senator Kennedy was.

Mr. DASH. Was that the limit of the instruction that you had?

Mr. STRACHAN. Yes, sir.

Mr. DASH. What did you do with that instruction? Did you make a record of it?

Mr. STRACHAN. We had, I had taken notes as he had dictated that to me. I walked down to my office, called Gordon Liddy, had him cleared into the White House, had him come over to my office, and literally read the statement to him.

Mr. DASH. When he came into your office could you describe what Mr. Liddy did, if anything?

Then there is an exchange about turning on the radio. I move past that. Then Mr. Strachan said:

I said that Mr. Haldeman had asked me, Haldeman, to give him this message and I read it to him.

In other words, you read it almost word for word as you got it from Mr. Haldeman?

Yes, I opened up my clipboard and just read it.

And you didn't give any further explanation as to what you meant by transferring his capabilities from Mr. Muskie to Mr. McGovern? What capabilities?

Strachan answers: "No."

Mr. Dash asked: "Did you know what capabilities he was referring to?

Strachan said:

No, I didn't except I suspected that there were plants in Muskie's campaign. It was fairly common knowledge that Muskie's driver was either in the pay of the CRP or supplying information to us. I presumed that these employees would be transferred over to Senator McGovern.

Then Mr. Dash asked questions about whether the capabilities could have included electronic surveillance and Mr. Strachan agrees that he could make that assumption. But he doesn't know anything about it so I pass over that testimony.

Tab 14.

Mr. Davis. In April 1972, Gordon Liddy told Howard Hunt that the DNC headquarters would be a target of electronic surveillance.

Tab 15. Shortly before May 25, 1972, a group including Bernard Barker, Eugenio Martinez, Virgilio Gonzalez, and Frank Sturgis, came to Washington, D.C., from Miami, Fla., in response to a request from Howard Hunt to Barker for a team of men to conduct a mission.

On or about May 25 and May 26, 1972, two unsuccessful attempts were made to enter surreptitiously the premises of the DNC, and one unsuccessful attempt was made to enter surreptitiously Senator McGovern's headquarters.

Mr. Doar. Members of the committee I don't have any particular comments about these and some of the following paragraphs, because the facts are established so conclusively, so we will just move on to 16.

Mr. Davis. Tab 16.

On or about May 27, 1972, under the supervision of Gordon Liddy and Howard Hunt, McCord, Barker, Martinez, Gonzalez, and Sturgis, broke into the DNC headquarters. McCord placed two monitoring devices on the telephones of DNC officials: one on the telephone of Chairman Lawrence O'Brien and the second on the telephone of the executive director of Democratic State chairmen, R. Spencer Oliver, Jr. Barker selected documents relating to the DNC contributors and these documents were then photographed.

Mr. Doar. Tab 17.

Mr. Davis. On May 28, 1972, Alfred Baldwin, an employee of CRP began intercepting conversations derived from the monitoring devices placed in the telephones at the DNC. Baldwin was unable to pick up the signal from the device placed in Lawrence O'Brien's telephone. Between May 28 and June 16, 1972, Baldwin monitored approximately 200 conversations and each day gave the logs and summaries to McCord. McCord delivered these logs and summaries to Liddy except on one occasion when Baldwin delivered these logs to the CRP headquarters.

Mr. Doar. Tab 18.

Mr. Davis. Tab 18. During the first or second week in June 1972, Magruder received transcripts of conversations intercepted in the DNC headquarters. The transcripts were typed on stationery captioned "Gemstone." In addition to the transcripts, Magruder was supplied with prints of the documents photographed during the initial entry into the DNC headquarters.

During this period, Magruder handed his administrative assistant, Robert Reisner, documents on the top of which was printed the word "Gemstone." Magruder instructed Reisner to place the Gemstone documents in a file marked "Mr. Mitchell's file" which was to be used for a meeting between Magruder and Mitchell.

Shortly after the June 17, 1972, break-in at the DNC headquarters, Magruder told Reisner to move the Gemstone files, containing transcripts of conversation and other politically sensitive documents from the CRP files. Thereafter, Reisner destroyed certain of the documents.

Mr. DOAR. The testimony of Jeb Magruder and Robert Reisner, on 18.1 and 18.2, developed this pertinent information.

Tab 18.3 is a document—this is page 877 of the Senate hearings, which is the Gemstone testimony and 18.4. Tab 18.4 is the testimony of Sally Harmony, the secretary, with respect to that stationary and its use.

Mr. Magruder has testified in his testimony here that the logs were done in the form that you would know that they were phone conversations, and that he took them to the regular 8:30 morning meeting with Mr. Mitchell. Mr. Mitchell, however, denies this.

Tab 19.

Mr. DAVIS. Tab 19, before June 17, 1972, Liddy, Hunt, Barker, and McCord, engaged in certain preliminary intelligence activities preparatory to the Democratic National Convention to be held in Miami, Fla.

Mr. DOAR. Tab 20.

Mr. DAVIS. Tab 20, on June 17, 1972, at approximately 2 a.m., McCord, Barker, Sturgis, Gonzalez, and Martinez, were arrested for burglary in the Watergate offices of the DNC.

On September 15, 1972, Howard Hunt, Gordon Liddy, and the five men who had been arrested at the DNC headquarters were named in an eight-count indictment charging, among other offenses, conspiracy illegally to obtain and use information from the offices and headquarters of the DNC. Hunt, Barker, Sturgis, Gonzales, and Martinez entered pleas of guilty. Liddy and McCord stood trial and were convicted on all charges.

An August 16, 1973, Jeb Magruder pled guilty to an information charging, among other offenses, conspiracy unlawfully to obtain and use information from headquarters of the DNC.

Mr. DOAR. I pause at this paragraph to refer you to section 20.7, which is the information that was brought against Jeb Magruder, and to refer you to the second page of that information. This is 20.7. This is a criminal action brought in the U.S. District Court for the District of Columbia, No. 715–73.

Paragraph 7 reads as follows:

Beginning in and around November 1, 1971, and continuing thereafter through March 23, 1973, in the District of Columbia and elsewhere, Jeb Stuart Magruder, the defendant, unlawfully, wilfully, and knowingly, did agree, combine, and conspire with co-conspirators, unnamed herein, to commit offenses against the United States, to wit: (a) to unlawfully obtain and use, by illegal means, and for illegal ends, information from the offices and headquarters of the Democratic National Committee and from related political entities and individuals, in violation of 18 U.S.C. 2511 and other Statutes of the United States and the District of Columbia; (b) To conceal, coverup, hinder, frustrate, impair, impede, and corruptly endeavor to influence, obstruct and impede the investigation, apprehension

and conviction of certain of the individuals involved in the planning, implementing and carrying out of the above-described activities, in violation of 18 U.S.C. 1503 and 1510; and (c) To defraud the United States of America and its Departments and Agencies and, more particularly, the Department of Justice by hindering, frustrating and impairing the lawful functions of the said Department by craft and dishonest means, in violation of 18 U.S.C. 371.

Tab 20.8 is an order in the case of Magruder, *U.S.* v. *Magruder*, indicating on lines 4 and 5 of that order that Jeb Magruder appeared in open court represented by counsel and waived indictment and entered a plea of guilty. The court accepted the plea of guilty on August 16.

Mr. Chairman, that completes my presentation.

Mr. Jenner?

The CHAIRMAN. Mr. Jenner?

Mr. JENNER. Thank you, Mr. Chairman. I have very little to add at the end of this long day: I would like to call the attention of the committee if you will return, for a moment, to tab 9.6, which you considered earlier and to which Mr. Doar called your attention when you considered the possibility of a meeting at an early date concerning the issuance of a subpena, with respect to two tapes respecting meetings with the President by Mr. Mitchell and Mr. Haldeman. You will notice on page 2881 of 9.6 that that meeting also included, as you will read in the last three lines of what is bracketed, indicate that the discussion, says Mr. Haldeman, covered the ITT-Kleindienst hearings. So that in connection with the possible issuance of a subpena, there is also that factor for you to cogitate with respect to, in the meantime.

There were some questions, inquiries of me during the recess as to what the staff would attempt to cover in the 3 days next week. It will all be Watergate. There will be additional books.

It may well be that you ladies and gentlemen will wish to consider, since I understand the chairman will announce to you that you may take these books with you, some means of keeping them under lock and key or some other method, and you will have to have in mind that eventually you will have quite a number of these books as we go into the other areas, in addition to Watergate.

The last remark I would like to make is that, as you notice, Mr. Doar and I hope, and we tried to present these materials to you very modestly, and we are doing our very level best not to indicate any conclusions on our own part. That to which we call your particular attention is only intended solely to arrest your attention because we do not want to be in the position, and we will endeavor throughout this not to voice our opinion as to the truth of the evidence or its weight.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The Chair will state that we will recess until 9:30 on Tuesday, but, the Chair would like to remind the members that some of the material might, while not all of it, and possibly a very small portion is confidential, is material that came to us from the grand jury and has come to us under a representation by myself and Mr. Hutchinson and staff that this material would be treated confidentially.

As a matter of fact, Mr. Doar, in a conversation with Mr. Jaworski yesterday, Mr. Jaworski reminded him of the need to retain the confidentiality of this material which relates to items and data, and individuals that are involved in matters that may be under consideration now and would affect due process of individuals. So, I would hope that as a result, while the members are going to take these books home and have them in their possession, that they use their discretion, as we have been using up until now, to see to it that they are kept confidential. And the material may not be discussed with others than the impeachment inquiry staff, and they are available to the members of the committee, together with the impeachment inquiry staff, Mr. Jerome Zeifman, Mr. Cline, Mr. Parker, Mr. Dixon, Ms. Schell, Mr. Polk, and Mr. Mooney, who will be available to the members of the committee for whatever help they might be able to give and who will be privy to this confidential material.

Mr. HUNGATE. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman? Mr. Chairman, I have been rather well satisfied with the security maintained by the staff to this date, and I wonder if some members, like myself, who might be leaving tonight for their districts, and are not returning until Monday or perhaps Tuesday, can leave these, as we received them, and then can check at the hotel or wherever they are to get them back. Is that an acceptable procedure?

The CHAIRMAN. I see no objection.

Mr. DOAR. We would be glad to do that. We will deliver them back to the officers Monday morning.

Mr. HUNGATE. Yes.

Mr. DOAR. We will pick them up at the end of the meeting right now.

Mr. HUNGATE. Thank you.

The CHAIRMAN. I might also advise the members that this room is going to be sealed and is going to be under security which will carry on from now on until we conclude our deliberations.

Mr. SEIBERLING. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Just following up on what Mr. Hungate said, those of us who would like to do that, can we just leave these materials here and will somebody pick them up for us?

Mr. DOAR. Yes. If you would leave them at your places we will be sure that they are picked up.

Mr. SEIBERLING. Mr. Chairman?

Mr. BUTLER. You will hold them until we call for them?

Mr. DOAR. We will hold them until you call for them.

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Has Mr. St. Clair indicated the extent to which he agrees also to be bound by the same rules of confidentiality?

The CHAIRMAN. Mr. St. Clair.

Mr. ST. CLAIR. I recognize, Mr. Chairman, and Mr. Seiberling, that we, of course, will abide by the rules of this committee, the full committee, on the hearing.

The CHAIRMAN. Thank you very much.

Mr. DANIELSON. Mr. Chairman?

Mr. CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. I would like to say that I think the presentation, since the recess, at least as far as I am concerned subjectively, this has been a lot more understandable for me. I was really having a problem with the first part, keeping up with the presentation. It is not intended as a criticism but I appreciate the last form of the presentation and hope we can continue in this vein.

The CHAIRMAN. The chairman took the gentleman's advice and suggested to counsel that they read very slowly and deliberately the paragraphs and this would be, I think, better for the members of the committee.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, just for purposes of clarification, are we prohibited by the rules of confidentiality from commenting on what took place here today?

The CHAIRMAN. No. The members are not precluded from commenting on what took place, except that I believe that respecting the rules of confidentiality, that those items that are confidential cannot be alluded to or cannot be referred to. And this, of course, is something that each individual member will have to consider when he discusses any portion of this with the press or any other individual in the public.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I gather that all of the materials from the grand jury fall into the confidentiality; is that correct?

The CHAIRMAN. That is correct.

Mr. WALDIE. Do any other materials?

The CHAIRMAN. None of the other materials, I believe, insofar as I am able to understand, unless counsel has some other opinion. I recall that the material——

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. That we really were concerned with is the material that we received from the grand jury.

Mr. DOAR. The matters that were received under the rules of confidentiality include the political matters memorandums. Some of those are public and some are not, at the present time.

Mr. WALDIE. Well, how does a member of this committee know as to which he is bound in terms of confidentiality? I want to share some of this material with my staff because I need help in analyzing it. I want to abide by confidentiality, but do I gather that nothing in this book is to be read by anyone except me? And if that is so, that means everything in the book is subject to confidentiality, or that I can read and discuss certain matters and I can read everything but not discuss certain other matters?

The CHAIRMAN. I believe that that is the case.

Mr. WALDIE. Well, if that is the case——

The CHAIRMAN. I believe that there are matters that you can discuss with members of your staff, but——

Mr. WALDIE. Well, we ought to——

The CHAIRMAN. But the index is confidential. The matters that have come from the grand jury are confidential. And there are other items and, of course, I cannot with any specificity just tell you just what are——

Mr. WALDIE. Well——

The CHAIRMAN. [continuing]. What are confidential.

Mr. WALDIE. But how do we know then as to what we are bound by, Mr. Chairman? Should there not be some——

Mr. MCCLORY. If the gentleman will yield, I will say if we have any question about it, we just assume that it is confidential. I am taking the logs and things like that——

Mr. WALDIE. I have not yielded, Mr. McClory, I have not yielded and I am not ready to follow that suggestion of yours. I want to know in it where I am bound. If I am not bound, I have got matters that I want to discuss with people on this evidence.

The CHAIRMAN. Well, let me read rule 2 of the Rules of Procedure for handling Impeachment Inquiry material:

> At the commencement of any presentation at which testimony will be heard or papers and things considered, each committee member will be furnished with a list of all papers and things that have been obtained by the committee by subpena or otherwise. No member shall make the list or any part thereof public unless authorized by a majority vote of the committee, a quorum being present.

Now, that specifically relates to the list. We do know that there are materials, such as those that came from the grand jury report, that are confidential, and I would suggest that the member certainly recognizes that there are areas which do relate to other matters and would consider those as being confidential. Otherwise, I do not know of any way to describe it.

Mr. WALDIE. I will not take any more of the Chair's time. I have listened carefully and I have found nothing degrading or defaming in——

The CHAIRMAN. Well, that is the gentleman's conclusion.

Ms. JORDAN. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. Mr. Chairman, while some of the matters in the material we received are public source information, I think the manner of presentation and the manner in which they are excised from that major document should be considered confidential, because if a newsman had the excised portions that are flagged for us, in no imagination at all, he would be able to tell the thrust of the evidence, the thrust of the case. So, I would suggest that the material, all of the material in here, be kept confidential, rather than just say only the material that has not previously been made public, because the very fact that some of it is flagged does, in effect, give it a different status than in a volume of Watergate hearings.

The CHAIRMAN. Well, the Chair can only state that I think each individual member can, will have to respect the rules of confidentiality. I know that so far as I am concerned, that while I have stated in my opening statement that I will briefly summarize procedures and

what we have touched upon, it is not my intention to discuss anything that relates to any of the material actually that has been presented to the members of the committee.

Mr. McClory. Mr. Chairman, may I ask a question?

Mr. Chairman, I would like to leave my material here. However, I am going out of town and I will be back Sunday night and I would like to have access to them on Monday. Would I be able to get into this room?

The Chairman. I am sure that can be arranged.

Mr. Smith. Mr. Chairman?

The Chairman. Mr. Smith.

Mr. Smith. I have the same question, except I am going out of town and will be back here on Saturday, and will this room——

The Chairman. The inquiry staff works all around the clock.

Mr. Doar. Congressman Smith, we will pick up the material from your desk and not leave it here. We will take it over to the offices. Whenever any member of the committee would call for it we would deliver it promptly. We have the messenger service who would bring it over and deliver it to you whenever you say, Saturday, Sunday, or during the week.

Mr. Smith. The staff will be working then Saturday?

Mr. Doar. That is right.

The Chairman. Mr. Wiggins.

Mr. Wiggins. I have a question of counsel.

Mr. Doar, the tabs contain a statement of information followed by an annotation of evidence bearing upon that statement. Is it correct that the annotated reference to evidence is the totality of the evidence which bears upon the statement?

Mr. Doar. No, that is not.

Mr. Wiggins. Or are there other materials?

Mr. Doar. That is not correct. There may be cumulative evidence that we have not included. That is where we think the matter is not in dispute and we have not included it all. But, we have tried to be fair and objective about it. We certainly have not kept anything back knowingly, anything that we thought was pertinent for your information.

Mr. Wiggins. I am satisfied with your answer. Thank you, Mr. Chairman.

The Chairman. Ms. Jordan.

Ms. Jordan. Mr. Chairman, when you talked about confidential material, you referred only to the grand jury information. And Mr. Doar referred to some of the political matters. We also have testimony taken in executive session of the Senate select committee.

The Chairman. That is correct.

Ms. Jordan. Is that not also under the aegis of confidential material?

The Chairman. Yes, it is.

Mr. Kastenmeier. Mr. Chairman?

Mr. Mezvinsky. Mr. Chairman?

The Chairman. Mr. Kastenmeier.

Mr. Kastenmeier. In that connection, in the request of the gentleman from California, Mr. Waldie, I am wondering whether it might

be useful, and I say this in light of what the gentleman from Maryland, Mr. Hogan, raised, if not only were the items, supporting evidence, like 1.1, 1.3, or 4 or 5, or whatever, noted as they are, but also whether it might be helpful if they had an asterisk in back of it or some other identification noting that that is particularly under the rule of confidentiality?

Mr. Doar. Well, Mr. Congressman, we can do that. We will do that in subsequent books. I would think, however, that the committee might want to consider, considering the rule of confidentiality, with respect to this material, keeping the whole book confidential until it considers it or a number of books, keeping it confidential and then decide whether or not it is in the public interest to make the whole book available. I think Mr. Hogan, Congressman Hogan, does have a point, that if you comment on part, that it is not, you do not get a fair and accurate picture of what has been presented.

The Chairman. Mr. Mezvinsky.

Mr. Mezvinsky. Mr. Chairman, it was my understanding, so I understand it properly, that, in fact, as far as when we leave this room, the specific substantive content of those books, whether it is the grand jury material, or what was mentioned by the executive sessions of Watergate, that, in fact, the whole book, as Mr. Doar pointed out, is, in fact, in substance, confidential for purposes of discussion with others, including the press. Now, that is my understanding. Is that the proper understanding? So that when we leave, we all at least are on notice of that correct interpretation.

The Chairman. That is correct.

Mr. Mezvinsky. Thank you.

Mr. Fish. Mr. Chairman?

The Chairman. Mr. Fish.

Mr. Fish. Mr. Chairman, at the counsel's desk it seems to me that both the majority counsel and both of the minority counsel have a copy of book I in front of them, but I noticed during the presentation this afternoon, that Mr. St. Clair and his associate, who is also bound by the rules, had to share a book. And I wondered if it would not be possible to make available two copies of book I for Mr. St. Clair and his associate, who I presume is going to be with us throughout these?

Mr. Doar. Congressman Fish, could I explain?

The collating machines are such that they only collate 50 copies. And we just felt that it was prudent to hold back four or five copies in the event that one of them got somewhere, or some way or other was not located, and so we limited the number of books that your staff can have and, in that way, we have also limited the number that Mr. St. Clair could have.

Now, if we had more books, we would be glad to make it available. If this presents a problem, I am sure that we could take care of that. But, that was the reason for it.

The Chairman. I would also like to point out, too, Mr. Fish, that both majority and minority staffs of the Judiciary Committee have not been able to receive individually a book because of the difficulty in having to reproduce more than 50 at this time. But, that is the only reason why.

Mr. Fish. Thank you, Mr. Chairman.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. As I read rule 4 of our procedures for handling impeachment inquiry material, while they make it quite certain that no member shall make any testimony, or papers or things public, unless authorized by a majority vote of the committee, that this would not prevent a member from discussing or showing such papers to a member of his own staff, unless there is some other rule somewhere that says that the making public includes showing it to any other individual. And I wonder if we could get something clarified on that because I still think there is a little confusion.

The CHAIRMAN. Well, I think that when we considered the rules of confidentiality that it was expressly understood that members of the staff of the individual members would not be privy to material which is considered confidential. And I think that that understanding is implicit in these rules of confidentiality.

Mr. SEIBERLING. Well, that is not what the word "making public" would ordinarily mean, and I just wonder if everyone agrees with that, that that is what we are making reference to?

The CHAIRMAN. I think when that matter was considered, that everyone understood it and agreed at that time. There was discussion and debate as to it, and the minutes will reflect.

Mr. SEIBERLING. Well, without quarreling with that, I will accept that, if that is what the Chair rules, but I think we all should then understand that that is what we mean. I do not so recall.

The CHAIRMAN. The Chair hopes that everyone understands the rules and we all participated in that vote when we adopted these rules of confidentiality.

There being no further business, we will recess this hearing until Tuesday, May 14, 1974, at 9:30 a.m.

[Whereupon, at 4:34 p.m., the committee was recessed, to reconvene on Tuesday, May 14, 1974, at 9:30 a.m.]

IMPEACHMENT INQUIRY

Executive Session

TUESDAY, MAY 14, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:43 a.m. in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison, III, deputy minority counsel; Robert A. Shelton, associate special counsel; Evan A. Davis, counsel; Richard H. Gill, counsel; Robert P. Murphy, counsel; and Robert Halverson, consultant.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order. And this morning's session is merely a resumption of last Thursday when the committee recessed until this morning to continue the initial presentation of the detailed information.

It is the intention of the Chair to go until 11 o'clock and then to recess for 10 minutes, just to be able to afford counsel a break from this presentation, and then to go until about 12 or 12:15, and then to recess again until later on this afternoon, possibly at 2 or 2:30 this afternoon.

Mr. SEIBERLING. Mr. Chairman, I wonder if I could make a parliamentary inquiry.

Is this considered to be a new session or this merely a continuation?

The CHAIRMAN. This is a continuation. We are in recess; we have been in recess since last Thursday.

Mr. WALDIE. Mr. Chairman?

Mr. SEIBERLING. All right. I thank the Chairman.

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. I have a parliamentary inquiry I just want to make for the record. I never got it clarified last time. The maker of the motion, Mr. Donohue, made it on the basis that the material that we were about to hear was defamatory and degrading, and it is seemingly strange to me since under our rules of confidentiality he could not have ever had access to the material. The Chair was not willing to represent whether the material was defaming or degrading, and it does seem to me that that presents an almost insurmountable opposition to our having entertained the motion without debate and closing the sessions. I simply want to place my objection, parliamentarily, to that procedure in the record.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I want to go on record in support of the remarks made by the gentleman from California in a parliamentary sense. I also checked the rule that was cited, and I must confess, unless I misread it, there was nothing that spoke as to whether the motion for executive session was nondebatable.

The CHAIRMAN. Well, without prolonging my response to the parliamentary inquiry, may I just state that once again that the rule does not provide that there be a finding, in fact, that the material defame or degrade, but merely that is may tend to defame or degrade. It was on that basis that the Chair ruled that there would be no purpose served by such a rule if that rule or if that motion were to be debated, since then it would suggest that there would have to be first a finding, and that is not, that is not the reading of the rule in accordance with the Chair's interpretation of the rule. So, I would hope that we could get on to the business.

Mr. DANIELSON. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. I would just like to state, and I will entertain this other parliamentary inquiry, but if we are going to go on with these proceedings we have much work to do, I would merely like to suggest to the members who are going to inquire in this fashion that it is only going to take more time, and more deliberation, and we are just going to be unable to meet any date or any time frame that we have set for ourselves.

Mr. DANIELSON. I would like to know whether the Chair would consider transferring these hearings to the caucus room when they become public hearings. That is the extent of my inquiry.

The CHAIRMAN. Well, that is a matter that the Chair will have to take under consideration. And for the present the Chair does feel disposed, in light of the fact that I think there are many, many problems that attach to such a move, but nonetheless, the Chair is considering that. Mr. Doar.

Mr. DOAR. Mr. Chairman, members of the committee, before beginning this morning I would like to introduce some additional members of the inquiry staff that are here. Sitting back at the table with the machinery, recording equipment, is Robert Shelton who is the senior associate counsel in charge of administration for the inquiry staff. And Mr. Halverson, who is our consultant on audio, our audio consultant who has worked with us on a regular basis since it became clear that we were going to have to prepare to play the recorded conversations to the committee.

Also at the second counsel table here behind me is Richard Gill, who has been in charge of the domestic intelligence task force. He is from Montgomery, Ala. And the lawyer on my far left here, is Robert Murphy who came to us from the GAO on loan, and has been with the inquiry staff since I think about the first of last December.

It was suggested to me, and I concur, that the staff has gotten, in assembling these books, have gotten them a little bit too full to make them easy to use. And we will from now on make an endeavor not to put quite so much material in each volume so that it is easier to use. As a suggestion for today, if you would remove the statement of information out of the front part of the book, you would find that it would be easier for you to turn the pages, the remaining pages, and it would just eliminate about 55 pages from the book and make it somewhat easier to handle. That sets forth the entire statement of information for the entire book II which consists of 57 paragraphs.

Mr. Jenner pointed out that as we did before, each one of the sheets is in front of the tab number, a corresponding tab. We will follow the same procedure that we followed at the end of the last hearing with Mr. Davis reading the paragraph to the committee, and behind each tab, and then myself, and if Mr. Jenner has any matters that he wishes to call to the committee's attention, directing the committee's attention to the evidence, explaining the evidence, the supporting materials behind the tab.

We will begin with 1.1.

One last thing is that organizing these books we have tried to follow a chronological pattern principally, but in organizing the period between June 20 and June 21, or June 20 and sometime in February, I believe, we looked first, examined first the investigation that was conducted by the authorized agencies of Government. And then we looked with respect to activities of defendants or persons that were what the FBI calls the subjects, or possible subjects, or witnesses to this investigation, and so that books II and III to some extent overlap chronologically. That is to the only extent that we have overlapped chronologically.

Finally I would like to say one more thing, and that is that at the end of the last meeting Congressman Wiggins asked me if this was all of the proof that we had with respect to a particular statement of information, or all of the materials and I said yes, except to the extent that we might have had more cumulative information, it does. I would like to elaborate on that. As you go over these books new matters come to your attention, you see new things, and it could very well be that there was additional material that we didn't appreciate the significance of, or that we though should be brought to the committee's attention, and that we brought it up, we will bring it up at a later time.

Now we will begin, Mr. Chairman, with tab No. 1.

Mr. DAVIS. Tab 1, on June 17, 1972, shortly after 2 a.m. five persons, including James McCord, a security consultant for the Committee for the Reelection of the President, were arrested in the Watergate headquarters of the Democratic National Committee.

Immediately after the arrest, Howard Hunt and Gordon Liddy left the Watergate Hotel. Hunt took with him a briefcase belonging to McCord that contained electronic equipment and went to the White

House. Hunt went to his office in the Executive Office Building and withdrew from his safe $10,000 previously provided to him by Liddy for use in case there was a mishap. Hunt placed McCord's briefcase in the safe. In the early morning hours he delivered the money to an attorney on behalf of the five persons arrested at the DNC Headquarters.

Mr. DOAR. Tab 1.1 is the testimony of one of the law enforcement officials who was at the scene. At page 105 of that testimony he describes the actual arrest in the office of the Democratic National Committee, the materials, equipment that was seized at that time, and the arrest. On 1.6 the location of the arrest with respect to the location of the office of the chairman in the Democratic Party, Mr. Lawrence O'Brian.

It also indicates that the men gave names that were proved later to be false.

Tab 1.2 is the testimony of James McCord. At page 126 he indicates that he was a full-time employee of the Committee to Reelect the President commencing in January 1972.

Tab 1.3 is Howard Hunt's testimony, which I would like to direct your attention to at page 3688, 3688 near the bottom of the page where Mr. Hunt says that he closed up Mr. McCord's briefcase. Mr. Hunt is at room 214 of the Watergate Hotel, which is in another building, the briefcase which contained the electronic equipment, and with Mr. Liddy.

We left the premises. I drove to the White House where I inserted the briefcase belonging to Mr. McCord into my two-drawer safe. I went—I believe I called Mr. Douglas Caddy's apartment, he being an attorney.

Mr. Hunt there is speaking of the Executive Office Building, not the White House. And he testifies to that.

And on the next page, 3689, he relates how he took out the $10,000 from the safe, which money had been given to him, provided to him by Liddy. Tab No. 2.

Mr. JENNER. Excuse me, John, We have employed in paragraph 1 the words used by Mr. Liddy with respect to the $10,000 and which he testified that that money had been held in the safe "for use in case of a mishap." As you will notice, the money was employed immediately by Mr. Hunt when he became aware of the happening that evening to retain Mr. Caddy as counsel, and in the event necessary to use the funds for bail.

Mr. DAVIS. Tab 2.

At the time of the arrest, at the Watergate headquarters of the DNC, electronic surveillance and photographic equipment, and approximately $1,500 in cash were found in the possession of the persons arrested. A subsequent search of the rooms in the Watergate Hotel that had been rented under alias names used by certain other persons arrested produced a directory containing a telephone number for a White House telephone for Mr. Howard Hunt, a check drawn by E. Howard Hunt, and 32 sequentially numbered $100 bills.

These bills had been received from a Florida bank into which Barker had deposited five checks contributed to the President's reelection campaign. Four of these checks totaling $89,000 had been drawn on a Mexican bank payable to Manuel Ogarrio, a Mexican lawyer. The fifth

check, totaling $25,000, had been drawn by Kenneth Dahlberg. These checks had been delivered to Gordon Liddy by FCRP treasurer, Hugh Sloan, to be converted into cash.

Mr. Doar. Among the things that were seized at that time by the police were certain notebooks that the arrested individuals had in their possession. I mention that because at a later time we will call that to your attention.

The testimony is, $89,000 came from campaign contributions from certain individuals in the State of Texas who put up the money, wanted to put the money through the bank in Mexico so that their identity be not disclosed.

Paragraph 2.1 at page 107 of 2.1, this is Sergeant Leeper describing what he did after he got on the scene, getting the possession of the material, the equipment, the money, the notebooks. And if you will look down at the middle of the page, there is a description of Sergeant Leeper and it says, "A small notebook, as you describe it, with the names that you have brought out on it. The name, E. Howard Hunt, is that the name?"

"I believe it is. It said E. Hunt, White House on it, yes, Sir." Or W. H., excuse me, or "E. Hunt, W. H. on it."

Tabs 2.2 through 2.4 is material that we provide to indicate the true names or the aliases that the people used who were arrested. Tab 2.2 is a document from the Central Intelligence Agency to the Federal Bureau of Investigation dated July 7.

And in paragraph 2 there is a discussion of the fact that during July and August of the preceding year, two sets of alias documents in the name of George F. Leonard and Edward Warren were furnished by the CIA to these two individuals. George Leonard is Gordon Liddy's alias, and Edward Warren is Howard Hunt's alias. Those documents with respect to that fact are shown in paragraphs 2.3 and 2.4.

The next matter I wanted to call to your attention was paragraph 2.6, which is the testimony of Patrick Gray, who was the acting director of the Federal Bureau of Investigation. He is talking about an interview that he had on the 22d of June, and he is describing the two checks. One, how the checks had gone into the bank account of Bernard Barker in Miami, and one was the check from Kenneth Dahlberg and the other was a check, four checks drawn on a Mexican bank payable to Manuel Ogarrio.

Mr. Jenner. Ladies and gentlemen of the committee, I call your attention to tab 2.6 in which you will find the report of the Metropolitan Police, District Metropolitan Police, of the materials found in the Democratic National Headquarters. Tab 2.5 is it? I'm sorry, 2.5, and that is the listing of that which the police on that occasion seized pursuant to a search warrant.

Mr. Doar. The last item that I wish to call your attention to with respect to this paragraph is 2.7, which is the testimony of John Dean. On page 942 of the Senate select committee public hearings, Mr. Dean described how these checks got into, apparently they got into Mr. Barker's bank account.

The checks had come to the Committee to Reelect the President, and Gordon Liddy was the finance director of it, or the treasurer and general counsel, excuse me, of the Finance Committee to Reelect the

President. And he was given the checks with the assignment of converting the checks into cash. Some time prior to that time he had gone to Miami and had used Barker to convert this money to cash, and some of it then was used in connection with the payment of the services of the people that broke into the Democratic National Committee.

Mr. Dean, on page 943, testifies that with respect to these checks, these contributions, that he related on the 22d or theretofore the facts about the checks to Mr. Haldeman and Mr. Ehrlichman. As we go on, there will be more material about those checks, and the money, and discussions about them in later paragraphs. Tab No. 3.

Mr. Davis. Tab. 3. At approximately 8 a.m. on the morning of the arrests, Henry Petersen, the Assistant Attorney General in charge of the Criminal Division of the Justice Department, telephoned Attorney General Richard Kleindienst at home to tell him of the arrest at the DNC Headquarters.

Mr. Doar. I have nothing to call to the committee's attention about tab No. 3.

Mr. Davis. Tab 4. On the morning of June 17, 1972, Gordon Liddy telephoned Jeb Magruder, chief of staff to John Mitchell at CRP at the Beverly Hills Hotel in California. Magruder returned Liddy's call from a pay telephone. Liddy advised Magruder of the arrests at the DNC Headquarters.

Shortly thereafter, Magruder met with John Mitchell, the campaign director of CRP and Fred LaRue, Mitchell's special assistant at CRP at the hotel. There was discussion regarding somebody's contacting Acting Attorney General Richard Kleindienst concerning the arrests at the DNC Headquarters. Later that day, Liddy and Powell Moore, an official at CRP, met with Attorney General Kleindienst at the Burning Tree Club near Washington, D.C. Liddy told Kleindienst that Mitchell had asked him to give him a report on the break-in at the DNC Headquarters, and that some of the persons arrested might be employed by either the White House or CRP. Kleindienst called Henry Petersen and instructed him not to give special treatment to those arrested at the Watergate. Kleindienst told Liddy to leave the premises.

Mr. Doar. Now, Members of the committee, there is a conflict, or various versions as to who gave the directions to call Mr. Liddy, what directions were given to Mr. Liddy about Mr. Kleindienst. And it does seem clear that Mr. Liddy did call Mr. Magruder, Mr. Liddy did suggest that Mr. Magruder go to a secure phone and Magruder did go to a secure phone and called back and got the information as to what happened on that morning. I think that Mr. Magruder testifies to that at 4.1.

But, I would like to turn to 4.2, which is the testimony of Fred LaRue, and go over that testimony with you.

Mr. Jenner. In this connection, as in all areas where there appears to be a difference in testimony, pro and con nuances, the staff has been careful to afford you all of that which we have bearing upon that particular possible difference of nuances and thrust of testimony, and the exhibits so that you will make your decision with respect to the subject matter. We do not claim we have everything, but we have reported to you and do include everything that is available to us at the moment.

Mr. DOAR. On page 2284 Mr. LaRue relates how he and Mr. Magruder, Mr. Mardian and Mr. Porter were having breakfast at the Beverly Hills Hotel, and he says at the bottom of 2284:

Magruder was paged and went to the telephone. He came back and he said he had a rather unusual, strange call from Gordon Liddy who wanted him to go to some, as I recall, some NASA installation or NASA base in Los Angeles where there was a secure phone, to use the phone to call back to Mr. Liddy in Washington.

Mr. Dash asked:

Did Mr. Magruder say anything about what the problem was?

Mr. LaRue said:

Mr. Liddy indicated that there was a problem that he wanted to discuss and Mr. Magruder, in an aside to me, said, "You know, I think maybe last night was the night they were going into the Democratic National Committee."

And Mr. Dash said:

Did that mean anything to you when he said that?

And Mr. LaRue said:

Well, no, specifically no, but it—in view of the fact that I was aware this plan had been discussed in Key Biscayne, it certainly aroused a great curiosity on my part.

And then Mr. Dash said:

What happened next? Mr. Magruder then went ahead and spoke to Mr. Liddy. LaRue said I told Mr. Magruder that why didn't he just use a pay phone, and Mr. LaRue then said Magruder called Liddy and then came back and told him that Liddy had told him that a break-in, five people had been caught and one of the persons was Mr. McCord.

And then Mr. Dash said:

Was this information relayed to Mr. Mitchell?

Mr. LaRue said:

Yes. I personally relayed that to Mr. Mitchell.

Mr. Dash asked:

And what was Mr. Mitchell's reaction?

And Mr. LaRue describes Mr. Mitchell's being very surprised and saying that this is incredible, and he asked did Mr. Mitchell give any instructions, and he said, "Not at that time." He said Mr. Mitchell went back to his meeting and he said:

Later, I think, Mr. Magruder and I, and Mr. Mitchell met, and Mr. Mitchell asked that someone call Mr. Liddy and have him contact Mr. Kleindienst, the Attorney General, and have Mr. Kleindienst get in touch with Chief Wilson and see what details we could find out about the situation.

And then at tab 4.3, Mr. LaRue again expands on that at page 2330, and there was a discussion about who was to call Mr. Liddy, and Mr. LaRue said:

Well, someone was to call Mr. Liddy, to call Mr. Kleindienst, to call Mr. Wilson to find out what happened.

At tab 4.4, we have a testimony of Richard Kleindienst in which he describes at 3561 Mr. Liddy coming to the Burning Tree Country Club with Mr. Powell Moore. Powell Moore is identified as a former

Deputy Public Information Officer of the Department of Justice, who went with Mr. Mitchell when he resigned over to the Committee for the Reelection of the President.

And if you look at page 3561, or excuse me, 3562, at the end of the first not full paragraph but at the end of the first paragraph that had begun on the previous page, and Mr. Kleindienst tells how Mr. Liddy said that he had been asked to come out and give him a report about the Watergate break-in. And he said that some people that were arrested might be employed by either the White House or the Committee for the Reelection of the President. And Mr. Kleindienst describes how he told Mr. Liddy to leave the premises, and as far as he was concerned the people were to receive no different treatment than anyone else with respect to the way the authorities were to handle the investigation.

Paragraph 4.5 is Mr. Mitchell's testimony, and at page 1662 Mr. Mitchell does not have a clear recollection of the phone call, but there was some conversation that someone might call Mr. Kleindienst and find out generally what happened.

And then Mr. Mardian testifies at 4.6 with respect to his conversations with Mr. Liddy in which he gives details about what had happened and relates what had happened out at the Burning Tree Country Club after Mr. Kleindienst told them to get out of there. In other words, Mr. Liddy had reported back to someone in California as to what had happened out at the Burning Tree Country Club.

Paragraph 5——

Mr. JENNER. Excuse me, John. Members of the committee, there is a slight error in the statement of information on No. 4, and Attorney General Richard Kleindienst is there stated to be Acting Attorney General. He was, in fact, the Attorney General at that time, so you may amend that by striking the word "Acting" in line 8.

And if you will permit me a personal observation, Attorney General Kleindienst acted as you would expect a dedicated and honorable Attorney General of the United States to act when he was approached by these gentlemen at the golf course.

Thanks, John.

Mr. DOAR. Tab No. 5.

Mr. DAVIS. Tab 5. In the late afternoon of June 17, 1972, Secret Service Agent Boggs telephoned John Ehrlichman, assistant to the President, and told him that one of the persons arrested at the DNC Headquarters had in his possession a document referring to Howard Hunt, who apparently was a White House employee. Later that day, Ehrlichman phoned Ronald Ziegler, the President's Press Secretary who was with the Presidential party in Florida. Ehrlichman told Ziegler the substance of his telephone conversation with Agent Boggs. Ehrlichman also telephoned Charles Colson, special counsel to the President, and discussed Hunt's White House employment status.

Mr. DOAR. In this paragraph, Mr. Ehrlichman testifies at 5.1 and he makes clear that he inquired of Mr. Ziegler or called Mr. Ziegler to give him information because he thought he might be getting some inquiries. And then he called Mr. Colson, special counsel to the President, to find out whether Howard Hunt was still employed.

Tab 5.2 is Charles Colson's deposition. It merely corroborates the call from Mr. Ehrlichman. Mr. Colson was not a witness before the

Senate select committee, but he did give his deposition and later on we find that he presented, in his own behalf, he and his attorney, a statement to the Senate select committee. And we have inserted in the several paragraphs or subparagraphs parts of that statement that we think are pertinent to the statement of information. Tab No. 6.

Mr. DAVIS. Tab 6, during the evening of June 17, 1972, Assistant Attorney General Petersen telephoned Attorney General Kleindienst and told him that documentation relating to a White House consultant had been found at the scene of the break-in at the DNC Headquarters.

Mr. DOAR. Assistant Attorney General Petersen is the Assistant Attorney General in charge of the Criminal Division. As most of the members of the committee know, Mr. Petersen is a long time employee of the Department of Justice in the Criminal Division, moved up through the ranks, head, I believe, of the General Crime Section, worked in Organized Crime, served as acting assistant attorney general on a number, I believe, several occasions with former administrations. And at this particular time he was the assistant attorney general in charge of the Criminal Division. The Criminal Division is a very large division of the Department of Justice. I think at about that time it employed about 400 attorneys.

Mr. DAVIS. Tab 7, on June 18, 1972, H. R. Haldeman, chief of staff to President Nixon, who was at Key Biscayne, Fla., with the Presidential party, spoke by telephone with Jeb Magruder, who was in California. Haldeman directed Magruder to return to Washington, D.C., to meet with counsel to the President, John Dean, Haldeman's special assistant, Gordon Strachan, and FCRP treasurer, Hugh Sloan, to learn what had happened, and determine the source of the money found in the possession of the persons arrested at the DNC headquarters. By the following day, Magruder had returned to Washington.

Mr. DOAR. Mr. Haldeman testified that he had no recollection of this particular call. Mr. Magruder said that Mr. Haldeman asked what happened and directed Mr. Magruder to find out what happened and whose money was used. And he told him to talk to John Dean, who was counsel to the President, talk to Gordon Strachan, who was his special assistant on the White House staff, and talk to Mr. Sloan, who was then Treasurer of the Finance Committee To Re-Elect the President, but theretofore had worked under Mr. Haldeman, and Mr. Chapin in the White House before he transferred over to the Finance Committee. Mr. Haldeman's only recollection of the conversation was that he was concerned about what kind of a release, I assume this is a press release, the Committee To Re-Elect the President was going to issue. And he wanted to be informed, and to participate in that release. Tab No. 8.

Mr. DAVIS. Tab No. 8, on June 18, 1972, John Ehrlichman spoke by telephone with H. R. Haldeman. They discussed the break-in at the DNC Headquarters, the involvement of James McCord and the fact of Mr. Hunt's name being involved.

Mr. DOAR. Mr. Ehrlichman's testimony with respect to this indicates that he too was concerned about what tact the committee would take with respect to explaining this, and he wanted to have someone talk to Hunt and get the details of Hunt's being involved. Tab No. 9.

Mr. DAVIS. Tab 9, at noon on June 18, 1972, Gordon Strachan telephoned Haldeman's principal staff assistant, Lawrence Higby. Higby

told Strachan that Haldeman had spoke with Jeb Magruder about the break-in and that John Ehrlichman was handling the entire matter.

Mr. DOAR. I would like to call the committee's attention to paragraph 9.1, which is Gordon Strachan's testimony. It is at page 2457 where Mr. Dash, and this is before the Senate Select Committee, asked him, "Did you later learn from Magruder anything about this event?"

Mr. Strachan said:

Well, I called him that afternoon and then tried to call him again that evening and did not reach him. Placed a third call on Sunday about noon, Washington time, and asked him if he knew anything about this, since I had rather expected a phone call from Mr. Haldeman. And he said, "Don't worry about it, I have been on the phone this morning with Bob, and you needn't know anything about it."

Mr. Dash said:

All right. What did you do after that?

Mr. Strachan said:

I called Mr. Higby, because I didn't really believe that Magruder had talked to Mr. Haldeman. Mr. Haldeman was down in Key Biscayne. Mr. Higby told me yes, in fact Magruder had talked with Mr. Haldeman and Mr. Ehrlichman was handling the entire matter.

Mr. Higby, as you will recall, also was a special assistant to Mr. Haldeman, and sat right outside of his office on the first floor of the White House. Tab No. 10.

Mr. DAVIS. Tab 10, at 7:32 a.m. on June 19, 1972, Attorney General Kleindienst telephoned the Acting Director of the FBI, L. Patrick Gray, in Palm Springs, Calif., and stated that Kleindienst wished to be briefed on the investigation of the break-in at the DNC Headquarters. Kleindienst told Gray that the President wanted to talk to Kleindienst about it that day or possibly the next day.

Mr. DOAR. This paragraph of material, of information, comes from material that the staff acquired after it interviewed Patrick Gray in March of this year, or I believe it was on April 30 of this year. At that time Mr. Gray furnished to the inquiry staff handwritten notes that he had made on June 19. And if you look, because the handwritten notes are difficult to read, we retyped them for you. But, I think the committee might want to look at Mr. Gray's notes on paragraph 10.1, the handwriting, the handwritten notes, and they consist of three pages.

Mr. JENNER. They follow the typed material.

Mr. DOAR. And the pertinent material or one part of the pertinent material is on the first page there, Monday, June 19, 1972, and if we then go back, turn back to the typed material, which is an exact typewritten copy of the notes——

Mr. JENNER. That's the first page.

Mr. DOAR. Back on 10.1, you will notice that at 7:32 a.m. Mr. Gray out on the West Coast, Palm Springs, got a telephone call from the Attorney General, Richard Kleindienst. And the note said that, "Sometime today or possibly tomorrow RN is going to want to talk to me. Is there anyone there who can come brief me today this p.m.?" And the answer was, "Yes." And that's Mr. Felt.

Mr. DAVIS. That's correct.

Mr. DOAR. Special Agent Felt of the FBI who was in overall charge of the Watergate investigation.

There are other materials in Mr. Gray's notes that may be pertinent to the committee. At 8 o'clock, if you run down the page, he gets a telephone call, Mr. Gray gets a telephone call from Mr. Felt. And if you see the second note there that Mr. Gray wrote: "I have a memo to HRH and to AG." This is with respect to Mr. Gray. The committee may want to hear from Mr. Gray with respect to an explanation of these notes, but it seems to be apparent that this relates to the break-in, and so also Mr. Gray wonders, asks why in his notes relating to the fact that the memo goes to HRH and to the Attorney General.

Mr. RAILSBACK. What does TCF mean?

Mr. DAVIS. Telephone call from.

Mr. DOAR. Then if you go down to the second page, you see the information that Mr. Gray was getting with respect to Howard Hunt, because there was material found at the scene that connected Mr. Hunt. And you know that he writes, "He may have been a consultant at the White House" on the lefthand side, large letters, and then the fourth line from the bottom, "We conducted an investigation for the WH in 1971 for a sensitive post some 9 months ago," and that Caddy, and that's the lawyer who Liddy gave the money to, advised the FBI that he received a call at 3 a.m. from a person he refused to identify. At the bottom of the first page——

Mr. JENNER. Bottom of the first page and the typed page, 10.1. L. Patrick Gray notes.

Mr. DOAR. Then on the top of the second page you will see notes of a discussion between the Director of the FBI and the man that is special agent that's in charge of the particular investigation, and you see to the left he's got the note, "Are we in it solidly?", and the answer, "Yes." And there is a note on the right, "Do not send." And there again is a cryptic note, but it would appear that this was an instruction to follow the policy of the FBI not to circulate outside the Bureau information with respect to an investigation until the FBI was prepared to make its report.

Since I worked in the Department of Justice for 7½ years, I can tell the committee that it is standard practice in the Department of Justice for the Bureau to make periodic reports on investigations that it was conducting, and to send them over to the Assistant Attorney General in whose division the particular violation or alleged violation had occurred. These reports would come in a standard package with a summary on the top, or really a summary status of the investigation, and then the interviews behind. And these would always have been reviewed by a high Washington official of the FBI. There was a standard form on the top. It would indicate the nature of the investigation, whether it was a preliminary investigation or full investigation, and generally the report, the form would indicate that the investigation was continuing. As I say, the material never came over in bits and pieces. It came after it had been analyzed and summarized, and came periodically when the Bureau felt that it was important to report to the Justice Department or to the attorneys in the particular division.

I know of no occasion when we were able at Justice to get interviews, 302 interviews on a piecemeal basis. That was not the case

out in the field. If you were in the field working with agents in the field, and preparing information for a grand jury, or preparing for trial, and the agents were conducting interviews, they would give you 302's, work closely with you, that is, the witness interviews, before they went to Washington unless they had specific directions to the contrary.

Mr. JENNER. When I was with the Warren Commission there were, and these are exceptions to that practice, but occasionally we would have need for an immediate FBI interview and check and report. The practice of the FBI was to do its best to refer that to the field agent in the particular city or town as to which there were areas in which we wished information, and we would receive a spot report, depending on the nature of the emergency and pressure. But Mr. Doar has described for you the normal procedure followed by the FBI, not only with respect to the Department of Justice, but when it is conducting investigations for others as well, other Government agencies.

Mr. DOAR. Tab 11.

Mr. DAVIS. Tab 11, in the morning or early afternoon of June 19, 1972, Ehrlichman told John Dean to look into the question of White House involvement in the break-in at the DNC and to determine Howard Hunt's White House employment status. Dean has testified that he then spoke to Charles Colson regarding Colson's knowledge of the break-in and Hunt's status, and that Colson denied knowledge of the event, but expressed concern over the contents of Hunt's safe. Dean has also testified that he spoke to Gordon Liddy, who advised of his and Magruder's involvement in the planning and execution of the break-in. Thereafter Ehrlichman received a report from Dean that Dean had spoken to Liddy and to law enforcement officials, that law enforcement officials were aware that the matter went beyond the five persons who were apprehended, that Liddy was involved, and that there was a further direct involvement of the CRP.

Mr. DOAR. Paragraph 11.1 is testimony of John Dean before the Senate select committee. And in the middle of the page or at the top of page 933, Dean testifies how there was concern at the White House among the people there, Mr. Colson, Mr. Dean, Mr. Ehrlichman, with respect to Hunt's payroll status, and with respect to the contents of Hunt's safe. And then at the middle of the page Dean relates how he contacted Mr. Liddy and they went out. Mr. Liddy suggested they take a walk. He puts it about noon, and Mr. Liddy reported to him that the men who had been arrested were his men. And he expressed concern about them.

> I asked him why he had been in the DNC, and Liddy told me that Magruder had pushed him into doing it. He told me that he had not wanted to do it, but Magruder had complained about the fact that they were not getting good information from a bug they had placed in the DNC some time earlier. He then explained something about the steel structure of the Watergate office building that was inhibiting transmission of the bug, and that they had gone into the building to correct this problem. He said that he had reported to Magruder that during the earlier entry of the DNC offices, they had seen documents, which I believe he told me were either government documents or classified documents and Magruder had told him to make copies of these documents.

And then Liddy goes on to tell them that Dean asked why one of the men had a check from Hunt, and Liddy said they were friends of Hunt, and Hunt had put him in touch with him.

And then if you turn to page 11.3, and 11.2, 11.2 is the testimony of John Dean on November 19, 1973, before the grand jury of the District of Columbia. And the pertinent information is elicited on pages 48, 49, and 50 of Mr. Dean's testimony.

I want to remind the members of the committee again that with respect to the grand jury testimony, this is how we received it from the grand jury. We did not receive all of Mr. Dean's testimony. With respect to grand jury material, there has been no editing of pages whatsoever. The way we have the material in the book is exactly as the grand jury gave it to us.

The committee may wonder about on the first page of 11.2, which relates to John Dean's testimony, you will see at the top of the page, you will see a stamp "DV." That is a stamp that we put on the material because it is a classification of restricted material, and we had in our own inquiry staff the closest security of that material on a need-to-know basis, and that was the highest classification that we used. This particular material was retained by me in my office in a a safe, which I did not have the combination. Mr. Shelton had the combination; Mr. Marshall, our security officer, had the combination; and Maureen Barden, who is the head of our research staff, our control had the combination.

We maintained a log at all times when any person withdrew the material from the safe, and they were permitted to read the material in the suite of offices which I occupied. Mr. Coppock had a small office in that suite, and when some person wanted to read the material he either sat in the space between my office and my secretary's office, or around the corner in Mr. Coppock's office. That is where Chairman Rodino and the Ranking Minority Member, Mr. Hutchinson, read the material. And only those members of our staff examined the material that had a need to know in connection with the preparation of these matters for the committee.

The figure 47.6 on the top there means that this is the first page, means that this is the sixth point under the 47th paragraph of the grand jury report to us. And you will see that repeated. I meant to explain that to you yesterday. You will see that repeated on each one of the grand jury material. And the grand jury material, as it came to us, look, has statements not unlike the statements we have prepared for you with annotations at the bottom. And then behind it in folders, the file folders, are these various subparagraphs. It is not an index.

Now, the tapes that we received from the judge were also kept in that safe and they were released, of course, they went out of my office and down to the tape room, which was on the floor that we occupy. And they were played and listened to by people that had written authorization by me, and approved by Mr. Jenner to listen to the tapes.

When we got the material from Judge Sirica, Mr. Jenner and I met with Judge Sirica and went over the grand jury material page by page. I think it took us about 3 hours. This was to be certain that every piece of material, every piece of paper that the grand jury had submitted, that we received, and that we receipted for that information. And if there was an error in it, some kind of an error or something, we would make a note of it. There were no errors but there may have been a few places where Mr. Jenner wrote explanations on the

index to make it clear just exactly what material the committee was receiving. There was also—Mr. Jenner calls my attention to the fact—that there was also a court reporter and the entire proceedings were recorded and then placed under seal in the records of the court. Also, there were transcripts of tape recorded conversations in the grand jury material and pages of the transcripts were referred to in the grand jury index. These transcripts were used by us in comparing the transcripts that the White House had given to us and the transcripts which we made and which we will furnish to you as we get into listening to the recorded conversations.

Now, if you look at page 48—also, Mr. Jenner calls my attention to the fact that the brackets are brackets that we placed on the material for the committee's use. They weren't there when we received the material.

And if you look at the question at the top of the page it is:

And what did you tell Mr. Ehrlichman?

Answer:

Well, I reported to Mr. Ehrlichman everything that Liddy had told me and I recall recounting back to him, trying to put all of the pieces I had available at that point together by telling him about the meetings which had occurred in the Attorney General's Office in January and February of 1972.

Question:

Those were the meetings at which Liddy presented his intelligence programs?

Answer:

That is correct.

And if you go to the bottom of the page now, the question is:

Now, during these first few conversations with Mr. Ehrlichman, after the Watergate break-in, did he instruct you to conduct an investigation and determine whether anyone in the White House was responsible or had knowledge of the Watergate break-in? Give you a specific instruction to conduct a Watergate investigation?

Answer:

I wouldn't say it was an instruction to conduct an investigation. He just told me to keep my eyes and ears open and learn what I could.

Mr. Jenner said to call the committee's attention to the fact that the reference to the Attorney General in February was Mr. Mitchell, not Mr. Kleindienst.

And then on page 49, question:

Did Mr. Ehrlichman or anyone else in the White House ever give you a specific instruction to conduct an investigation into this matter, telling you that it was your responsibility to make a determination of the facts and determine whether anyone in the White House was involved or responsible?

And Mr. Dean's answer:

Well, I wouldn't say that it was really until late August when it was reported that I had conducted such an investigation that there ever became any semblance of such an investigation. And, after that, when it had been put on the public record that I had conducted an investigation, I began to pretend like I had conducted an investigation.

But I am unaware of being instructed to do an investigation because I would have proceeded much differently if I was investigating. I was merely sort of catch-as-catch-can.

Question:

Was this—did it naturally fall to you, as counsel to the President, as a person who had formal liaison with the Justice Department and the informal contacts there, to be the person at the White House most aware of what was going on in the Watergate?

Well, with things like what would generally happen is that after Mr. Haldeman or Ehrlichman would either lose interest or get concerned in something else, it would fall to me to be the man to follow up and continue the liaison and keep them abreast of what I was learning.

Tabs 11.3 and 11.4 are testimony by Mr. Ehrlichman at different times at the Senate select committee. They are slightly equivocal, but it seems at tab 11.4 that Mr. Ehrlichman does confirm the fact that Mr. Dean did report to him about his talk with Mr. Liddy, and that the fact that Mr. Liddy was involved in the Watergate break-in, and that there was further direct involvement of the CRP in this. That is page 2583 of tab 11.4. Tab No. 12.

Mr. DAVIS. Tab 12, on June 19, 1972, the President telephoned Charles Colson from Florida and spoke with him for approximately 1 hour, ending shortly before noon. The break-in at the DNC Headquarters was discussed.

Mr. DOAR. This is the first direct information that we have had that the President was informed of the Watergate break-in. This came to us initially by virtue of the fact that the special prosecutor requested, and you can see this from 12.1, meetings and telephone conversations between the President and Charles Colson for the period June 16, 1972, through April 30, 1973. And this is an abstract of a log. I do not know whether this was an abstract from Mr. Colson's log or an abstract from the President's log. But, at any rate, it summarizes day-by-day the contacts between the President and Mr. Colson. The special prosecutor received similar abstracts from Mr. Haldeman, Mr. Ehrlichman, Mr. Dean and a number of other officials in the White House during the course of his investigation in the summer of 1973.

Tab 12.2 is the tab that I referred to, is the material, the statement by Charles Colson. This is a statement that he delivered to the committee which he intended to make but the committee concluded that they would not call him. But, he delivered this and then the committee furnished it to us. And at page 6 of that statement—we have the entire statement, of course, at our offices and I believe it is some 50 pages in length—at No. 5, paragraph 5, Mr. Colson confirms that the President called him and that the President was angered and incredulous that anyone involved in the Presidential campaign apparatus could have engaged in such conduct. And Colson explained that he had no idea what happened; and now Colson says that, relates about the conversations he had with the President the following week, in which the President expressed great annoyance in the way in which the committee was being managed. And the President said he had not been able, according to Colson, the President said he had not been able to devote time to campaign matters and that he complained that the staff was overstaffed and overpaid and that the committee had too much money to spend. Watergate was an example of misguided enterprise. And he said that he had ordered Mr. Haldeman to have the staff of the committee reduced. And he said that he had done this on more than one occasion, reflecting the direction that came from the President, through Mr. Haldeman to the committee. Tab 13.

Mr. DAVIS. Tab 13, on June 19, 1972, Howard Hunt went to the Executive Office Building and reviewed the contents of his safe. He determined that the contents included cables Hunt had fabricated indicating a relationship between the Kennedy administration and the assassination of Vietnamese President Diem, materials relating to Gemstone, James McCord's electronic equipment and other material. Hunt thereupon informed Charles Colson's secretary, Joan Hall, that Hunt's safe contained sensitive materials.

Mr. DOAR. Members of the committee, this is a reference to Howard Hunt and his conversation with Charles Colson's secretary, and it is impossible for us to determine as yet whether this occurred before the phone call between Mr. Colson and the President or whether it happened after the phone call. We have placed it after the phone call with the President, but as I say, on the basis of our present information we can't establish that.

There are, as Mr. Jenner says, instances where various witnesses place instances at different times during the day, and to the extent we are able to reconcile those differences we do. Where there is a difference, we try to bring it to the committee's attention.

The matter I wish to call to the committee's attention here, because as we go on in these next few paragraphs, there are a number of items of information about the fact that the safe was drilled open by specialists and it is pertinent, I think, for the committee to look at page 3689, which is 13.1. This is Howard Hunt's testimony. And also look at the conversation at the bottom of the page, which begins maybe 10 lines up. Mr. Dash says:

> Now, did you inform anyone on that day of the contents of your safe?
> Answer. "I did."
> *Question.* "Who was that?"
> Answer. "Mr. Colson's secretary."
> *Question.* "What is her name?"
> Answer, "Her name was Mrs. Joan Hall."
> *Question.* "Did you characterize or say anything about the contents?"
> Answer. "Yes, sir, I did."
> *Question.* "What did you say?"
> Answer. "Before I left the White House for the last time I stopped by Colson's office, not to see him, but simply to inform Mrs. Hall, whom I knew held the combination to my safe, that it contained sensitive material. I simply said to her: 'I just want you to know that that safe is loaded.'"

Mr. Chairman, this next paragraph is a long one.

The CHAIRMAN. Yes. We will recess for 10 minutes.

[Short recess taken.]

The CHAIRMAN. Mr. Doar?

Mr. DOAR. Mr. Chairman, during the recess my attention was called to the fact that the record, someone reading the record might conclude that I was suggesting, or that the inference could be drawn, that President Nixon directed Mr. Colson to have Mr. Hunt's safe cleaned out, because of my reference to the fact we didn't know whether or not the phone call came before or after the time that Hunt reviewed the contents of his safe. I certainly meant to suggest no such inference, and we have no evidence whatsoever that would support that. And I say to you unequivocally in the state of the record there isn't anything that supports that. And I did not mean to suggest by just making the explanatory remark about the phone calls, to in any way suggest that.

Congressman McClory also asked a question about the log. That is at 12.1. And what the symbols meant on the log. And just to go back to 12.1, at the top of the page there is this stamp quote "WH," and at the bottom "WH." Those are our stamps that our research staff placed on all materials that were furnished us by the White House. This material came to us in response to our letter of February 25 for the material which the White House had furnished to Mr. Jaworski. The date, March 9, is the date that we received the material from the White House. As I say, this material had theretofore been submitted by Mr. Buzhardt to Mr. Cox following requests by Mr. Cox to Mr. Buzhardt in the early part of June 1973.

Now, we will go to paragraph 14.

Mr. DAVIS. Tab 14, during the afternoon of June 19, 1972, John Ehrlichman, Charles Colson, John Dean, Bruce A. Kehrli, staff assistant to H. R. Haldeman, and Ken Clawson, White House Deputy Director of Communications, met in Mr. Ehrlichman's office and discussed Howard Hunt's White House employment status. Colson stated that Hunt should have been terminated as a White House consultant as of March 31, 1972. Kehrli was asked to and did bring Hunt's employment record to Ehrlichman's office. These records did not indicate that Hunt's consultant status had been terminated. By memorandum dated June 19, 1972, Colson, transmitted to Dean documents relating to Hunt's status.

By memorandum dated March 27, 1972, to Charles Colson had requested assistance in changing the annuity benefit option he had selected upon retirement from the CIA.

By memorandum, dated March 30, 1972, to Kehrli, Richard Howard, staff assistant to Charles Colson, had inquired respecting Hunt's situation. At the top of the original of the Howard memorandum, there is a handwritten note:

Noble—please let me know of this w/o giving out any info on the name of the fellow we are trying to help. B.

At the bottom of that memorandum there is a handwritten note:

Okay—drop as of April 1, 1972 NAK.

On May 5, 1972, Hunt had written a letter on White House stationery to CIA General Counsel, Lawrence Houston, renewing his request respecting his benefit option and station that he had discussed the matter with White House legal staff.

Mr. DOAR. Bruce Kehrli ran the Staff Secretariat Office in the White House, or the Staff Secretariat Office that Mr. Haldeman had installed at the direction of President Nixon. That meant that all papers, all records, reading material which went to President Nixon each day went through Bruce Kehrli. He was one of Mr. Haldeman's special assistants along with Higby and Strachan.

This paragraph is complicated in that the information is—there are some things that are unresolved and it may be that the committee will feel that they want to have Mr. Kehrli testify as a witness as to when he wrote on the bottom of the memorandum that is referred to in the statment of information:

OK—drop as of April 1, 1972.

Mr. JENNER. John, before you go into that——

Mr. DOAR. Yes.

Mr. JENNER. Ladies and gentlemen of the committee, there was an understandable concern in the White House as to whether Mr. Hunt was a White House employee in the first day or two following the break-in. And there was an immediate resort and inquiry into what was his status, in fact, having in mind that his check had been discovered in the DNC Headquarters the night of the break-in by the Metropolitan Police, and because of that delicateness with regard to that, there was an understandable inquiry into the area.

And we have elected to present to you all that we can find with respect to that particular matter. There was also concern understandably that Mr. Hunt had then, we think, reasonably described as having an office in the White House and, of course, the safe to which your attention has already been called, and the materials presented to you under the tabs now to be explained by Mr. Doar, are all directed to that. Whatever the information is, pro and con, is presented for your ultimate resolution on credibility and other considerations in reaching your ultimate judgment.

Mr. DOAR. Tab 14.1 is John Ehrlichman's log for Monday, June 19, and it reflects the fact that he had a meeting at 12 o'clock that day with John Dean, and then the 4 o'clock meeting with Colson, Dean, Kehrli, and Clawson. Clawson is one of the public information officers at the White House.

Tab 14.2 is John Dean's testimony, and as you see at the bottom of page 934, that Mr. Dean's assistant, Fielding, had checked into it and Hunt had not drawn a check from his White House consultantship since late March, but Dean said as far as he knew, Hunt was still a White House consultant and he was a consultant to Colson. And Dean also testifies that Colson said that it was imperative that someone get the contents of Hunt's safe.

And 14.3—at any rate, the information—before going into 14.3, I turn you back to page 935 of 14.2, where Dean explains that they called Bruce Kehrli, who as I say is the staff secretariat, to bring up the records to see whether Hunt was still employed by the White House. And according to Dean, when Kehrli arrived, Ehrlichman and Colson quizzed him and Colson was arguing that Hunt should have been removed from the White House as of March 31, and according to Dean, Kehrli's records did not so indicate.

After the meeting, Colson submitted to Dean three memorandums. These are found on 14.4, and you will see the first one is a letter memo from Colson to Dean with respect to Hunt. And he said——

Mr. BUTLER. Do you mean 14.5?

Mr. DOAR. Tab 14.3. Excuse me, 14.3.

Mr. JENNER. The series of typed memorandums there.

Mr. DOAR. At any rate, Colson apparently, or this is sent to Dean after the meeting, a memorandum saying that "the attached is his chron file." It clearly says that Hunt's: "Services here terminated on March 31, 1972," and he also attached a report of the conversations which his secretary, Joan Hall, had 6 or 8 weeks ago. The attachment where he attached was a memorandum to Bruce Kehrli which is dated March 30, 1972. You will note that at the bottom there are words "a true copy" typed there.

We got this material from the Senate select committee, and it would appear that, or we think that this is their copy, and it wasn't a copy

produced by Colson. But Richard Howard, who is Colson's assistant, writes to Kehrli on the 30th, and he said:

We would like to accommodate Hunt on the attached and would like to do it right away, and then totally drop him as a consultant, so that 1701 can pick him up and use him. Howard has been very effective for us but his most logical place now is consulting 1701, the attached to be a major program, and we would like to do everything we can to accomplish this and help him in this way. Please let me know.

The second memo Mr. Colson attached as a memo from Joan Hall, his secretary, where she reported that 6 or 8 weeks before she asked him why—Howard Hunt—why he had not turned in his timesheets, and he said "Well, they have been taken care of elsewhere." Previously, she indicated that she had had to initial his timesheets.

And 14.5 the attachment to this memo from Bruce Kehrli, was not attached to the material that was sent to John Dean. But 14.6, which follows Mr. Ehrlichman's and Mr. Colson's description in the meeting, and his description of the termination, his characterization on 14.5 of the termination memo of March 30, 14.6 is a memo from Howard Hunt to Charles Colson on March 27 in which he asks about having a change in his annuity so that he could provide for post-mortem benefits for his survivors.

Hunt was unaware that the choice was irrevocable after he left the CIA. And he is asking Mr. Colson whether the White House could give him assistance in restoring the opportunity to provide for his family beyond the limits of private insurance. And this memorandum was in among the papers that we secured, and I believe we got this from the Senate select committee.

And 14.7 just indicates Mr. Colson's staff and indicates that Mr. Howard was his special assistant to the President, staff assistant to Mr. Colson.

Tab 14.8 is the copy of the memorandum which we asked the Watergate Special Prosecutor's Office to furnish us. This is the copy of that memorandum. And you will notice the second page of 14.8 there is Mr. Buzhardt's letter of transmittal in which he indicates that this document was a Presidential paper. This response from Mr. Buzhardt came after a request by Mr. Cox on August 27.

Mr. DOAR. Tab 14.9 is the original memo that went from Mr. Howard to Mr. Kehrli. This is a memo dated, as I say, March 30. It has some underlining on it. The underlining I wish to call your attention to. If you look at the density of the marks on the page there, the circled line seems to be of different intensity or degree of marking than the underlined part. As you see, "Howard Hunt" is underlined in the first paragraph. "Totally drop him as a consultant so that" on the third line, and "1701 can pick him up and use him."

In the second paragraph, "very effective for us" and "most logical place now is consulting 1701."

At the top, "B" for Bruce writes: "Noble, please let me know on this without giving out on the name of the fellow we are trying to help."

Then on the bottom, you see the words "OK—drop as of April 1, 1972," Bruce Kehrli. Then a line going back up to a circle of the words "Totally drop him as a consultant so that 1701 can pick him up and use him." This suggests that the ink markings were made at different times.

If you go over on the right hand side of the page above the "so that" on the third line and start with the beginning of that line and follow them on, you will see that it comes over to "totally" and then drops down and comes back so that it picks up with "so that". It was made differently from the line immediately above "1701 can pick him up and use him."

May 5.

Mr. Jenner said I should give you an indication of what this means.

I think it suggests an inquiry as to whether the "OK, drop as of April 1, 1972" was written by Bruce Kehrli at the same time the note at the top of the page was written and the only way to decide that is to interview Bruce Kehrli or get his testimony, which was not secured.

The next page, 14.10, is a letter that Mr. Hunt wrote in which he writes about his annuity benefit and says that he has been in touch with the legal staff to see whether or not the Director of the CIA could recall him to duty and then permit him to revert to retired status.

This document was furnished to us along with a number of other documents from the CIA. You will note that the date of the document is May 5, 1972, and Howard Hunt purports to identify himself as a consultant to the President.

I do not want to suggest that that is establishing anything except what Howard Hunt might suggest, for I think that Howard Hunt would be capable of suggesting that without any authority whatsoever.

Mr. JENNER. I share that view of Mr. Doar and as I said at the outset, there was a natural concern, understandably so, with respect to Mr. Hunt and any connection of his with the White House on the occasion of the break-in. There is presented to you then all that we have, the elements bearing upon ultimate resolution on your part. That is why we went into the efforts of Mr. Hunt to obtain these heightened pension benefits during this period of time and preceding the March 31 date.

Mr. SMITH. Mr. Doar, on that Howard Hunt letter near his signature, 100380, is that one of your staff numbers?

Mr. DOAR. Yes, it is. Tab 15.

Mr. DAVIS. Tab 15. At the meeting specified in the preceding paragraph, John Ehrlichman instructed that Howard Hunt's EOB safe should be opened in the presence of John Dean, Bruce Kehrli, and a Secret Service agent, and that Dean should take possession of the contents. Charles Colson said that this should be done immediately. On the evening of June 19, 1972, at Kehrli's request, Hunt's safe was forceably opened in the presence of a Secret Service agent and a GSA representative. Kehrli and Fred Fielding, Dean's assistant, arrived shortly thereafter.

Mr. DOAR. The material behind this tab is all straight-forward testimony. There is not any conflict about the fact that these men did go to Howard Hunt's' office and I think one of them removed the safe from the office and put it in the small office in the Executive Office Building. Secret Service men then were called and a GSA representative, and they drilled the safe open. Then Kehrli and Fred Fielding,

Dean's assistant, arrived shortly thereafter to take possession of that which was in the safe.

Mr. JENNER. Excuse me, John.

You will notice when you read some of the testimony, an effort, perhaps purely accidental—I hope that way—of describing the place where the safe was located as an office; then the response each time that it was not an office at all, it was a storeroom. I call your attention to that in order that you will be alert to the fact that it was not truly a Hunt office, it was the safe taken from his office and placed in what is sometimes described and referred to as a storeroom and likely, that is a better description than the use of the word "office."

Mr. DOAR. That storeroom was where the safe was opened. It was not where the safe was prior to the time that it was decided it would be opened.

Mr. JENNER. That is correct, John.

Mr. DOAR. Tab 16.

Mr. DAVIS. Immediately before the meeting specified in paragraph 14, John Dean asked Gordon Liddy to advise Howard Hunt that he should leave the country. Liddy contacted Hunt and told him that "they" wanted Hunt to get out of town. Dean states that he took this action on instructions from Ehrlichman, and that Dean retracted his instruction shortly after he gave it. Ehrlichman has denied that he gave such instructions.

Mr. DOAR. Generally, in presenting this information to the committee, we tried to present information that we think is not contradicted or strongly corroborated. In instances where there is a conflict between the testimony of two witnesses, we either will include it and explain that to the committee, or not include it at this time. In this instance, there is a straight conflict between John Dean and John Ehrlichman as to who told Howard Hunt to leave the country. There is no conflict about the fact that Liddy did contact Hunt and told him that "they" wanted Hunt to get out of town and that this instruction was later withdrawn.

Tab 16.8, the deposition of Robert Bennett, corroborates this. John Ehrlichman called the SSC's attention to transcripts of two tape recorded conversations that he had with Ken Clawson and Charles Colson. The one with Ken Clawson in March or April of 1973, and with Colson on April 17, 1973.

The information that will come to you later in the presentation, that the President had asked Mr. Ehrlichman in the latter days of March 1973 to make an investigation, and these two conversations were presented to the committee when Mr. Ehrlichman testified.

Tab 16. These are not Presidential conversations, these are conversations with, between Mr. Ehrlichman and other members of the White House staff.

Tab 16.5 is the conversation with Mr. Clawson. He is asking Clawson if he remembers what took place at this meeting. Clawson gives his answers. Tab. 16.6 is the interview with Mr. Colson.

Mr. JENNER. Refer to page number 3010.

Mr. DOAR. I think the committee is entitled to know that both Mr. Clawson and Mr. Colson seemed to be willing witnesses, what we might call willing witnesses, in that if you look at 16.5 at the middle

of the page, Mr. Clawson says to Mr. Ehrlichman, right almost in the middle of the page, after Ehrlichman says "I agree", Mr. Clawson says "If you want me to be forthright and straightforward with you, I will recollect anything you want me to."

Mr. Colson, in 16.7 indicates, below the bracket on 3010, his feeling about John Dean, where he says "Let's get it clearly understood that son-of-a-bitch does not get immunity. I want to nail him." That is about the fifth line from the boottom of 3010.

Mr. JENNER. It is the last sheet under tab 16.6.

Mr. DOAR. Just to go over it again, these are tape-recorded conversations that Mr. Ehrlichman conducted in March and April of 1973, about this meeting that took place on the 19th of June 1972.

Mr. JENNER. We want to draw to your attention that these tape recordings were not Presidential system tape recordings, but provided by Mr. Ehrlichman.

Mr. DOAR. Tab 17.

Mr. DAVIS. Tab 17, on the evening of June 19, 1972, John Mitchell met at his apartment in Washington, D.C., with John Dean, Jeb Magruder, Robert Mardian, and Fred LaRue and discussed the break-in at the DNC headquarters.

Mr. DOAR. Here there is no conflict about the fact that these men met and discussed the break-in. There is a conflict about whether or not there was any talk about destruction of documents. Magruder testifies there was discussion about destruction of documents. Mitchell denies that there was any talk about destruction of documents. LaRue says that he has a very hazy recollection of the meeting. He said, "In fact, were it not for a thing that sticks in my mind"—this is at 17.4, page 2304, he says, "Were it not for a thing that sticks in my mind"—in the middle of the page, just above the bracket, 17.4, page 2304. Mr. LaRue says, "Mr. Thompson, I have a very hazy recollection of that meeting. In fact, were it not for the thing that sticks in my mind, the statement about 'you might have a good fire,' if it were not for that, I do not think I could recall any details of that meeting at all."

Mr. Davis calls my attention to the fact that Magruder in his testimony says that it was concluded that the files should be immediately destroyed. As I say, Mr. Mitchell has denied that.

Mr. JENNER. Excuse me, John. The materials under tab 16, if I may draw your attention and urge something upon you, need to be carefully read because of that direct conflict on a matter that is fairly serious, in directing a witness or a putative defendant to leave the country or to go to California, which he actually did. What Mr. Doar and I are doing is drawing your attention to these, and we do not want to highlight any particular thing other than to draw your attention, but they need fairly careful study. That is true also of tab 17.

Mr. DAVIS. Tab 18, on June 19, 1972, Ronald Ziegler, the President's press secretary, described the break-in at the DNC headquarters as "a third-rate burglary attempt."

Mr. DOAR. In addition to that, apparently in the same conference, Mr. Ziegler indicated that certain elements may stretch this beyond what it is. We were not able to secure the official documents with respect to this statement by Mr. Zeigler. This is the best information that we have available. Tab 19.

Mr. DAVIS. Tab 19, on June 20, 1972, at 9 a.m., H. R. Haldeman, John Ehrlichman, and John Mitchell met to discuss the break-in at the DNC headquarters. John Dean joined the meeting at 9:45 a.m.; Attorney General Kleindienst joined the meeting at 9:55 a.m. Later that day, Haldeman met with the President for 1 hour and 19 minutes—11:26 a.m. to 12:45 p.m.—and the subjects discussed included Watergate. Haldeman's notes of the meeting reflect that that portion of their discussion dealt which checking an EOB office for bugs, a "counterattack," "PR offensive to top this," and the need to "be on the attack—for diversion."

When a tape recording of the conversation was produced on November 26, 1973, in response to a subpena by the Watergate Special Prosecutor, the recording contained an 18½-minute buzzing sound that obliterated the portion of the conversation reflected in the foregoing segment of Haldeman's notes.

Mr. DOAR. With respect to the information with respect to the 18½-minute buzzing sound, we do not intend to play that tape and that buzzing sound today, nor are we prepared to give to the committee all of the information that it might wish to have with respect to the hearings that took place before Judge Sirica.

I understand that Judge Sirica filed with or there was filed in Judge Sirica's court yesterday a final report by the tape experts with respect to this particular 18½-minute buzzing sound and we are making efforts to secure that material, that report, and at a later date will present that to the committee for its consideration. I feel certain that we will be able to secure that material for Judge Sirica. Perhaps we could take a minute now for Mr. Jenner to outline the procedure that we have followed with respect to getting materials from the court that was under seal with respect to matters that were pertinent to our inquiry.

Mr. JENNER. What we have done the last 2 weeks, we address first, or the chairman addresses a letter to each judge on the U.S. District Court here and also to the chief judge of the Court of Appeals of this circuit, a letter from him calling attention to our understanding of matters, materials, under seal, in other words impounded by the court and respectfully requesting access by members of the staff who have top security clearance to examine those materials.

Mr. Rodino, the chairman, has been careful, and we with him, that the committee is not placed in a position of submitting to the jurisdiction of any of the judges or the court. This, then, has been followed out by a visit by me and one of the members of the staff, Mr. Woods, or Mr. Gill, who was introduced to you this morning, and a chamber's conference with the particular judge—all eight of them, as a matter of fact—naturally with the judge's secretary and law clerk present, in which we expand upon the chairman's letter to the judge.

The judge then indicates to us his initial reaction. Normally, the judge desires that we either contact counsel in the case, including the Special Prosecutor, the Department of Justice where that is called for, or that he thinks it is better that his law clerk undertake to contact counsel. In some instances, it has been felt that an in camera hearing, either in the courtroom or a chamber's conference, be held with counsel for the various parties present.

An explanation is made by me of the need for examination of the materials, and in some instances, there has been an argumentive hearing in which I have presented the views and attitude of this committee as to its need for examination of those materials.

I am pleased to say to you that all the hearings, all the chambers' conferences, and all the other meetings we have had have resulted in our obtaining access to various materials that are of importance to you, and some are being presented to you during the course of this presentation.

Initially we had the limitation which still obtains to some extent, understandably, that the Special Prosecutor, Mr. Jaworski, advised the court's judges by letter that while he had no objection from the standpoint of the propriety of our looking at the materials, he did have some reservation to our looking at those materials; not that he objected, but he wished to know that which we were requesting. That placed us in the second stage, which we have pursued without any great difficulty, of specifying the documents we desire to have and his indicating that he had no objection.

As to the Department of Justice in connection with logs and with authorizations for taps, 17 wiretaps, we have consulted, I have consulted at some length with Mr. Wilderotter, Assistant Attorney General in the Department of Justice, with regard to those matters. I would say they have been reasonably cooperative. Perhaps I should strike the word "reasonably." They have been cooperative. At the moment, we are having just a slight problem with respect to one authorization and logs with respect to a bug rather than a tap. But on the whole, the matters have proceeded this way and from our standpoint, satisfactorily, and I wish to assure you that we think satisfactorily also from your viewpoint.

Mr. DOAR. June 20 has a lot of pertinent material on that day and I would like just to go through the logs and the various things.

The first log is Mr. Haldeman's calendar for that day. He indicates that he first met with John Ehrlichman. Then he met with the President in the executive office building office between 11:15 and 12:45 approximately.

John Ehrlichman's log on the 20th, 19.2, shows that he met with Mr. Haldeman at 8 o'clock. Then he went into the Roosevelt room. From 8:15 to 9 o'clock, he met with Mr. Mitchell and Mr. Haldeman. He was joined by John Dean at 8:45 and at 9:55, he was joined by Mr. Kleindienst.

Mr. Mitchell's log at 19.3 shows that he went to the White House at 8:15, he returned at 10:30. Immediately after he returned, you will see a 10:32 on 19.3. He had about a 45-minute conversation with Jeb Magruder, Fred LaRue, and Bob Mardian. Then you see the rest of his meetings during the day.

At 6 o'clock—this is on page 2—he again saw Fred LaRue and Bob Mardian and then at 6:08, he had a conversation with President Nixon. That conversation is reported to you in item A25 of the information and it is the first recorded—it is not a recorded conversation, but we have a dictabelt of President Nixon's recollection of that conversation, which President Nixon made at the——

Mr. SMITH. Where are you now?

Mr. DOAR. I am just reporting. I do not have the dictabelt. I am referring to the second page of Mr. Mitchell's log.

Mr. HOGAN. There is no indication of meeting the President.

Mr. DOAR. That is right. I will bring that out in the next log. You will pick up in the next log. We will come to that.

Then if you go to 19.6; which is the President's log for that day, this is President Nixon's daily diary. The exhibit number at the top that is faintly stamped as exhibit number I believe, No. 130, which was produced and offered in evidence at the tape hearing involving the 18½-minute buzzing sound. It is my information that this type of log was regularly prepared by the White House staff of Mr. Nixon, President Nixon's day from beginning to end. This is not a contemporaneous recorded document, but it is a summary of information that comes from various people such as Mr. Butterfield, Mr. Bull, Secret Service people that were over in the residence, the secretary of the office in the Executive Office Building where the President worked, and other people that kept track of the President's movements during the day. At the end of each day, these forms were sent over to a central office, where they were reproduced or collected, put together, and assembled into one document. This is an example of 1 day of such a document.

You will see that from 9:01 to 9:04, the President met with Alexander Butterfield. Then at 10:20, he goes over to his office in the executive office building. Then at 11:26 to 12:45, he talks to Mr. Haldeman.

Then if you turn to the next page, you see that 6:08 to 6:11, the President talked with John Mitchell, Campaign Director for the Committee for the Reelection of the President.

That is what I was referring to when I said if you go back to Mr. Mitchell's log, you can see what his day was like at around that same time.

Mr. JENNER. Or at least know what he knew at 6:08 that evening.

Mr. DOAR. In the afternoon of that day, from 2:20 to 3:30, the President met with Mr. Colson, and I think from 4—I cannot make out the time, but it is sometime after 4:14—to 5:25, he met with Mr. Haldeman. Then in the evening, from 7:52 to 7:59, the President talked with Mr. Haldeman; from 8:04 to 8:21, the President talked with Mr. Colson. From 8:42 to 8:50, the President talked with Mr. Haldeman; from 11:33 to 12:05, the President talked with Mr. Colson.

Those are conversations which we wrote to Mr. St. Clair about and requested that he furnish us the tape recordings of those conversations if they were recorded. These conversations on June 20 were among the conversations that Mr. St. Clair advised me that President Nixon had declined to furnish to the committee. We will request the committee to consider tomorrow the issuance of a subpena for that material.

Mr. St. Clair has delivered to me a memorandum which he has asked me to file before that meeting with members of the committee stating why he, as the attorney for the President, believes the subpena should not be issued. I mention that just so that it is clear what the status of that is right now.

The CHAIRMAN. Mr. Doar, I would suggest that the members of the committee have, together with your justification or your recommendation for the subpena, the argument that Mr. St. Clair has made.

Mr. DOAR. Yes, I thought I would distribute that at the end of the day, all the material together, as soon as we get our——

The CHAIRMAN. That will be fine.

Mr. JENNER. Mr. Chairman, Members of the committee, we have found on the whole that the Presidential logs are reasonably precise as to time specification. However, in requesting Mr. St. Clair for taped conversations, if any, we relied as to the time period on the Presidential logs. We have had no opportunity, of course, to know whether, for example, the first bracketed item on the first page under tab 19.6, whether that conversation in fact began precisely at 11:26 and precisely ended at 12:45.

Mr. DOAR. Tab 19.7 is Mr. Haldeman's log. That indicates also that when the President met with Mr. Haldeman that day, when he talked to him on the phone that day.

Tab 19.8 is the notes which Mr. Haldeman produced of his meeting with the President. They have been copied because they are illegible and the pertinent part is on page 2.

This is 19.8 and if you look at the second document there, if you turn over the court file cover page, then you turn over the second page, referred to as exhibit 61, you will see a typed page. Then you go to two handwritten pages. These are Mr. Haldeman's notes of the meeting with the President between 11:25 and 12:45. The testimony is that 18 minutes of that were devoted to the Watergate break-in.

If you go back then to the typewritten notes, you will see Mr. Haldeman's notes, which are in brackets, which begin "Be sure EOB office is thoroughly checked re bugs at all times—etc."

Then a paragraph, "What is our counter-attack. PR offensive to top this.

"Hit the opposition with their activities.

"Point out libertarians have created public" then there is an unreadable, "do they justify this less than stealing Pentagon Papers, Anderson file, and so forth?

"We should be on the attack for diversion."

Then 18 is the testimony with respect to this gap in the tape, and 19.10 is a report from the advisory panel about the 18½ minute buzzing sound. I think this material—as I say, this is not the final report, but it is a preliminary report that was furnished to the court, and which we include it here preliminarily in connection with the material that we had today.

Tab 19.11 is a statement produced by Fred Buzhardt, counsel to the President, on which he notes on the second page that:

> A file search has disclosed handwritten notes of H. R. Haldeman, which from the identifying markings and the content indicate the notes were made by H. R. Haldeman during the meeting with the President on June 20, 1972, between 11:26 a.m. and 12:45 p.m.

The CHAIRMAN. Mr. Doar, I think this is a good point to recess. We will resume at 2:30 this afternoon.

I think it would be well to leave the books here. The room is going to be secured.

[Whereupon, at 12:15 p.m., the committee recessed to reconvene at 2:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. Mr. Doar will resume.

Mr. DOAR. Did you want to mention this inquiry by the——

The CHAIRMAN. Yes; I would just like to call the committee's attention to an inquiry that has been made by the press regarding certain press reports that the committee is conducting an investigation of the inquest into the death of Mary Jo Kopechne. I know that members will be questioned by the press and I have asked the staff regarding this to report to me. This is the statement that I intend to make to the press: That in late March of this year, the legal research section of the impeachment inquiry staff was studying procedures possibly applicable to the forthcoming committee hearings and particularly the question of participation in those hearings by the President's counsel. Several possible analogous procedures were studied. Among these were grand jury proceedings, various administrative agency hearings, and coroners' inquests. Preliminary legal research revealed that the opinion of the Supreme Judicial Court of Massachusetts in the Kopechne inquest matter was perhaps the leading appellate case on the question of the right to counsel at inquest proceedings. It was for this reason that in late March, an attorney on the staff, through regular channels for supplying the public with copies of legal papers, secured copies of the legal briefs and arguments on appeal in the case.

Shortly thereafter, the attorney concluded that the procedural analogy to inquest procedures was not useful in formulating procedures for the impeachment inquiry and no use was made of the legal documents that had been requested.

I would hope that the committee members, if questioned regarding this, would understand that this was an investigation that was just normal and was merely with regard in trying to ascertain what the procedures are and were, and this case of the Supreme Judicial Court of Massachusetts, was one of the leading appellate cases. Therefore, I am going to state the there is certainly no foundation to any of the suggestions that the committee is conducting an investigation of the inquest into the death of Mary Jo Kopechne. Mr. Doar.

Mr. DOAR. Mr. Jenner wishes to call attention to one paragraph.

Mr. JENNER. Mr. Chairman and members of the committee, would you turn to tab 14.8? That is the memorandum for Mr. Kehrli to which Mr. Doar drew your attention. We will reproduce this for insertion into your books tomorrow.

There was testimony of Mr. Magruder before the Senate committee—I am sorry, it is 14.8—in which the following occurred. There are other pertinent points on the page, but I will call your attention only to this particular portion.

Mr. DASH. By the way, did you know at that time that Mr. Hunt was working for Mr. Liddy?

Mr. MAGRUDER. At that time, I think by that time, I had been encouraged by certain staff——

Tab 14.9 is the memorandum of Richard Howard to Mr. Kehrli.

Mr. CONYERS. What are you reading from?

Mr. JENNER. When I am reading the quote, I am reading a quote from the Senate hearings which has not yet been supplied to you, which you will receive tomorrow. I am doing that this afternoon in order to call your attention to further testimony before the Senate select committee that is pertinent and should be considered by you into the question of when Mr. Hunt was no longer employed by the White House and the circumstances under which his White House connection was terminated. In that regard, I am now reading from page 792 of book II of phase I of the Senate committee hearings, which will be reproduced for you tomorrow. All I am reading it for is to alert you to the fact that this is pertinent.

Mr. DASH—

This is Mr. Magruder testifying.

Mr. DASH. By the way, did you know at that time that Mr. Hunt was working with Mr. Liddy?

Mr. MAGRUDER. At that time, I think by that time, I had been encouraged by certain staff members at the White House to be sure that Mr. Hunt was not employed by us directly but employed by Mr. Liddy. So I think I was aware of it at that time that he was.

Thank you. John.

Mr. DOAR. Tab No. 20.

Mr. DAVIS. Tab 20, on June 20, 1972, Gordon Strachan met with H. R. Haldeman and showed him a copy of a political matters memorandum Strachan had sent to Haldeman prior to April 4, 1972, concerning approval of a "sophisticated intelligence system with a budget of $3,000." Haldeman acknowledged to Strachan that he had read the political intelligence item in the memorandum. Strachan also showed Haldeman political intelligence reports referring to "Sedan Chair II" which had been attached to the memorandum. Haldeman said he had not previously read the attachment, and proceeded to read it. According to Strachan, Haldeman directed him to destroy all of the documents. Haldeman has testified that he could not recall giving Strachan any such instruction.

Mr. DOAR. Some of the testimony before the Senate select committee pertinent to this particular statement of information is already reproduced for you in book I, and the summary in essence describes Strachan's testimony of talking to Mr. Haldeman, showing him these particular documents, and at the end of Mr. Haldeman's examination of the documents, saying to him, "Make sure that our files are clean." That is on page 2458 of 20.1, close to the bottom of the page.

Mr. Strachan also testified that he was on Air Force One with Mr. Haldeman, and he reported that to him on July 1, on a trip, when they were going, I think out to the West Coast. Mr. Haldeman did not recall receiving a report from Mr. Strachan.

That completes, members of the committee, volume I of book II. You have volume II before you. We will turn to tab 21.

Mr. JENNER. On page 2458 to which Mr. Doar drew your attention, you will notice a paragraph that Mr. Dash asked the question, "Were you fired, or did he berate you?"

Then in the answer, six lines down, the last word appears as the word "check." That should, keep in mind that means checkmark, not a personal check.

The political matters memorandum is memorandum No. 18, as indicated near the bottom of that page, the one that was destroyed.

Mr. DOAR. Tab 21.

Mr. DAVIS. Tab 21, following his meeting with H. R. Haldeman, Gordon Strachan shredded the political matters memorandum regarding a sophisticated intelligence-gathering system that he had shown Haldeman. Strachan also shredded other related documents, including a memorandum regarding Gordon Liddy, an April 4, 1972, talking paper prepared by Strachan for a meeting between Haldeman and John Mitchell, a memorandum from Jeb Magruder to Mitchell regarding Donald Segretti, and Segretti's telephone number.

After Strachan destroyed these documents, he told John Dean what documents he had destroyed. On July 1, 1972, Strachan, Haldeman, and Laurence Higby were part of a Presidential party aboard Air Force One. Strachan had testified that during the flight, he reported to Haldeman that the job had been accomplished, and Haldeman told him to reduce the number of copies made of future political matters memorandums from three to two. Haldeman has testified that he does not recall receiving such a report.

Mr. DOAR. Mr. Strachan was asked in his testimony to whom did the two copies of the political matters memorandum go, and he said one was for Mr. Haldeman, and the other one was "for my file." So there was no distribution of that political matters memorandum except to Mr. Haldeman. The paragraphs behind 21 outline in descriptive detail the documents that Mr. Strachan testified he destroyed, and also the fact that Mr. Strachan reported this to Mr. Dean. Tab. 22.

Mr. DAVIS. Tab 22, on June 20 or 21, 1972, Robert Mardian and Fred LaRue met in LaRue's apartment with Gordon Liddy. Liddy told LaRue and Mardian that he and Howard Hunt had developed the plans for entries into the DNC and the McGovern presidential campaign offices; that he, Hunt, and others involved in the Watergate break-in had been previously involved in operations of the White House, specifically an entry into the offices of Daniel Ellsberg's psychiatrist; that Hunt had acted to make ITT lobbyist Dita Beard unavailable as a witness at the Senate Judiciary Committee hearings on the nomination of Richard Kleindienst to be Attorney General; and that he had shredded all new, serialized $100 bills in his possession and other evidence relating to the Watergate break-in. Later that day, Mardian and LaRue met with John Mitchell and apprised him of their meeting with Liddy. Mitchell was told of Liddy's and Hunt's prior surreptitious entry into the office of Daniel Ellsberg's psychiatrist and of Hunt's earlier activities involving Dita Beard.

Mr. DOAR. The testimony of Fred LaRue at 22.1 describes in detail the conversation that he had with Mr. Liddy at his apartment. It was there that Mr. Liddy described how he had organized the break-in to the Democratic National Committee, and at the top of page 2288—this is Mr. Liddy's testimony—according to Mr. LaRue, Mr. Liddy mentioned that he had on other occasions been involved in incidents or operations for the White House. He specifically mentioned the attempted burglary of the office of the psychiatrist of Mr. Ellsberg.

Later on on this page, Mr. Liddy indicated that he was prepared to be assassinated if that was the wish of the people in the room, with

respect to being sure that he did not give out any information about this operation. That is in the middle of the page.

On 2309, Mr. LaRue testified that Mr. Liddy had told him that he had gone in and shredded a number of documents from the files of the Committee To Re-Elect the President, and he described Mr. Mardian's reaction as being shocked. That is on page 2309.

Mr. Mardian's testimony is—there is only one thing I want to call to your attention about that. That is that Mr. Liddy said that he pulled off—I believe Mr. Mardian testifies at page 2359, at the middle of the page—that is 2359, in 22.2. The paragraph starts: "He discounted this possibility." Then at the end of the paragraph, it says:

He discounted this completely by saying that this group had been operating together for some considerable period of time, that they were all real pros, that they had engaged in numerous jobs. And when I asked him what kind of jobs, he said, we pulled two right under your nose.

Mr. Mardian was in the Department of Justice at that time and had some supervisory responsibility with respect to the *Ellsberg* case and also with respect to the matter that was presented before the Senate with respect to ITT. He explains that what he meant by that was, in the next sentence, that he meant the break-in of the psychiatrist's office and the operation that got Dita Beard out of town.

At the second to last paragraph, you see Mr. Liddy claiming that he was acting on the express authority of the President and with the assistance of the Central Intelligence Agency.

Mitchell's testimony on printed page 1643, in 22.3—excuse me, I made a mistake on that. It was at page 1628, Congressman Butler. I apologize.

Mr. BUTLER. Mr. Doar, it would be helpful to me if when you get ready to give a direct quote, you give us the tab number, then the page number, then the place on the page.

Mr. DOAR. All right. I am talking about tab 22, No. 22.3, page 1628. About a third of the way down the page, where there is a direct question by Mr. Dash:

Well, now, Mr. Mitchell, you did become aware, as you have indicated, somewhere around June 21 or 22, when you were briefed or debriefed by Mr. LaRue and Mr. Mardian about the so-called—as you described it, the White House horrors of the Liddy operation and the break-in. Did you, yourself, as the President's adviser and counselor, tell the President what you knew or what you learned?

Mr. MITCHELL. No, sir, I did not.

Mr. JENNER. Excuse me, John. Directing your attention back to the statement of Information, paragraph 22, in the sixth line there occurs the phrase, "in operations of the White House." Those are largely borrowed from the testimony of the witnesses and not the conclusions of your staff. That is really the Plumbers and I thought I had better call that to your attention in the event anyone of you might think that the staff is seeking to characterize them as a White House operation in a broad sense.

Mr. DENNIS. I would like to ask a broad question. Did Mitchell talk to Mr. Liddy on——

The CHAIRMAN. I am afraid we had better not go into questioning counsel at this point until we have concluded. I would suggest that

the members reserve their questions, note them, and then we will be able to direct questions to counsel.

Mr. DENNIS. Be sure to remind me.

Mr. DAVIS. Tab 23. Shortly after Hunt's involvement in the Watergate matter became known, without apparent reason, a White House telephone list bearing Howard Hunt's name and phone extension was recalled and the list was reissued, deleting Hunt.

Mr. DOAR. This material came to us in a large group of material that was furnished to us by the CIA. It is classified secret by the CIA, as you will see at tab 23, No. 23.1. The cover page there indicates volume 1 and there are a number of volumes which we received.

At the CIA's request, we were asked to eliminate the names of all employees of the CIA from the documents, although those names are available to any member of the committee who wishes to see them. If in the judgment of Mr. Jenner and myself, the name of the person is not highly pertinent to the inquiry, well, following the general instructions of the chairman and Mr. Hutchinson, we black out those names before we xerox them.

The CIA's explanation is that sometimes, these clerical workers and relatively middle grade Civil Service workers in the CIA get transferred from one post to another and get sent overseas and they like to keep the names of all of the CIA employees confidential.

This particular employee was an employee who was in the Executive Office Building. The CIA has a liaison office in the Executive Office Building and mans that on a regular basis.

The relevant portion is on tab 23.1. It is a statement—in the third paragraph which begins:

> Shortly after my assignment at the Executive Office Building, a new telephone list was issued by the White House and it contained Hunt's name. The Watergate news broke and Hunt was involved. The White House recalled the phone listings without reason and re-issued them—we noted that Hunt's name had been deleted.

Tab No. 24——

Mr. JENNER. Excuse me, John. If you will remain a moment with that short paragraph on 23, you will note in the second line, the phrase "without apparent reason." That is more an observation of the staff and perhaps we should not have included that in there. The bare fact is that the facts are stated apart from that phrase. We do not intend to suggest any, that intent in that respect.

Mr. DAVIS. Tab 24. On June 20, 1972, John Mitchell, the campaign director of CRP, issued a prepared press statement. The statement denied any legal, moral, or ethical accountability on the part of CRP for the break-in at the DNC headquarters.

Mr. DOAR. We were not able to secure the original press release in the course of our inquiry and therefore, reproduced the newspaper article in the Washington Post. Tab 25.

Mr. DAVIS. Tab 25. On June 20, 1972, at 6:08 p.m., the President spoke by telephone with John Mitchell. The President and Mitchell discussed the break-in at the DNC headquarters. According to a dictabelt recording made by the President on June 20, 1972, recollecting the events of that day, Mitchell expressed to the President his regret that he had not kept better control over the people at CRP.

Mr. DOAR. Now, Mr. Chairman, we are ready to play the first recorded conversation. Before doing so, I would like to make a few observations.

At the time that we get to a paragraph covering a recorded conversation, we will distribute to each member a transcript of that conversation. These transcripts were prepared by our staff. We went through—Mr. Shelton, Mr. Nussbaum, David Hanes and our consultants were generally in charge of preparing the tapes and the transcripts.

With some of these tapes, we went through five generations, literally, of tapes before we got one that we considered of best quality. The tape that you are going to listen to this morning is the poorest quality of the tapes that we received. I want to stress that and stress that, emphasize it very emphatically, because I do not want you to feel that the quality of this recording or this dictabelt reflects in any way the quality of subsequent recorded conversations.

Mr. Nussbaum calls my attention to the fact that it is not the June 20, it is the June 30, and the quality of this dictabelt is all right.

You will remember the subpena that we served with respect to certain conversations between, in March—February, March, and April, 1973. Included in that conversation, we asked for all dictabelts or subsequent dictabelts that the President had made of recorded conversations. This one is an example of that kind of a recorded, of a recollection of a nonrecorded conversation. There was no recorded conversation of this particular conversation, because the phone conversation occurred on a phone that was not part of the taping system.

The testimony before Judge Sirica was that this conversation occurred in a hallway in a residence of the White House and that the only phone that was part of the system in the White House was in the Lincoln Room.

Ms. HOLTZMAN. What is that date you referred to?

Mr. DOAR. June 30 is the second tape we will play this afternoon, part of a conversation.

Now if you will—Mr. Shelton, are you ready to explain how to operate this equipment? Will you turn on that microphone?

Mr. JENNER. Excuse me, John. Before you do that, Mr. Chairman, in reporting to you this morning of the sessions I had with the various judges of the district court and the court of appeals, I overlooked mentioning to you something, I think, is quite apropos now, that Judge Sirica afforded us the opportunity of making tapes from the original tapes that he has, and included among those tapes is the March 21, 1973, tape and our tape drawn from the original and then run through our sophisticated listening devices is a very excellent tape. Some people in the staff say it is, different between that and other tapes of that same conversation is as hi-fi against the old crystal set radio.

Mr. DOAR. Mr. Shelton, are you prepared to explain to the members how they should work the equipment?

Mr. SHELTON. The earphones are all switched to "on" or should be. They are individually adjustable. There are two knobs on the listening device and they are all supposed to be turned to what should be the right volume. Each one is adjusted by turning the knob clockwise close to you. If anybody does not hear anything, we have an extra microphone.

The switch should be to the right.

Mr. DOAR. We are ready to play the tape, Mr. Chairman.

[Tape is played.]

Mr. DOAR. Some members may wonder about the note about the 42 second silence. That is an unexplained silence on the dictabelt. Then at the very end, you hear the President beginning to dictate about another subject. We move then to tab 26.

Mr. DAVIS. Tab 26.

Mr. DOAR. I will say to the members that tomorrow and Thursday, and the next conversation on June 30 is very short, too, but thereafter, the conversations run from between 30 minutes and, one particular conversation is about 1 hour and 40 minutes.

Mr. WALDIE. Mr. Chairman, did we get the date when the dictabelt was dictated? Is June 20 the date of the dictabelt?

Mr. DOAR. Yes, June 20 was the date, the evening—the President has stated that it was his habit to dictate his recollections at the end of most days or many days.

If you look, Congressman Waldie, at paragraph 25.2, it is twice in the page, the second page of that Presidential document and it is bracketed. The President said:

> I have a practice of keeping a personal diary, I can assure you not every day. Sometimes you were too tired at the end of every day to either make notes or dictate it into a dictabelt. On that particular day, I happened to have dictated a dictabelt, and on the dictabelt for June 20, which I found, I found that I had referred to the conversation with John Mitchell.

Tab 26.

Mr. DAVIS. Tab 26, on June 21, 1972, shortly after 9:35 a.m., John Ehrlichman told Acting FBI Director Gray John Dean would be handling an inquiry into Watergate for the White House and that Gray should call Dean and work closely with him. Gray told Erlichman that the FBI was handling the case as a "major special with all of our normal procedures in effect." At 10 a.m., Gray telephoned Dean and arranged to meet Dean at 11:30 a.m. in Gray's office. At the meeting they discussed the sensitivity of the investigation, and Dean told Gray that Dean would sit in on FBI interviews of White House staff members in his official capacity as counsel to the President.

Mr. DOAR. This paragraph refers to a term that the FBI uses, "a major special." This is the term for a major case investigation conducted by the Federal Bureau of Investigation. The committee may wish to have a witness from the FBI describe just exactly all the normal procedures. My experience is that a particular agent is placed in charge, generally at the level of an inspector and he supervises and controls and coordinates the entire investigation until it has been completed.

On 26.1 is Pat Gray's log for June 21. It is almost illegible. At 11:30 on the next page, you see Mr. Dean came over and saw Mr. Gray.

Mr. Gray testified that, in 26.2, the fact that this was a major special, Mr. Mitchell's concern about the leaks, and Mr. Dean advising Mr. Gray that he would be there in his official capacity sitting in on interviews of the White House staff personnel as counsel to the President: Erlichman informing him that John Dean would be handling the inquiry into Watergate. That he should deal with Dean, et cetera.

Mr. Dean's testimony at page 26.3 indicates that Mr. Mark Felt, one of the senior officials in the Bureau, would be handling the investigation in Mr. Gray's absence.

Tab 27. There is no material under tab 27, so you turn to tab 28.

The reason why not is, there was a conflict in the testimony that we thought was, we could not resolve it and we did not think it was pertinent to the inquiry, so we felt it was not appropriate to include it. In the final clearing out of, reviewing of the material by Mr. Jenner and myself, we decided to eliminate that particular item of proof.

I would be happy to indicate what it is if the committee would want me to.

Mr. CONYERS. I think we should.

The CHAIRMAN. You might. The public would like to know.

Mr. DOAR. It involves a conversation on the issue between Mr. Dean and Mr. Ehrlichman as to whether or not Mr. Ehrlichman told Mr. Dean to deep six some of the materials that came out of the Hunt safe. Mr. Dean said that Mr. Ehrlichman told him to do that, Mr. Ehrlichman said he did not. We concluded that we could not resolve that and it was not pertinent to the inquiry, so we kept it out, withdrew it—tab 28.

Mr. DAVIS. Tab 28.

Mr. CONYERS. Mr. Chairman, a point of inquiry to the chairman. Is that going to be a matter of procedure from this point, that whenever the investigating staff cannot resolve a factual contradiction, we do not get it at all?

The CHAIRMAN. No; that material is available to the members at any time once it has been referred to.

Mr. CONYERS. Well we would not have known about it, Mr. Chairman, if there had not been a tab here. Otherwise, we would have had the obligation of going through I do not know how much material.

The CHAIRMAN. Well, I suppose we have to have some confidence in the ability of our staff to determine what is relevant and what is not relevant. Then if members are not satisfied, they can inquire, as they have done. I think this will be the procedure from now on.

Mr. DOAR. I would say to the Congressman that it is not the practice that we would not, if we could not resolve anything, we would not do this in the ordinary case. There have been a number of times where we have included the material. This is the only time that I recall that the material was not included.

Mr. CHAIRMAN. Well, I would suggest to counsel, though, if there are any other instances where this might occur, counsel might make an explanation as to why it does occur.

Mr. DOAR. I certainly will.

Mr. JENNER. We just did not regard it as pertinent.

Mr. DAVIS. Tab 28, on June 22, 1972, FBI agents interviewed Charles Colson in the EOB. John Dean was present. When the agents inquired about Howard Hunt's office in the EOB, Dean told them either that he would have to check out whether Hunt had an EOB office or that the request to see Hunt's office would have to be checked out.

Mr. DOAR. We have stated that in the alternative; the first alternative is Mr. Gray's version of what Dean told him and the second ver-

sion is Mr. Dean's version of what he told Mr. Gray—or told FBI agents, excuse me. This matter came up later at FBI Acting Director Gray's confirmation hearing on March 22, 1973, and when Mr. Gray testified that Mr. Dean probably lied with respect to this information that he furnished.

I think the members of the committee would have to read all of this testimony—we have reproduced all pertinent testimony under this paragraph.

Mr. JENNER. Mr. Chairman and members of the committee, may I observe and draw your attention to the fact that an official investigation is underway. As Mr. Doar pointed out in drawing your attention to tab 27, the FBI was undertaking a special investigation. So that even earlier than this, you have problems of whether there is an interference with, along these lines, an official investigation, which is a crime under Federal law; obstruction of justice; and possible violations of title 18, section 1001, which is making false statements—not perjurious, because they are not under oath, but making false statements to a Federal agent undertaking an investigation.

Mr. DOAR. Tab 29.

Mr. DAVIS. Tab 29, on or about June 22, 1972, Acting FBI Director L. Patrick Gray met with John Dean. Gray told Dean the FBI had discovered that a $25,000 check drawn by Kenneth Dahlberg and four checks totaling $89,000 drawn on a bank in Mexico City payable to Manuel Ogarrio had been deposited in a Miami, Fla. bank account of Bernard Barker, one of the persons arrested on June 17, 1972, at the DNC headquarters in the Watergate. Gray and Dean discussed the FBI's alternative theories of the Watergate case, including the theory that the break-in was a covert operation of the CIA. The following day, Dean reported to H. R. Haldeman on his meeting with Gray.

Mr. DOAR. The next 11 paragraphs deal with, primarily with the investigation of the FBI and the relation to it by the CIA. This matter was investigated by the subcommittee of the Senate Appropriations Committee in executive session and as you will see from 29.6, Mr. Haldeman testified in executive session before that committee. This paragraph discusses information as to the alternative FBI theories of the Watergate case and it includes the logs in 29.1 of the meeting between Dean and Gray.

Tab 29.2 is Mr. Gray's testimony about the early theory, and within the bracketed marks on 3451 is a discussion of that alternative theory as well as the matter of the two checks, one for $25,000 and four for $9,000.

Tab 29.3 is Mr. Dean's testimony as to how he came over to see Mr. Gray at page 943 of 29.3 at about the 10th line down from the top. Mr. Dean testified that "at the request of Mr. Ehrlichman and Haldeman, I went to see Mr. Gray at his office to discuss the Dahlberg and Mexican checks."

And then on the next page Mr. Dean testifies, and this is the third full paragraph on the same page, from June 23: "I reported my conversation with Gray of the preceding evening to Mr. Ehrlichman and Haldeman."

Tab 29.4 is a memorandum, internal FBI memorandum. You see the typed copy here. It is from Bates who is one of the supervisors on this investigation of the Watergate break-in. And he writes on the

second page within the bracketed materials, bracketed paragraph, he describes the cashing of the two checks and the cashing of one check, the Dahlberg check down at the Boca Raton Bank and the Republic National Bank of Miami, and the check drawn on the Boca Raton Bank. On page 1 of that memorandum, that document, you will note in the second paragraph, or the first paragraph there is a mention that the FBI's reputation was at stake in this case and that the investigation should be completely impartial, thorough, and complete.

I noticed in reviewing this today, the next sentence, I tried to inquire what was meant by the identity of the Secret Service official. I haven't been able to find that out yet. I just report that to the committee.

The next paragraph indicates Mr. Gray instructed to hold up any dissemination of information to the defendant or the White House, to hold any interviews of White House personnel. And the last paragraph on that page, there is again a notation against dissemination of material and no briefing.

Tab 29.5 if an internal Bureau memorandum from the Field Office in Miami to the Central Office in Washington reporting on the information developed with respect to the checks.

Tab 29.6, I wish to call the committee's attention to. This is retyped testimony in executive session which is marked "Secret" by the subcommittee of the Committee on Appropriations. This is the testimony of Mr. Haldeman on May 31, 1973, slightly less than 1 year ago. And if you look at page 361 or 360 at the bottom, Mr. Haldeman says, or, well, first, Chairman McClellan says:

We do not want to restrict or limit you in any way. You give us the true story beginning when you first knew that the President was interested in and wanted this meeting set up, the reasons why he wanted such a meeting and what was to be the hoped-for result, what was the objective of the meeting, what purpose was it to serve.

Mr. Haldeman answered: "Right".

Either that morning, the 23d, or the preceding afternoon, and I am not sure which, afternoon or evening, John Dean, as I best recall this, and again it is trying to recall events of a year ago, John Dean told me that the FBI was concerned about the question of whether there might be CIA involvements in some aspects of the Watergate affair, either directly or indirectly.

Mr. Haldeman goes on:

In raising this concern of the FBI, I felt that something needed to be done at that point in time to guide the FBI as to whether there was involvement, and, if so, what and what problems there might be in that respect.

And then he said:

I transmitted this report in essence to the President, I believe, on the morning of the 23d.

Paragraph or tab No. 30.

Mr. DAVIS. Tab 30, on June 22, 1972, the President held a press conference. He was asked whether he had made an investigation to determine whether there was a direct link between the people who bugged the DNC Headquarters and the White House. The President said:

Mr. Ziegler and also Mr. Mitchell, speaking for the Campaign Committee, have responded to questions on this in great detail. They have stated my position and have also stated the facts accurately.

This kind of activity, as Mr. Ziegler has indicated, has no place whatever in our Electoral Process or in our governmental process. And, as Mr. Ziegler has stated, the White House has had no involvement whatever in this particular incident.

As far as the matter now is concerned, it is under investigation, as it should be, by the proper legal authorities, by the District of Columbia Police and by the FBI. I will not comment on those matters, particularly since possible criminal charges are involved.

Mr. DOAR. Tab No. 31.

Mr. DAVIS. Tab 31, on June 23, 1972, H. R. Haldeman met with the President and informed the President of the communication John Dean had received from Acting FBI Director Gray. The President directed Haldeman to meet with CIA Director Richard Helms, Deputy CIA Director Vernon Walters, and John Ehrlichman. Haldeman has testified that the President told him to ascertain whether there had been any CIA involvement in the Watergate affair and whether the relationship between some of the Watergate participants and the Bay of Pigs incident was a matter of concern to the CIA. The President directed Haldeman to discuss White House concern regarding possible disclosure of covert CIA operations and operations of the White House Special Investigations Unit—the Plumbers—not related to Watergate, that had been undertaken previously by some of the Watergate principals.

The President directed Haldeman to ask Walters to meet with Gray to express these concerns and to coordinate with the FBI, so that the FBI investigation would not be expanded into unrelated matters that could lead to disclosure of the earlier activities of the Watergate principals.

Mr. DOAR. Members of the committee, although we didn't set forth the logs of that day, we don't have a Presidential log, the logs that we do have from Mr. Haldeman's meeting with the President indicates that there were three meetings that day, one between 10:04 and 10:39, which was a meeting between the President and Mr. Haldeman with Mr. Ziegler being present from 10:33 to 10:39. Another meeting at 1:04 to 1:13, which was a meeting between the President and Mr. Haldeman. And the third meeting at 2:20 to 2:45, a meeting between the President and Mr. Haldeman, with Mr. Ziegler being present from 2:40 to 2:43.

We have asked Mr. St. Clair if the President would produce those recorded conversations. Mr. St. Clair has advised us on the President's behalf, that the President declines to make those recorded conversations available. We will be asking the committee tomorrow at its meeting that it consider the issuance of a subpena for those three recorded conversations.

Tab 31.1 is Mr. Haldeman's——

Mr. WALDIE. I am sorry, I did not follow counsel. What conversations are now being requested?

The CHAIRMAN. Would you kindly repeat that, Mr. Doar?

Mr. DOAR. The three conversations between the President and Mr. Haldeman, one at 10:04 to 10:39 a.m., one at 1:04 to 1:13 p.m., and one at 2:20 to 2:45 p.m., on June 23, 1972.

The CHAIRMAN. Mr. Doar, is it not also your intention to supply the Members with the justification for these requests? Will they not have them available to them?

Mr. DOAR. Yes. At the end of the day we will distribute to the Members the justification for the materials that we desire the committee to authorize the issuance of a subpena for tomorrow, as well as Mr. St. Clair's memorandum. That will be at the end of today.

The CHAIRMAN Thank you.

Mr. DOAR. I notice in my book that 31.1 and 31.2 have been reversed: 31.1 is President Nixon's statement on May 22, 1973, his statement on the second page of 31.1, where the President said:

I wanted justice done with regard to Watergate, but in the scale of national priorities with which I had to deal and not at that time having any idea of the extent of the political abuse which Watergate reflected. I also had to be deeply concerned with insuring that neither the covert operations of the CIA nor the operations of the Special Investigations Unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to insure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House Investigation Unit, and to see that this was personally coordinated between General Walters, the Deputy Director of the CIA and Mr. Gray of the FBI. It was certainly not my wish, not my intention nor my wish, that the investigation of the Watergate break-in or related acts be impeded in any way.

Mr. Haldeman's testimony at 32.2 again is testimony that he gave in secret executive session.

Mr. BUTLER. 31.2?

Mr. DOAR. 31.2. Excuse me. I would like to read page 353, the top of 354, with respect to Mr. Ehrlichman's and Mr. Haldeman's meeting with the President. I am reading from the bracketed part on page 353.

In that regard, on June 23, 1972, John Ehrlichman and I were requested by the President to meet with Director Richard Helms and Deputy Director Vernon Walters of the CIA.

To the best of my recollection the purpose of this meeting was five-fold.

1. To ascertain whether there had been any CIA involvement in the Watergate affair;

2. To ascertain whether the relationship between some of the Watergate participants and the Bay of Pigs was a matter of concern to the CIA;

3. To inform the CIA of an FBI request for guidance regarding some aspects of the Watergate investigation because of the possibility of CIA involvement, directly or indirectly.

I could interject there that this request had been made known by John Dean, counsel to the President and had been transmitted by me to the President immediately upon being told of it by John Dean.

The President, as a result of that, told me to meet with Director Helms and General Walters and John Ehrlichman to get into this matter, as I am laying it out here.

4. To discuss White House concern regarding the possible disclosure of non-Watergate related covert CIA operations or other national security activities not related to Watergate that had been undertaken previously by some of the Watergate principals.

5. To request that General Walters meet with Acting Director Gray of the FBI, to express these concerns and to coordinate with the FBI so that the FBI's areas of investigation of the suspects, the Watergate suspects, not be expanded into unrelated matters which could lead to disclosure of their earlier national security and CIA activities.

Mr. Haldeman testified about the meeting with the President before the Senate select committee and that is contained in 31.3 and 31.4.

Tab 32.

Mr. DAVIS. Tab 32, in the early afternoon of June 23, 1972, John Mitchell, Campaign Director of CRP, met with Maurice Stans, Chairman of FCRP in Mitchell's office. They discussed the Dahlberg and Mexican checks, Stans knew at that time that these checks were cam-

paign contributions that Hugh Sloan, Treasurer of FCRP had given to Gordon Liddy to be converted to cash.

Mr. Doar. Members of the commitee will recall that April 7, 1972, was the cut-off date on the new law with respect to the reporting of campaign contributions. The Dahlberg check was dated April 10, but there was testimony by Mr. Stans that the check had actually been delivered or the contribution had been made prior to April 7 and, therefore, a way was devised to handle this check when it got to the finance committee to give it to Mr. Liddy for cashing and converting it into cash. And he did this and, ultimately, the cash was returned to Mr. Sloan and some of the money from that cash was found on the persons that broke into the Democratic National Committee.

Paragraph 33.6 is Mr. Sloan's log or Mr. Stan's log, excuse me, and if you run through his day that day, you see he met early in the morning with Mr. LaRue and another gentleman, and then at 10 o'clock he met with Mr. Sloan and Mr. Liddy. At noon he had lunch with Mr. Mitchell. Mr. Mitchell says on his calendar that that meeting was at 1:30, and at 3 o'clock he met with Mr. Dahlberg, who is the man from Minnesota who received the contributions from Mr. Andreas, and at 5 o'clock Mr. Stans met with Messrs. Mardian, LaRue, and Dahlberg.

Mr. Butler. And if I understand reading the log, he also met with Dahlberg at 3 o'clock; is that what you told us?

Mr. Doar. That is what the log shows.

Mr. Butler. Now ——

Mr. Doar. Also at 5 o'clock.

Mr. Butler. And again with Dahlberg on the same day?

Mr. Doar. Yes, at 5 o'clock.

Mr. Butler. Thank you.

Mr. Owens. And does he not have a meeting with Mr. Liddy in the meantime?

Mr. Doar. I am sorry, I didn't get the question.

Mr. Owens. He has a meeting with Mr. Liddy in the meantime.

Mr. Doar. Yes, that is right. It shows a meeting in the afternoon at 4 o'clock with Mr. Liddy.

Mr. Hutchinson. Who was Mr. Pappas?

The Chairman. A contributor.

Mr. Doar. Mr. Pappas is Tom Pappas, cochairman of FCRP. He is from Boston. I think in order to follow the facts or the information or the information with respect to the checks, that the committee members will have to read the testimony of Mr. Stans explaining how these checks originally being unrelated to the Watergate break-in, came into Mr. Liddy's hands for cashing following April 7.

Mr. Sloan's testimony and this is at 32.5 at page 576, shows that he took the check to Mr. Liddy in response to a conversation with Mr. Stans, and Mr. Liddy recommended that they be converted to cash. And he offered to handle it. And that it was not until mid-May that Sloan got the money back less $2,500 expenditures.

Mr. Jenner. May I say also, Mr. Chairman and members, as to Mr. Pappas, as you will learn subsequently, he was already a substantial contributor. And also when we reached the March period, that his name is mentioned in connection with raising funds involving that series of incidents.

The CHAIRMAN. Are you finished with tab 32?

Mr. DOAR. No. I just have one more thing at 32.8 which is the telephone calls of Mr. Stans indicating that he called Mr. Dahlberg in Minnesota, Lake Minnetonka, early that morning. Tab 33.

Mr. DAVIS. Tab 33, at approximately 1:30 p.m., on June 23, 1972, pursuant to the President's prior directions, H. R. Haldeman, John Ehrlichman, CIA Director Helms, and Deputy CIA Director Walters met in Ehrlichman's office.

Helms assured Haldeman and Ehrlichman that there was no CIA involvement in the Watergate, and that he had no concern from the CIA's viewpoint regarding any possible connection of Watergate personnel with the Bay of Pigs operation. Helms told Haldeman and Ehrlichman that he had given this assurance directly to the Acting FBI Director Gray. Haldeman stated that the Watergate affair was creating a lot of noise, that the investigation could lead to important people, and that this could get worse. Haldeman expressed concern that an FBI investigation in Mexico might uncover CIA activities or assets. Haldeman stated that it was the President's wish that Walters call on Gray and suggest to him that it was not advantageous to push the inquiry, especially into Mexico. According to Ehrlichman, the Mexican money or the Florida bank account was discussed as a specific example of the kind of thing the President was evidently concerned about. Following this meeting, Ehrlichman advised Walters that John Dean was following the Watergate matter on behalf of the White House.

Mr. DOAR. There are a number of materials in this tab that I wish to call the committee members attention to.

Tab 31.1 is John Ehrlichman's log of the meeting; 31.2 is——

Ms. HOLTZMAN. You mean 33.2?

Mr. DOAR. Yes, 33.2, excuse me, is Mr. Walters' testimony with respect to the meeting. And if you will look at the bottom of 34.4——

The CHAIRMAN. You mean page 34?

Mr. DOAR. Tab 34.4, excuse me.

The CHAIRMAN. Tab 34.4.

Mr. DOAR. General Walters said, reading about the eighth line from the bottom:

> I believe Mr. Haldeman was doing nearly all of the talking. I do not recall Mr. Ehrlichman actually participating actively in the conversation.

I think that is the gist of the testimony of all of the gentlemen from the CIA who were at that meeting.

Tab 33.3 is a memorandum of General Walters' recollection of that meeting. And at the second paragraph, General Walters writes on June 28 that: "Haldeman said," and this is the second paragraph:

> That the bugging affair at the Democratic National Committee Headquarters at the Watergate Apartment had made a lot of noise and the Democrats were trying to maximize it. The FBI had been called in and was investigating the matter. The investigation was leading to a lot of important people and this could get worse. He asked what the connection with the Agency was and the Director repeated that there was none. Haldeman said that the whole affair was getting embarrassing, and it was the President's wish that Walters call on Acting FBI Director, Patrick Gray, and suggest to him that since the five suspects had been arrested that this should be sufficient and that it was not advantageous to have the inquiry pushed, especially in Mexico.

And if you skip the next paragraph, General Walters writes:

Haldeman then stated that I could tell Gray that I had talked to the White House and suggest that the investigation not be pushed further.

I am reading from the fourth paragraph on page 33.3. General Walters' memorandum of June 28. That is the fourth full paragraph:

Haldeman then stated that I could tell Gray that I had talked to the White House and suggest that the investigation not be pushed further. Gray would be receptive as he was looking for guidance in the matter.

Tab 33.4 is Mr. Helms' recollection of that meeting in Mr. Ehrlichman's office, and I am looking at page 3238 of the Senate select committee. And as you look down to get the sense of the conversation, Mr. Helms, about a third of the way down the page, describes the meeting as being held in Mr. Ehrlichman's office on the second floor of the West Wing of the White House. And then he says:

We arrived first, General Walters and I had waited a few minutes. Then I recall Mr. Haldeman and Mr. Ehrlichman came into the room. Mr. Haldeman did most of the talking.

And then if you drop down the page, where Helms corroborates what General Walters has said about his memorandum of the 28th and then if you go down to the second paragraph from the bottom, Mr. Helms says that:

At some juncture in this conversation Mr. Haldeman says something to the effect that it had been decided that General Walters will go and talk to Acting Director Gray of the FBI and indicate to him that these investigations of the FBI might run into CIA operations in Mexico and that it was desirable that this not happen and that the investigation, therefore, should be either tapered off or reduced or something. But, there was no language saying stop, as far as I recall.

Then Mr. Helms testified that he was perplexed because he says at this point the:

Reference to Mexico was quite unclear to me. I had to recognize that if the White House, the President, Mr. Haldeman, somebody in high authority had information about something in Mexico which I did not have information about, which is quite possible—the White House constantly has information which others do not have—that it would be the prudent thing for me to find out if there was any possibility that some CIA operation was being—was going to be affected and, therefore, I wanted the necessary time to do this.

At the end of that paragraph, Mr. Ehrlichman, according to Mr. Helms, made his sole contribution to the conversation which was, that he, that was General Walters, "should get down and see Gray just as fast as he could."

Tab 33.5 is Mr. Haldeman's testimony before the executive session of the Senate Armed Services Committee. I direct your attention to page 355, the second to the last paragraph. No, it is the first full paragraph on the page where we have Mr. Haldeman's explanation for his actions with respect to the CIA.

We did this in the full belief that we were acting in the national interest and with no intent or desire to impede or cover-up any aspects of the Watergate investigation itself.

That is the first full paragraph on page 355 of 33.5.

Then you see, if you skip the next paragraph, and read the one that begins, I would like to call your attention to the paragraph that begins,

"it must be understood," Mr. Haldeman says: "It must be understood that"—this is his testimony, members of the committee, on May 31, 1973, almost a year later.

It must be understood that at the time of our meeting with the CIA, we had only very sketchy knowledge of what and who were involved in the Watergate affair. We had no reason to believe that anyone in the White House was involved and no reason, therefore, to seek any cover-up of the Watergate investigation from the White House.

On the contrary, everyone in the White House was instructed to cooperate fully with the Watergate investigation and, so far as I knew at that time, was doing so.

An then at page 401, Chairman McClellan is talking to Mr. Haldeman about Mr. Walters' memorandum and a third of the way down the page he says:

Then he says and that "he" there is General Walters "says that the FBI had been called into it and was investigating the matter. And he said you said the investigation was leading to a lot of important people and this could get worse. Do you wish to comment on that?"

Mr. Haldeman said to Senator McClellan: "No, sir."

Chairman McCLELLAN. "Do you want to say it is true or just remain silent about it?"

Mr. HALDEMAN. "I would have no comment to make on it. That is his characterization of the conversation."

Chairman McCLELLAN. "Is this characterization of the conversation wrong or correct."

Mr. HALDEMAN. "I have no material conflict with it."

Then on page 33.7 John Ehrlichman is testifying and he testifies unequivocally at page 345 of 33.7 that Helms and Walters were told that John Dean was following the Watergate matter closely for the President and any future White House contact should be with him. Tab No. 34.

Mr. DAVIS. Tab 34.

The CHAIRMAN. Excuse me. I think we ought to take a break for 10 minutes at this time.

[Short recess was taken.]

The CHAIRMAN. Mr. Doar, can you give us an estimate as to how much longer we will be in?

Mr. DOAR. I would think, Mr. Chairman, it would be a half hour to 40 minutes, including the distribution of materials for the subpena. We would like to go through this book through paragraph 40 today, and that is all.

The CHAIRMAN. All right. Will you please proceed?

Mr. DOAR. Tab 34.

Mr. DAVIS. Tab 34, on June 23, 1972, at 1:35 p.m., Dean telephoned Gray and said that Walters would be visiting Gray that afternoon. At 2:34 p.m., on the same day, Walters met with Gray and discussed the FBI investigation of the break-in at the DNC headquarters. Walters stated that if the FBI investigation were pursued into Mexico it might uncover some covert CIA activity and that the matter should be tapered off with the five men under arrest. Gray agreed to hold in abeyance the FBI interview of Manuel Ogarrio. Gray has testified that the FBI continued its efforts to locate Kenneth Dahlberg.

Gray reported to Dean the substance of his conversations with Walters.

Mr. DOAR. At 34.2 at page 3453 you will see that Acting FBI Director Gray in the third full paragraph down the page said that "Mr. Dahlberg was evading us as we tried to interview him."

Mr. Walters testified that he told Mr. Gray that he had come from the White House. Mr. Gray testified that the White House was not mentioned when Mr. Walters and he had the discussion. Tab No. 35.

Mr. DAVIS. Tab 35, on June 23, 1972, at 3 p.m., Maurice Stans met at the CRP offices with Kenneth Dahlberg, who, at the request of Stans and Fred LaRue, had flown to Washington that day for the meeting. LaRue and Stans discussed the check drawn by Dahlberg, the money from which had reached the bank account of Bernard Barker. At 5 p.m. on the same day, Dahlberg met with Stans, LaRue, and Robert Mardian.

Mr. WALDIE. I'm sorry, may I interrupt, Mr. Chairman? May I ask a question? I didn't follow on 34 where the FBI was trying to find Kenneth Dahlberg. What number is that? 34?

The CHAIRMAN. Identify the tab.

Mr. WALDIE. It's 34 point what?

Mr. DOAR. Tab 34.2 at page 3453, the last sentence of the fourth paragraph. The last sentence of the third paragraph, excuse me.

Tab 35 is a resume of material that we also mentioned earlier. It has Mr. Stans' calendar for that day, and then the conversation between Mr. Stans and some of his associates about determining the source and tracing of the Dahlberg check. Tab 36.

Mr. DAVIS. Tab 36, on or before June 26, 1972, Walters determined that there were no CIA sources or activities in Mexico that might be jeopardized by FBI investigations of the Ogarrio check in Mexico. On June 26, 1972, Walters met with John Dean and advised him that there was nothing in any of the FBI investigations that could jeopardize or compromise in any way CIA activities or sources in Mexico.

Mr. DOAR. At 36.1, page 3407, about a third of the way down the page, General Walters is testifying about his 2:30 meeting with Mr. Gray. And he said:

> I said to Mr. Gray that I had just come from the White House where I had talked to some senior staff members, and I was to tell him that the pursuit of the FBI investigation in Mexico, a continuation of the FBI investigation in Mexico, might uncover some covert activities of the Central Intelligence Agency. I then repeated to him what Mr. Helms had told me about the agreement between the FBI and CIA, and he said he was quite aware of this and he intended to observe it scrupulously.

The agreement that he speaks about is, as I understand it, an agreement between the two agencies that if one investigation by the agency should tend to lead to some covert activity of the other agency, the agency will, one agency will advise the other one; that is, the FBI would advise the CIA of its investigation or vice versa.

At 3408, General Walters testimony about his meeting with Mr. Dean on the following day. This is 36.1. And he relates how Mr. Dean pressed him about the CIA involvement, and he inquires, if you look at the last paragraph on 3408, he said:

> He kept pressing this. There must have been. These people all used to work for the CIA in all of this thing. I said maybe they used to, but they were not when they did it, and he pressed and pressed on, on this, and asked if there was not some way I could help him, and it seemed to me he was exploring perhaps the option of seeing whether he could put some of the blame on us. There was not any specific thing he said, but the general tenor was in this way. And I said to him—I did not have an opportunity to consult with anybody—but I simply said, "Mr. Dean, any attempt to involve the Agency in a stifling of this affair would be a disaster. It would destroy the credibility of the Agency with

the Congress and the Nation. It would be a grave disservice to the President. I will not be a party to it. I am quite prepared to resign before I do anything to implicate the Agency in this matter."

Then he goes on, "That seemed to shake him," that's Mr. Dean, "somewhat, and I said anything that would involve anything like the Government agencies like the CIA and the FBI in anything improper in this way would be a disaster for the Nation. Somewhat reluctantly he seemed to accept this line of argument and I left."

Tab No. 37.

Mr. DAVIS. Tab 37, on or about June 27, 1972, John Dean and Fred Fielding, his assistant, delivered to FBI agents a portion of the materials from Howard Hunt's safe. The materials given to the FBI agents included top secret diplomatic dispatches relating to Vietnam. The portion withheld from the FBI agents included fabricated diplomatic cables purporting to show the involvement of the Kennedy administration in the fall of the DM regime in Vietnam, memorandum concerning the plumbers unit, a file relating to an investigation Hunt had conducted for Charles Colson at Chappaquiddick, and two notebooks and a popup address book.

Mr. DOAR. Paragraph 37.1 at the bottom of 937 is Mr. Dean's summary of the materials that were in the safe. In paragraph 37.3 is the FBI inventory of the materials that were in the safe. That's at 329.

Tab 37.3, is an inventory of the material which John Dean, legal counsel to President Richard M. Nixon, provided Special Agents Mahan and Michael King and the date of the memo was July 3. This was delivered, however, on June 27. Not all of the material was delivered to the FBI agents. Some of the material was delivered to Mr. Gray and two notebooks were kept and retained by Mr. Dean. Mr. Dean testified to this fact in the case of *United States* v. *Hunt* before Judge Sirica in November 1973. Mr. Dean had not testified to the fact that he had retained these two notebooks when he testified before the Senate select committee.

If you will look at page 37.4 and if you will look at the bottom of page 3 of that testimony, you will see Mr. Ben-Veniste, who is one of the special prosecutor's staff saying to Judge Sirica:

Your Honor, this is in connection with the motion made by the defendant, Hunt, and it relates to evidence which has recently come into our possession from John Dean. As you know, Your Honor, Mr. Dean pleaded guilty on October 19 before this Court, and following that time we had occasion to interview him from time to time, but the developments over the last few weeks inhibited us to some extent from doing that as thoroughly as we would like. However, last Friday, while we were in court, members of our staff interviewed Mr. Dean and questioned him with respect to the content of Mr. Hunt's safe. This was the first occasion on which members of the Special Prosecution Force had the opportunity to question him about this matter. Mr. Dean related that at some time in late January, 1973, he discovered a file folder in his office containing the President's estate plan, two cloth bound notebooks with cardboard covers and lined pages containing some handwriting. Dean at that time recalled that these had come from Howard Hunt's safe. Dean did not look at the contents and cannot recall what might have been in them. He assumed it related to the Ellsberg break-in.

At the same time he discovered a pop-up address book containing some names with each page xed out in ink. Dean threw this pop-up notebook into the wastebasket at the time. These are facts, of course, which defense counsel should know about, and we are apprising the court of them.

Now, so that the material that is pertinent is the material that came out of the safe, and some was delivered to the FBI agents, some was

delivered, as you will see later on, to Mr. Gray. It doesn't appear in this book, but tomorrow we will get to that. And these two notebooks were retained by Mr. Gray, Mr. Dean, and later destroyed. Paragraph 38.

Mr. DAVIS. Tab 38, on June 26 or 27, 1972, Dean met with Walters and asked if there was any way the CIA could provide the bail money or pay the salaries of the persons arrested in connection with the break-in at the DNC Headquarters. Walters said the CIA would do so only on a direct order from the President. According to Dean, his proposal to the CIA had previously been approved by John Ehrlichman. Dean also has testified that he reported to Ehrlichman regarding Walters' negative position on the proposal, and that he was asked by Ehrlichman to push Walters a little harder. Ehrlichman has denied receiving these reports from Dean. On June 28, 1972, at 10:45 a.m. Dean met with Ehrlichman. At 11:30 a.m. Dean telephoned Walters and asked Walters to see him in his EOB office. At this meeting, Walters and Dean discussed the Dahlberg check and the Mexican checks, and Dean again asked whether the CIA could do anything to stop the FBI investigation of these checks. Walters said there was nothing his agency could do.

Mr. DOAR. Tab 38.1 is John Ehrlichman's log reflecting that he had the meeting with John Dean at 10:45.

Tab 38.2, John Dean's testimony where at page 946 he outlines at the top of the page that Mr. Mitchell suggested that he explore with Mr. Ehrlichman and Haldeman having the White House contact the CIA for assistance, and that on the 26th of June in the morning he spoke with Mr. Ehrlichman regarding this suggestion. "And he thought it was a good idea and he told me to call the CIA and explore it."

And then Mr Dean testifies on the next page, next two pages, about his discussion with General Walters and General Walters declining to provide funds for the purpose. This also is the testimony of General Walters on 38.3 at page 3410.

Mr. Ehrlichman denied this, and his denial is found at 38.4, at page 2835, about the meeting with Mr. Walters and Mr. Dean on the 26th. Tab 39.

Mr. DAVIS. Tab 39. On the morning of June 27, 1972, Gray met with Mark Felt and Charles Bates of the FBI to receive a briefing on the latest Watergate break-in developments. During that briefing, Dean telephoned Gray. Gray has testified that in the ensuing conversation he told Dean that if Dahlberg continued to evade the FBI, Dahlberg would be called before a grand jury. Gray also has testified that he asserted to Dean the importance of an aggressive FBI investigation to determine the motive and identity of all persons involved.

On June 27, 1972, CIA Director, Helms, received a memorandum from the Chief of the Western Hemisphere Division of the CIA stating that there were no CIA traces on Manuel Ogarrio and that the CIA's last contact with a person named Kenneth Dahlberg occurred in 1961 and concerned the manufacturing of a hearing aid for a high-level Peruvian. Later that day, Helms told Gray that the CIA had no interest in Ogarrio. Helms confirmed with Gray their plan to meet the following day.

Mr. DOAR. Tab 39.1 is the memorandum from Mr. Shackley, the Chief of the Western Hemisphere Division. It is a memorandum to

the Director of General Intelligence with respect to these two gentlemen, Dahlberg and Ogarrio. You will see that they report that there is no CIA traces on Ogarrio and that the last contact reported with Dahlberg was in May 1961.

Tab 38.2 is Patrick Gray's logs which he indicates that he saw there or spoke to Mr. Dean in the morning, and then spoke to Mr. Helms in the late morning, and then in the afternoon again spoke to Mr. Helms at 3:40.

Tab 39.3 is Mr. Gray's testimony in which he tells Mr. Helms that his position was that they were going to conduct an aggressive investigation. Tab No. 40.

Mr. DAVIS. Tab 40. On June 28, 1972, at 10:25 a.m. Dean telephoned L. Patrick Gray about rumors of leaks from the FBI, the material from Hunt's safe, a slowdown in the investigation and the tracing of the Mexican money. According to Gray, he may have told Dean during this conversation of the meeting he had scheduled with Helms for 2:30 p.m. that day. At 10:45 a.m., Dean met with John Ehrlichman. At 10:55 a.m. Ehrlichman telephoned Gray. Gray has testified that when he returned the call at 11:17 a.m., Ehrlichman said, "Cancel your meeting with Helms and Walters today; it is not necessary." At 11:23 a.m. Gray called Helms to cancel their meeting. Helms asked Gray to call off interviews which the FBI had scheduled with two CIA employees.

In July 1971 pursuant to a request from Ehrlichman to Deputy CIA Director Robert Cushman, the two CIA employees had provided Howard Hunt with disguises, hidden cameras and other material for use in domestic clandestine operations. In requesting CIA assistance for Hunt, Ehrlichman had told Cushman that Hunt "has been asked by the President to do some special consulting work on security problems."

Mr. DOAR. Tab 40.1 is the log of that day showing the conversation of 10:25 with Mr. Dean and then 10:55 on the second page of that log, it is the Gray log, Mr. Jenner points out, Mr. Ehrlichman's call, and then at 11:17, Mr. Gray then spoke to Mr. Ehrlichman. At 11:25 Mr. Ehrlichman called Mr. Helms, and you see at tab 40.2 at page 3455 at the first full paragraph:

> At 10:55 a.m. on this same day Mr. Ehrlichman called me. I was not available but I returned his call at 11:17 a.m. His first words issued abruptly were, "Cancel your meeting with Helms and Walters today: it is not necessary." I asked him for his reasons, and he simply said that such a meeting is not necessary. Then I asked him point blank who was going to make the decisions as to who is to be interviewed. He responded, "You do."

Tab 40.3 is John Ehrlichman's log showing a meeting with John Dean.

Tab 40.4 is Mr. Ehrlichman's testimony about that.

Tab 40.5 is Mr. Helms testimony with respect to the fact that there were not traces of these two men in the CIA.

Tab 40.6 is Mr. Helms' memorandum dated June 28 in which Gray called to Mr. Helms and said, "Cancel our meeting scheduled for 2:30 this afternoon."

And then I read the second paragraph of that where Mr. Helms writes:

> I informed [deleted] and [deleted] this morning in preparation for the scheduled meeting this afternoon that the agency is attempting to distance itself from

this investigation, and I wanted them along as "reference files" to participate in the conversation we requested, I told them that I wanted no free wheeling exposition of hypotheses or any effort made to conjecture about responsibility or likely objectives of the Watergate Investigation.

In short, at such a meeting it is up to the FBI to lay some cards on the table. Otherwise we are unable to be of help. In addition, we still adhere to the request that they confine themselves to the personnel already arrested or directly under suspicion, and that they desist from expanding their investigation into other areas which might eventually run afoul of our operations."

Tab 40.7 is an affidavit with the name withheld in which there was a call by Mr. Ehrlichman to Mr. Cushman.

Tab 40.7 is an affidavit by a CIA employee in which he describes the assistance that was given to Mr. Hunt by the CIA in July and August of 1971 when Mr. Hunt was a member of the White House Investigating Unit. Special Investigating Unit, and it goes into detail about the disguises and the other equipment that the CIA furnished to Mr. Hunt.

Mr. DOAR. Tab 40.8 is a memorandum describing the location of the conversation, a recorded conversation, a partial transcript of a conversation between John Ehrlichman and General Cushman on July 7, 1971. This conversation was not located until some time later, the exact date being—I do not recall the exact date. But at any rate, this affidavit explains how they found this telephone conversation later, I think it was February 4, 1974. If you look at the top of the second page, it says "During the morning."

Take 40.8, second page of the affidavit, paragraph 4.

During the morning of February 4, 1974, I went through the papers in my safe in order to determine if any misplaced transcripts of conversations were located there. At the bottom of the second drawer were two folders of material that contained information used for General Walters orientation briefings after he was appointed Deputy Director of Central Intelligence in March 1972. Under these briefings files I found a brown folder containing ten stenographic notes summarizing General Cushman's telephone conversations with members of the White House staff in 1969, 1970, and 1971. In this folder was a summary of General Cushman's 7 July 1971 conversation with Mr. John Ehrlichman.

Five. These stenographic notes in this folder included summaries of General Cushman's conversations with Dr. Kissinger on leaks of intelligence report in the press, and his request for an analytical paper on Cambodia.

This is most of that conversation. It is a telephone call to General Cushman from John Ehrlichman dated July 7, 1971.

Mr. EHRLICHMAN: I want to alert you that an old acquaintance, Howard Hunt, has been asked by the President to do some special consultant work on security problems. He may be contacting you sometime in the future for some assistance. I wanted you to know that he was in fact doing somethings for the President. He is a longtime acquaintance with the people here. He may want some help on computer runs and other things. You should consider he has pretty much carte blanche.

Mr. Chairman, that completes book II of volume 2. I would like now to distribute the materials that we will ask the committee to take up tomorrow morning at the meeting at 9 o'clock.

The CHAIRMAN. You will be distributing also the statements which have been filed by Mr. St. Clair regarding the subpenas?

Mr. DOAR. Yes, Each folder has a member's name on it, and the justification for the subpena and Mr. St. Clair's document is contained therein. Shall we go ahead and do that now, Mr. Chairman?

The CHAIRMAN. I would suggest that you merely distribute the material, and we do not expect to hear any arguments one way or the

other. The statements will suffice, and the members of the committee will make judgment based on the information they have.

Mr. SEIBERLING. Mr. Chairman, may I make a parliamentary inquiry?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. I believe there is a Democratic Caucus tomorrow at 8:30.

The CHAIRMAN. No, the Democratic Caucus is at 10 o'clock, and the business meeting is scheduled for 9 o'clock. The Chair intends to recess this phase of the hearing until 10 o'clock tomorrow.

Mr. SEIBERLING. Are we meeting tomorrow morning throughout the morning?

The CHAIRMAN. We are meeting tomorrow morning in a special business meeting at 9 o'clock.

Mr. SEIBERLING. But we are going to recess at 10 o'clock for the Democratic——

The CHAIRMAN. We are going to recess now until 10 o'clock tomorrow. I understand that we will be alerted when there is a vote on the matter that is going to be debated so that members may be able to go, those that have a question in the caucus.

Mr. SEIBERLING. Do the rules permit us to hold a hearing when a caucus is in progress?

The CHAIRMAN. The rules of the House permit us to meet. The rules of the caucus are otherwise. I think there is an admonition on the part of the caucus. But this is a matter that I think the Chair considers of importance, and I know that if the members want to get on to the floor to cast their vote, they will have every opportunity to do so.

Mr. HUNGATE. Mr. Chairman, point of clarification. The meeting at 9 o'clock is on the subpena matter.

The CHAIRMAN. We have a business meeting scheduled for 9 o'clock.

Mr. HUNGATE. And at 10 o'clock, we resume?

The CHAIRMAN. We resume this hearing at 10 o'clock.

Mr. WALDIE. Is the business meeting open?

The CHAIRMAN. Yes, the business meeting is open.

Mr. WALDIE. May I ask a question involving Mr. St. Clair's participation? This is the first definition today of a new extent of participation, the right of Mr. St. Clair to present a written argument against a recommendation of the staff. I have no particular objection at this moment to that, but I want to clarify procedures in the future.

Will such requests on the part of Mr. St. Clair be submitted to the committee for approval or rejection in the future?

The CHAIRMAN. I think that as the Chair reads the rules on procedure, Mr. St. Clair is being accorded an opportunity to participate during the course of the hearing. The question as to whether or not Mr. St. Clair would be accorded an opportunity to either file a statement or not for consideration by the committee is something that has not been debated or considered by the committee. It would seem to me, however, that since the Chair is already aware and all the members are aware of the position that has been expressed with regard to this, it is a matter of public knowledge with regard to subpenas that would be requested—or requests that would be made, that it would certainly be in accordance with our desire to accord every opportunity, and yet

at the same time, I think extend a courtesy and nothing more to Mr. St. Clair.

Mr. WALDIE. I do not want my remarks misconstrued. If the question had been presented on this issue, I would have voted for it. But I just caution the Chair that this is a privilege that we are extending and it ought not to be a precedent act today so that in the future, if similar requests are made, they may be entertained but not granted by right.

The CHAIRMAN. I think that is a matter that is understood. I think that all of us are aware of the fact that requests have been made and responses have come back from Mr. St. Clair on the instructions of the President.

Mr. WALDIE. Then, Mr. Chairman, may I just make one further request that as a matter of procedure, the Chair submit the request for a unanimous consent action on the part of the committee to protect the Chair as well as to afford each member of the committee any opportunity they might wish——

The CHAIRMAN. The Chair would be delighted to do that.

Mr. CONYERS. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, in connection with the caucus coming up in the morning, I suppose the Chair is advised of the importance of the matter and that he communicates with the chairman of the caucus so that if there is any way that these important meetings can be coordinated so that Members do not have to decide between these historic proceedings and urgent legislative decisions that are made in the Congress, it would greatly facilitate the important decisions we have to make. I understand there is a very important matter under discussion tomorrow.

The CHAIRMAN. I was advised of this meeting only recently and we had already scheduled these hearings. I tried to arrange that Members would be alerted to any votes that might be coming up. I had hoped that the gentleman who called the meeting for tomorrow on the issue that we know is of importance would have been aware that this meeting, too, on our part, is important. But there was no way, either, of delaying this meeting, and I thought this was the best accommodation we could make.

Mr. CONYERS. I thank the chairman.

Mr. WIGGINS. Mr. Chairman, I am somewhat puzzled by an observation of the chairman in response to a question by Mr. Waldie. It is my understanding that the chairman believes that the privilege of the President's counsel to submit written arguments on a given proposition requires the unanimous consent of the body and that any one member can object to such participation by him?

The CHAIRMAN. No, I think that the gentleman merely stated that he would suggest that the Chair submit it for unanimous consent request, nothing more.

Mr. WALDIE. If that is not rendered, then I would suggest that a vote will be required.

Mr. WIGGINS. As long as it is not subject to one person's veto, I have no problem with that.

The CHAIRMAN. Well, I suppose if there were an objection, the committee would have to take that up.

Mr. BUTLER. Mr. Chairman?

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I do not know how I understand it, but I would be quite content that the Chair rule on these matters and that of course, such rulings be subject to appeal.

The CHAIRMAN. This is the ordinary way in which such procedures are handled. That has not specifically been covered, however, in our rules of procedure and the gentleman was correct in raising the question.

Mr. SEIBERLING. Mr. Chairman, I would like to make the suggestion and if necessary the motion that when we recess this hearing, we recess it until 10:30 instead of until 10 o'clock tomorrow morning so that those of us who wish to do so may have the opportunity to attend for purposes of establishing a quorum at the Democratic Caucus. I would think that would not be——

The CHAIRMAN. It is the prerogative of the Chair, if the members feel that they will not be able to have sufficient time to go on to the floor and vote during the caucus, I thought that at 10 o'clock, we would have resumed our hearings and then we would be alerted and I am sure the members would have an opportunity to go and vote and come on back.

Mr. SEIBERLING. Well, I think that is——

The CHAIRMAN. That would give us an opportunity to be able to go on with the morning hearings.

Mr. SEIBERLING. But do we not also have to establish our presence at the caucus at the start of the caucus so that we may be there for purposes of a quorum?

The CHAIRMAN. I must inform the gentleman that that is not a committee matter, that is a matter for the members of the Democratic Caucus. I am afraid that while we should be discussing this as Democrats, this is a matter that is taking the time of the committee and is not really in order.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. Ms. Holtzman.

Ms. HOLTZMAN. I have a question for Mr. Doar respecting the dictabelt conversation.

The dictabelt conversation on the 20th, is there some testimony in the court proceeding that that dictabelt conversation, the silence being engendered by tampering with that belt?

Mr. DOAR. No; there is not. My understanding is that the experts have made no report with respect to that 43-second silence.

Ms. HOLTZMAN. But they are making a report, they have been asked to make a report with respect to that?

Mr. DOAR. I think they have been asked to make an investigation with respect to all of the recordings that have been furnished to the court, the tape recordings, with respect to any seconds of silence. To date they have only submitted the report on the 18½-minute silence on the 20th of June.

Ms. HOLTZMAN. I just think it would be helpful if you would indicate to us that these matters are under investigation, that there will be reports made so that we will know that the silence, for example, has

no been conclusively established one way or the other. It would be helpful to me.

Mr. DOAR. I cannot go that far, Ms. Holtzman. The matter is, as I understand it, under consideration. What the experts will come up with one way or the other, I cannot tell you.

Ms. HOLTZMAN. Thank you.

Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich?

Mr. FROEHLICH. Inasmuch as we have discussed tab 27 and there have been some questions on it, can we have that information made available, the information that would have been in tab 27, for the members of the committee tomorrow morning?

The CHAIRMAN. Yes; counsel has already stated that they will have it.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I would like to call counsel's attention to something that Mr. Smith discovered which may be very relevant. I had made a question here, is not it important to establish when Hunt went on the CRP payroll; also, what was he doing there? I do not know if we tried to get those records.

Then Mr. Smith pointed out to me that in paragraph 37.2, item 5, there is a reference to Mr. Hunt's time records and payroll records respecting his—kind of in support of—charges to the White House. I would think that might be very relevant material.

The CHAIRMAN. Mr. Edwards?

Mr. EDWARDS. Mr. Chairman, I think we can presume that the documents delivered to us are not subject to the rules of confidentiality, is that correct, both Mr. St. Clair's memorandum and your memorandum?

Mr. DOAR. That is correct. The materials that are set forth in those justifications do not include materials that are within the rules of confidentiality.

Furthermore, they were submitted to the committee in a public meeting the night that we had the subpena, so they have been available to the public already.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. In the various justifications which we have received previously, many of the citations are simply stated as material in possession of the committee. Will that be explained or furnished to us tomorrow before we decide on our vote?

Mr. DOAR. Yes.

Mr. DENNIS. Thank you.

Mr. MCCLORY. Mr. Chairman, could I ask——

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. I will withdraw that.

The CHAIRMAN. The Chair would like to merely suggest that in order to preclude the press and other outsiders from entering the room while the books and earphones are on the desks, may I suggest that we leave the full committee room by the side entrances from the rostrum rather than by the doors at the back of the room? This will greatly aid our security.

Mr. HOGAN. Mr. Chairman, may I make an observation?

With respect to Mr. Doar's saying this is confidential, I have just briefly skimmed——

The CHAIRMAN. No, no, Mr. Doar stated it is not confidential.

Mr. HOGAN. That is my statement, but Mr. St. Clair's memorandum refers to the evidentiary presentation. We certainly would want to know what the evidentiary presentation is that is in Mr. St. Clair's memorandum.

Mr. DOAR. I have not had a chance to read Mr. St. Clair's memorandum so——

Mr. HOGAN. It might be well to look at it before we make it public information, because he has specifically referred to the evidence we have heard.

The CHAIRMAN. If there is any reference to the evidence that we have heard which is confidential, since there has been a great deal of the testimony which has been produced before us, which comes from executive sessions of the various committees of the Congress, then it would seem to me that the matter that has been called to our attention by the gentleman from Maryland, Mr. St. Clair's memorandum, on this would be considered confidential along with the others.

Mr. WALDIE. Mr. Chairman, you are going to get yourself into an awful bind here. We have a public meeting tomorrow. It is a business meeting. Mr. St. Clair's document is part of that open meeting. Now, you cannot have it both ways, I do not think, Mr. Chairman, or we are all going to get into some real trouble on this issue.

Mr. St. Clair, if he has introduced into his memorandum confidential materials to avoid us having a subpena issued, is going to preclude us from presenting his arguments to the public and if we accept his arguments, the public will never understand why we have not issued the subpena. We cannot permit that to happen, I do not think, Mr. Chairman.

The CHAIRMAN. Well, I think that the Chair cannot conclude that the material is other than evidentiary material that has been referred to in the confidential matters that we have had presented to us. I do not know how I am going to conclude otherwise, other than to state that we forego the rules of confidentiality as a committee and I do not know if this is a matter that I can act on alone.

Mr. HOGAN. Parliamentary inquiry, Mr. Chairman.

Mr. St. Clair, according to my understanding, will in no way participate in our meeting tomorrow morning.

The CHAIRMAN. That is correct.

Mr. HOGAN. So this material in his memorandum, there is no reason for it to be made a part of the public record.

Mr. WALDIE. There is every reason for it to be part of the public record.

Mr. HUNGATE. Mr. Chairman, may I inquire? Would it be in order or would it help to inquire if Mr. St. Clair or Mr. Doar or either one of them has any objection to the documents being made public?

The CHAIRMAN. May I inquire, Mr. St. Clair, has this document been released in any way whatsoever other than to members of the committee at this time?

Mr. ST. CLAIR. No, it has not and will not be released unless the Chair or the committee indicate that they will be released.

Mr. DRINAN. I move that they be released.

The CHAIRMAN. We cannot take any action here. This is not a business meeting.

Mr. DOAR. Mr. Chairman, the difficulty with this memorandum is that it does go into the evidence that we presented at the last two executive sessions, at the last executive session. It makes allegations with respect to what was suggested at the meeting and it really seems to me, frankly, on examination of this memorandum, that the committee really ought not to consider it. It ought to just return it. It is going to make it impossible for the committee to control its rules of confidentiality if this sort of brief is permitted to be received.

Mr. HUNGATE. Mr. Chairman, would it be in order to open in the morning in an executive meeting and make a decision on this matter? Then if we see fit to go public, we can vote on that, I suppose?

The CHAIRMAN. Well, the committee can always move to close the meeting. That is a matter that we can take up in the morning.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. MCCLORY. I suggest that we take our counsel's advice and return the memorandum that Mr. St. Clair delivered——

Mr. HUTCHINSON. No sir.

Mr. HOGAN. No. Mr. Chairman, I think we solve the problem if we just all agree to include the memorandum under the rules of confidentiality. That is all——

Mr. WALDIE. Object, Mr. Chairman. I would object to that strongly. It is going to be in an open session and that will force a vote on it.

The CHAIRMAN. The Chair would like to state that since we are not now in a business meeting, we cannot make a decision of that sort which would become a valid and official decision of this committee, and I would have to defer it until tomorrow, until we have our business meeting, and then take up the question as to whether or not——

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I am concerned that unless we resolve this today, this memo is going to be leaked out and we will have all kinds of problems about the confidentiality. We have made very clear that Mr. St. Clair has to abide by the same rules of confidentiality that every member of this committee does. I think that his memo does, in a sense, raise serious points as to the presentation by Mr. Doar and Mr. Jenner and I think that we really have to resolve it now, because if we do not resolve it, I am very fearful that in fact, this memo will be released to the press.

So I think we have to make it clear that it is either in or out.

And my God, they are just lined up out there. There were 100 of them lined up at noon; there are probably 150 by the time we get out of here tonight.

The CHAIRMAN. The Chair would like to advise that all we have to do in order to have a business meeting is to suspend the rules entirely and to have a business meeting on this particular item.

Mr. WALDIE. Then we have to open the doors and let the press in.

Mr. HUNGATE. Mr. Chairman, I would urge the Chair to rule, whatever power the Chair has to rule, as to whether or not this document is to be received at this time, with no idea that it cannot be received

later; and second, if it is received, whether or not it is under the doctrine of confidentiality.

The CHAIRMAN. The Chair will have to state that until this time, the Chair had had no opportunity to study the document and had no idea that it would contain materials which were confidential, which could not be discussed at an open meeting, and therefore, the Chair will have to defer judgment on that at this time, until we have a business meeting.

Mr. THORNTON. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Thornton.

Mr. THORNTON. Mr. Chairman, what would be wrong with the procedure of returning the documents to Mr. St. Clair this evening and making it a point of decision to be made in the morning at the regular meeting, either in executive session or public session, as the Chair might assume? I would think it might need to be taken into account at an executive session in the morning.

The CHAIRMAN. If there is no objection, this is not a business meeting, but the Chair at this time will state again that it has had no opportunity to review this and that I think if Mr. St. Clair will please listen to my remarks, I am going to state that at this time, the Chair is not going to accept this document for the committee and Mr. St. Clair may, at tomorrow morning's meeting, then decide whether or not he wants to offer this at that time.

Mr. HOGAN. Mr. Chairman, I do not know whether this matter ought to be brought up, but is the stenographer who typed this stencil included in the access to the evidence? It was my understanding that Mr. St. Clair and his assistant were included, but I did not know that personnel at the White House who must have typed this were also included or given access to it.

The CHAIRMAN. I have no idea whether they were or were not included.

Mr. HOGAN. I assume Mr. St. Clair or his assistant did not type this.

The CHAIRMAN. I have no knowledge as to who typed it.

Mr. SEIBERLING. Mr. Chairman, are we prepared to get to the motion to recess until tomorrow? Because at that time, I would like to make a specific motion that we recess until 10:30 instead of 10 o'clock.

The CHAIRMAN. The Chair will advise the gentleman that there is no need to make a motion to recess. The Chair can recess at any time and the Chair will now recess until 10 o'clock tomorrow morning.

Mr. MEZVINSKY. Mr. Chairman, are we going to return these?

The CHAIRMAN. I have stated that this will be turned back.

[Whereupon, at 5:20 p.m., the committee recessed to reconvene at 10 a.m., Wednesday, May 15, 1974.]

IMPEACHMENT INQUIRY

Business Meeting

WEDNESDAY, MAY 15, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:20 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel; William Weld, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committe will come to order. The Chair would like to make several announcements.

Informational data which the staff has prepared for this morning's meeting is being distributed now, with copies of the subpenas which will be considered for issuance by the committee as well as other informational data which has just come to our attention.

The Chair also expects to call a recess at sometime after it is notified by the Democratic Caucus that there may be a vote on a very important issue in the Democratic Caucus this morning and the Chair intends to recess as soon as that notification is received. Otherwise, this morning's meeting is a meeting which has been scheduled to consider whether to authorize the issuance of two subpenas calling for specific documents in the possession and under the control of the President of the United States.

As has been noted in the press, yesterday, during our executive session, Mr. St. Clair, counsel for the President, presented to Mr. Doar a document entitled "Response on Behalf of the President to Request of Special Staff that a Subpena Issue for a Tape of Presidential Conversation of April 4, 1972, 4:13 to 4:50 p.m."

I directed that this material be included with the special counsel's justification for subpena and be distributed to the members prior to the meeting. I did not then realize that the response was in fact a lawyer's brief on the evidentiary material which the committee had received under its rules of confidentiality in executive session, as well as other information, including quotes from Presidential conversations that had been recorded. After initially examining the document and discussing the matter with other committee members, I realized that its distribution would affect the committee's rules of confidentiality and that it was in fact an argument as to relevance. I then directed that the document be returned to Mr. St. Clair and this was done.

Our procedures do not provide for argument by President's counsel with respect to issuance of a subpena. H. Res. 803, under which this committee is now proceeding, authorized the committee to require by subpena the production of such things as it deems necessary to such investigation, and this was without qualification and only with relation to matters that are relevant and necessary to the conduct of this inquiry under our constitutional mandate to do so.

As the committee has said before, it is not for the President nor his counsel nor anyone else to make a determination for us as to what is necessary or relevant for our inquiry. Under the constitution, it is not within the power of the President to determine which evidence and what portion of that evidence is necessary or relevant to such an inquiry. This is a matter which, under the constitution, only the House has the sole power to determine and the House has delegated this authority to this Committee on the Judiciary. Our procedures do not provide for arguments with respect to the issuance of subpena for specific documents before a subpena is issued. The committee, of course, will consider carefully whether the staff has justified and will justify the issuance of any subpena, but it will do so only under that procedure or procedures which will preserve the integrity of the process in which we are engaged and the Chair is going to guard very carefully these procedures and insure that we not be diverted in our inquiry. Those procedures do not and should not provide for argument by President's counsel based on a contention that the President's position is that he has submitted to the committee all of the evidence that is relevant to his activities in the Watergate and the Watergate coverup or other matters that this committee is considering. I am sure that this committee will not go beyond the scope of its authority. However, it wants to preserve to itself the right, as is our right under the resolution under which we are acting, to proceed in this deliberate manner and to make a determination as to what material is necessary and to seek and search out that material. For that purpose, we are now proceeding with this meeting to justify the issuance of a subpena for materials which we consider relevant, and those are conversations which are specifically referred to.

I might also point out that Mr. St. Clair only a while ago presented to Mr. Doar, our counsel, a letter and other informational data, and

before proceeding any further, I will ask Mr. Doar to read the letter which Mr. St. Clair just presented to him.

Mr. DOAR. Mr. Chairman, members of the committee, this morning at about a few minutes after 9, I was handed this letter from Mr. St. Clair which reads as follows:

"Dear Mr. Doar." It is dated May 15.

Dear Mr. Doar:

I have rewritten my memorandum submitted through you to the committee yesterday so as to eliminate all references to matters not contained in the public record in order to obviate the necessity of disclosing confidential materials. I request that you submit this redrafted memorandum to the committee.

I also include a memorandum in opposition to the special staff request that a subpena issue for tapes of recorded conversations between the President and Haldeman on June 23, 1972. I have excluded all references to materials not contained in the public record here as well.

Sincerely, James D. St. Clair, Special Counsel to the President.

The CHAIRMAN. I would like to advise the committee since this material which Mr. St. Clair has now submitted may serve as informational data, I have instructed Mr. Doar to distribute that material, and the members of the committee may utilize it for their deliberations. But nonetheless, we will proceed in this orderly fashion and I am sure that there was no intent on the part of Mr. St. Clair—we discussed this quite at length with him yesterday—there was no attempt on his part to try to violate rules of confidentiality, and this matter, I think, is best resolved in this way.

Mr. Doar, will you please proceed with your statement regarding the justification for the issuance of these subpenas?

Mr. DENNIS. Mr. Chairman, I have a parliamentary inquiry.

Mr. DANIELSON. I have an inquiry, Mr. Chairman.

The Chairman. Mr. Danielson.

Mr. DANIELSON. There is a gentleman in a tan colored suit sitting at counsel table. I do not know who he is. I would like to know who he is, please.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, that is William Weld, who is a member of the Constitution and Law Task Force of the staff.

Mr. DANIELSON. Fine, thank you.

The CHAIRMAN. Mr. Dennis?

Mr. DENNIS. I would agree with you, Mr. Chairman, that this committee of course has the right to determine whether or not we will issue subpenas, but if the chairman is announcing as a rule and a program for the future that we are going to have the practice of issuing subpenas without hearing argument as to why they should not be issued before we act, I, as one member of this committee, respectfully dissent from that procedure. I think in some cases it might be exceedingly necessary and only fair to hear the reasons to the contrary and, personally, before I cast a vote on such a matter, I would like to have that opportunity.

The CHAIRMAN. The gentleman will be protected in his right to make whatever argument he wants in opposition to the subpena, but there will be no argument offered at this meeting or any other meeting by counsel for the President or anyone else, since this is a matter that is going to be a determination solely by the members of this committee.

Mr. DENNIS. If the chairman will yield, the chairman misapprehends my statement, I think. I have no doubt I will be entitled to be heard and I am not at all sure that I am going to oppose this subpena. It seems to me, prima facie, that a fairly good showing has been made here by the staff. What I am objecting to is the unilateral statement of the Chair that in no case will we hear argument on behalf of the counsel for the President. I do not particularly care even on this occasion, but I do not think we have adopted such a rule by the committee. We may want to hear it at some time. If we do, I want to hear it. I do not particularly care for taking the position that the committee is never going to take argument.

The CHAIRMAN. The committee's rules of procedure only provide for the participation of counsel for the President during the course of our inquiry hearings. He is not to be a participant during our deliberations at any meeting where these matters are considered by the committee solely. The committee is acting under the authority of the resolution of the House which was voted by a vote of 410 to 4 giving us absolute authority to inquire and to make our inquiry based on material that is relevant. We alone make that determination.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. Mr. Chairman, we have been concerned all along that we have fairplay here. Is the President's counsel here or someone on his behalf today? I see no one at the table.

The CHAIRMAN. No; President's counsel is not here.

Mr. HUNGATE. Mr. Chairman, this is a public meeting and they would be entitled to be here?

The CHAIRMAN. Yes.

Mr. HUNGATE. Mr. Chairman, I have not read a copy of the original brief Mr. St. Clair submitted to us. I do not have a press card. But I have read it in the paper and I am interested in its statement; if it is correctly stated—that is why I was interested to see if counsel for the President should be here. "Furthermore, this analysis supports the contention of the President that he has indeed submitted to the committee all of the evidence that is relevant to his activities in the Watergate matter." Because I take it he would see no need to call any witnesses, then, on the Watergate part of this inquiry.

Thank you, Mr. Chairman.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. May I make this further inquiry, following through on Mr. Dennis' remarks? That is this: While I am not going to argue with the chairman as far as the procedure this morning is concerned, I do feel that if we do get to the point of calling witnesses, witnesses that the committee may want to call or witnesses that Mr. St. Clair may want to suggest, they should be called by this committee and we will be making that decision. It seems to me that under those circumstances, Mr. St. Clair will be participating with regard to the question as to whether or not we issue subpenas for the calling of witnesses. That is why I wonder if we do not need to have the same rule with regard to the issuance of subpenas duces tecum as we would with respect to the issuance of subpenas to command the presence of witnesses before our committee.

Would you care to answer that question, Mr. Chairman? Or could counsel assist us on that?

Do you see any distinction between counsel participating in the question as to what witnesses may or may not be called by the committee, either at the request of the committee or at the request of Mr. St. Clair?

The CHAIRMAN. I might respond to that for the gentleman and advise the gentleman that we are proceeding under the impeachment inquiry procedures. If the gentleman will revert to rule A(4), the gentleman will read that the President and his counsel shall be invited to attend and observe the presentation, and following the presentation, the committee shall determine whether it desires additional evidence. Then it goes on to say that President's counsel shall be invited to respond to the presentation, orally or in writing. It shall be determined by the committee. He may also make written requests concerning witnesses. That, I think, sets specifically the role of the President's counsel in these proceedings.

Mr. DENNIS. Will the gentleman from Illinois yield?

Mr. MCCLORY. Yes, I yield to the gentleman.

Mr. DENNIS. I thank the gentleman, and I would simply like to observe that there is not a court in the land where counsel for the very lowliest citizen in the land would not be heard on the subject of issuing a subpena. This committee considering the case of the President of the United States is unique.

Mr. MCCLORY. May I conclude, Mr. Chairman?

The CHAIRMAN. The gentleman will just for a moment——

Mr. MCCLORY. I would like to conclude with one statement, Mr. Chairman.

I think it is inherent in our proceedings and the desire of the committee to be completely fair with the President to permit the representative of the President to participate with regard to the issuance of subpenas for witnesses or with regard to the issuance of subpenas duces tecum.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, you made it very clear, I think, that if Mr. St. Clair wants to submit any information, which he has done, he can do that. I think he has the opportunity to submit his point of view. He is not closed out, but he is just not going to participate in our proceedings. I think that point is very clear and I hope we can get on with the business at hand.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I never practiced law in Indiana, but apropos of the statement of the gentleman from Indiana, Mr. Dennis, I have never heard of a situation in which counsel for an opposing party had any voice whatsoever in the issuance of a subpena by the opposite party. To me, that would be the height of absurdity in a court of law, let alone in a grand inquiry such as we have before us here today.

Likewise, I would like to point out that the debate we are having this morning is a natural, direct, and necessary result of the ridiculous rule we adopted last week, to give President's counsel an unrealistic

voice in these proceedings. I suggest we are going to want to change that rule before long.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I have quickly read these two memorandums that Mr. St. Clair submitted to us and if this is any example of the kind of argument that he expects to present to this committee, then I would suggest that we are quite proper on the merits in refusing to entertain that kind of lack of substance in terms of presentations to the committee. It is the most incredible mishmash of irrelevancies that I have seen and it is not worth the paper it is written on.

Mr. RAILSBACK. Will the gentleman yield?

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Mr. Drinan.

Mr. DRINAN. As a member of the subcommittee that helped to draw up the rules, I would think that we have complied with the rules and Mr. St. Clair has been given all of the procedural rights to which he is entitled.

Presuming that we have now completed a section of the presentation, we are therefore following B 1, 2, and 3. Following that presentation, the committee shall determine whether it wants additional evidence. Consequently, under 3, the President's counsel has done what he is entitled to do; namely, he has given additional evidence in that he has submitted written requests. I think therefore we have given him everything that the rules entitled him to.

The CHAIRMAN. Mr. Railsback, then we will go on with our proceedings; otherwise, we will never get to the question Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I just respectfully submit that Mr. Seiberling's comments were a little bit, I thought, unfortunate. As I understand it, Mr. St. Clair has made it pretty clear that he felt constrained not to include any of the references that he had in his other memorandum, which I think gave a certain strength to his other memorandum because of the possible violations of our rules on confidentiality. So I am likely going to support the subpena, Mr. Chairman, but at the same time, I would like to ask the chairman if our staff had been directed to determine what actions we might take to enforce our subpenas. In other words, I have felt all along, as the chairman knows, that at some point, we are going to have to really bite the bullet and determine whether we are going to try to enforce our subpenas; if we have to, to go to court.

Mr. CONYERS. Would the gentleman yield to me on that?

Mr. RAILSBACK. Yes.

Mr. CONYERS. I had a motion on that the very first day we issued a subpena and I wish you would reconsider it at this time.

Mr. SEIBERLING. Will the gentleman yield?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Members of the committee, you have at your places this morning forms, two copies of forms for two subpenas. The first subpena:

To Benjamin Marshall or his duly authorized representative: You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control

of the things described in the attached schedule, to be and appear before the Committee on the Judiciary of the House of Representatives of the United States, of which the Honorable Peter W. Rodino, Jr., is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof, in their chamber in the City of Washington, on or before May 22, 1974, at the hour of 10 a.m., then and thereto produce and deliver said things to said committee, or their duly authorized representative, in connection with the committee's investigation, authorized and directed by House Res. 803, adopted February 6, 1974.

Attached to this proposed subpena is a schedule of things required to be produced pursuant to subpena of the committee on the Judiciary. It reads:

All tapes, dictabelts, or other electronic, and/or mechanical recordings, transcripts, memoranda, notes or other writings or things relating to the following conversations:

1. Meetings among the President, Mr. Haldeman and Mr. Mitchell on April 4, 1972 from 4:13 to 4:50 p.m. and between the President and Mr. Haldeman from 6:03 to 6:18 p.m.——

Mr. EILBERG. Mr. Chairman. I wonder if we can dispense with further reading of the subpena. I ask unanimous consent that we do that, Mr. Chairman.

[No response.]

The CHAIRMAN. Without objection.

Mr. DOAR. Members of the committee, this subpena requests or commands, would command the President of the United States to deliver to the committee on or before May 22, 1974, at the hour of 10 o'clock any recordings of 11 conversations on 3 days—April 4, June 20, and June 23, together with any notes, memorandums, dictabelts, or other writings that relate to those conversations that are in the possession or under the control of the President. The meetings on April 4 were between the President and Mr. Haldeman and Mr. Mitchell and between the President and Mr. Haldeman.

The conversations on June 20, 1972, were between Mr. Colson and the President, three conversations between Mr. Colson and the President and three conversations between Mr. Haldeman and the President.

The conversations on June 23 were three conversations between Mr. Haldeman and the President.

The justification for those, for this application is before the committee members. It was submitted to the committee some time ago and we initially requested this material from Mr. St. Clair on April 19, 1974, along with a number of other recorded conversations subsequent thereto, Mr. St. Clair advised us that the President of the United States had decided that no further material would be furnished to the committee with respect to the Watergate break-in or its aftermath.

Now, the meeting on April 4 followed a meeting in Key Biscayne between Mr. Magruder, Mr. LaRue, and Mr. Mitchell with respect to the Liddy plan, which was a plan for electronic surveillance of the President's political opponents. Mr. Magruder has testified that this plan was approved at that meeting and it provided for, among other things, entry into the Democratic National Committee headquarters.

Following that meeting, Mr. Strachan has testified that, it is a matter of public record, that he sent a memorandum to Mr. Haldeman

that advised him that a sophisticated intelligence gathering system had been approved with a budget of $300,000.

The public testimony indicates that Mr. Mitchell was reluctant about the approval of that meeting, of that plan. Mr. Strachan also testified that he prepared a talking paper for a meeting between Mr. Haldeman and Mr. Mitchell which took place at 3 o'clock in Mr. Haldeman's office on the first floor of the White House, the West Wing of the White House, and that this talking paper referred to included a reference to the sophisticated intelligence gathering system.

Mr. Haldeman has testified that the 3 o'clock meeting with Mr. Mitchell was in conjunction with a 4:15 meeting between the President and Mr. Mitchell and Mr. Haldeman, in which matters relating to the campaign and ITT were discussed.

Mr. Haldeman has also testified that his notes do not include a discussion of intelligence.

Following that meeting at 4:50, Mr. Haldeman and the President met alone for 15 minutes between 6:03 and 6:18.

It is the position of the inquiry staff that these conversations are necessary for the committee to have for the purpose of determining whether or not either of these conversations in any way bear upon the President's knowledge or lack of knowledge with respect to the so-called Liddy plan and that committee is entitled, has the responsibility, to seek out the best evidence with respect to that question and that the committee knows that there was this recording system in the White House and there is no reason to believe that this system was not operative on that date. For that reason, I feel that there is justification, ample justification, for the issuance of the subpena.

With respect to the June 20 conversation, as I say, there are three between the President and Mr. Colson and the President and Mr. Haldeman. The committee will recall that this was 3 days following the break-in at the Watergate Hotel, the Democratic National Headquarters. This was the first day that President Nixon had returned to Washington, and it was a day upon which there were a number of meetings between members of the staff and the Committee To Re-Elect the President. It is a matter of public record that the President and Mr. Haldeman discussed for 18 minutes, 18 minutes on the morning of that day, the Watergate break-in; and that that particular tape, the conversation on it was obliterated, and that all that remains for anyone to hear is a buzzing noise.

During that same day, there were meetings, as I say, among Mr. Ehrlichman, Mr. Mitchell, Mr. Haldeman, Mr. Dean, Mr. Kleindienst, in connection with the Watergate incident and the official Government investigation. Mr. Strachan has testified that at Mr. Haldeman's direction, he shredded the political matters memorandum containing the reference to the Liddy plan.

On that evening, the President spoke by telephone with Mr. Mitchell. The recording of this conversation was subpenaed by the Special Prosecutor but was not produced because it was not recorded. The President's recorded recollection of that conversation was recorded.

Mr. Mitchell has testified about the President's recollection, or his recollection of that conversation. After the conversation with Mr. Mitchell, the President then had four telephone conversations with Mr. Haldeman and Mr. Colson.

Again, the question, one of the questions that the committee is interested in is whether or not any of these conversations in any way bear upon the knowledge or lack of knowledge or action or inaction by the President with respect to the official investigation of the Watergate break-in. This would be the best evidence of conversations, discussions, and decisions, if such discussions occurred. We therefore feel that this request has been amply justified.

Mr. McCLORY. Mr. Chairman, may I ask a question at this point?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I note that Mr. St. Clair has presented us with two memos, one with respect to opposition to the subpena relating to the April 4 date and another relating to the June 23 date. Do we have a memo of any objection with respect to the tapes and other materials relating to the June 20 request that we have made?

Mr. JENNER. No.

Mr. DOAR. No. We do not.

Mr. McCLORY. He did not say whether he was objecting or not objecting?

Mr. DOAR. There was no indication one way or the other. I do not have any information what the reason was for that.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Doar, I would like to direct a question to the technical wording of the subpena. You will recall that at our meeting last week, there was considerable debate and division over your presentation of a chart as far as the accuracy of your representations on the chart, in that you seem to have drafted the previous subpena in the alternative without clarifying or specifying as to whether you wanted tapes, memorandums, dictabelts, and so forth. I would like to ask counsel, either Mr. Jenner or Mr. Doar, whether in your opinion the drafting of this subpena specifically includes everything in the alternative and the conjunctive so that there will be no mistake that we are asking not only for tapes, but in addition to that, any dictabelts and all dictabelts and all memorandums, so that if just transcripts are turned over, we will be satisfied that we have requested everything.

Mr. DOAR. Congressman, we did review that, consider that, and it was our judgment that we were asking for the memorandums, dictabelts, as well as tapes.

Mr. COHEN. You do not know of your own knowledge what is available, but you are saying that whatever is available, in existence, you want.

Mr. DOAR. We do not have any information as to what is available, although we do know that on June 20, there was a recording system operating.

The CHAIRMAN. I am going to ask committee members to defer any questions until Mr. Doar has finished his justification presentation on the conversations relating to June 23.

Mr. DOAR. The conversations on June 23 relating to three conversations between the President and Mr. Haldeman, both occurring before and after a meeting that Mr. Helms and Mr. Ehrlichman—no, Mr. Haldeman and Mr. Ehrlichman had with Mr. Helms and Mr. Walters of the CIA to determine the CIA's involvement and interest in the

Watergate break-in and to request Mr. Walters to meet with Acting Director of the FBI, Mr. Gray, to insure that the FBI's investigation not be expanded into unrelated matters which could lead to disclosure of non-Watergate-related, covert CIA operations or other related national security activities that have been undertaken previously by some of the Watergate participants. This was Mr. Haldeman's testimony before the Senate select committee.

The President has stated in a public statement of May 22, 1973, that he instructed Mr. Haldeman and Mr. Ehrlichman to insure that the FBI investigation of the Watergate break-in did not exposed either unrelated covert operations of the CIA or the activities of the White House Special Investigations Unit. It would seem that these coversations with Mr. Haldeman, both before and after the meeting with Mr. Helms and General Walters, would be the best evidence of whether any of these conversations in any way bore upon the subject of the President's instructions and directions with respect to what approach he wanted the CIA and the FBI to take to this investigation.

Finally, there is additional testimony that following that meeting, General Walters, following the meeting with Mr. Haldeman and Mr. Ehrlichman, General Walters met with Mr. Gray and stated to the FBI that its Watergate investigation should not be pursued into Mexico and should be tapered off with the five people arrested on June 17. Mr. Gray, in response to that, agreed to postpone two interviews involving funds in the bank account of Bernard Barker, one of the men arrested in the Democratic National Committee headquarters.

That is the justification for this material that we requested on the 23d. Mr. Jenner.

Mr. JENNER. Thank you. Mr. Chairman, members of the committee.

As minority counsel, I am particularly concerned to see that there is presented to the committee, and all of you, I am sure, share that with me, all of that which is honorable and favorable on these important issues to the President. These are conversations that occurred at a time, as you are now fully aware, when there might be a likelihood of a discussion. There very likely was, but we do not know. And if those recorded conversations do relate materials that indicate a lack on the part of the President or indicate, when you consider them, if they are afforded to you, a misunderstanding between Presidential aides and the President himself or eventually, an excess of zeal on the part of Presidential aides, that would be very material and necessary and desirable to your ultimate consideration of these matters. I have shared for some time, knowing somewhat in advance of you the thrust of all the proof which you now have, substantially, so far as these subpenas are concerned, that I would like to find, and I frankly am frankly pushed to state openly in front of all of you, exonerative material. It appears to me that here is something direct, at least that occurred as contemporaneously and in the course of a series of events, that this House committee, carrying and discharging this highest privilege granted in the Constitution, and acting highly responsibly as you have, that it hardly behooves us not to seek this.

Now, from a pure litigation standpoint, somewhere down the line, if the tapes are not, if the President responds negatively to the subpena, you, as lawyers, know that one of the things that may be undertaken by you to consider is the inferences to be drawn, if any, from

the failure of a respondent to a subpena to produce that which he or she is in control of or has actual possession of and is able to respond to the subpena. Technically, from a litigation standpoint, and you are in that position, the request must be carried out to the point that when a request is made or suggested to be made to inferences to be drawn from failure to produce, that the respondent has been afforded every opportunity to exercise his privilege or her privilege to produce or not produce.

Mr. SANDMAN. Mr. Chairman, on that question, may I question Mr. Jenner?

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN. This is the area where we had our difficulty last time, Mr. Jenner. We had previously requested some 42 tapes and the information came back that 13 of them never existed. Now, so far as, I have understood both Mr. Doar and yourself to say that in each of these items, you are not certain as to whether or not this information ever existed. Is this so?

Mr. JENNER. Well, we are not certain, sir, we just cannot be certain. We have a professional, let me say, judgment that some of the tapes do exist.

Mr. SANDMAN. You said may or may not exist, and I understood Mr. Doar to say almost the same thing, if that is so. We have no absolute proof that these things do exist today, is that so?

Mr. JENNER. We do not. Not absolute proof, no hard evidence.

Mr. SANDMAN. That is right. Now, bearing on what you just said, the inference that can be drawn on the inability to produce, is that altogether fair if we do not know at this point whether or not the information does exist?

Mr. JENNER. We know, Mr. Congressman, this: We know that there was a recording system. We know from the logs and other materials as presented to you that conversations did take place in places in the White House in which the recording system was operative. We know from responses by Mr. St. Clair from consideration of matters that have occurred in the U.S. District Court, that the premise upon which refusal to produce so far in response to our letters and responses to subpenas issued by the Special Prosecutor was not that the tapes did not exist, but as to this committee, that in the judgment of the President and his counsel, all that they regard as relevant has been produced. There is no contention at any time that I know of and presently can recall that these conversations requested now or submitted to you for a request basis were not recorded except as we have been advised and in turn advised you yesterday and last week that certain conversations were not recorded, either, A, because the tape ran out, or, B, that a conversation took place in a room or in the presence of a recorder which was then not operative.

Mr. SANDMAN. That could be the case, though, in a good many of these things, too, could it not?

Mr. JENNER. I am sorry, sir, I could not hear you.

Mr. SANDMAN. I say it could be the case on a good many of the items requested here. That could be the point?

Mr. JENNER. Mr. Congressman, that is absolutely so, but to have this committee have the response and information that it does not exist, it is very important to you as well.

Mr. SANDMAN. Do not get me wrong, Mr. Jenner. I intend to support the subpena, but I do want it in the record at this point prior to the subpena being approved by the committee that we do not know whether or not any or all of this information actually exists today. Is that a fair statement?

Mr. JENNER. That is a fair statement.

Mr. SANDMAN. Thank you.

The CHAIRMAN. I recognize the gentleman from Massachusetts, Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, I move that this Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, of a subpena to be signed by you, our chairman, the text of which is at your desk and copies of which are now before the members of the committee.

Mr. BROOKS. Second the motion, Mr. Chairman.

The CHAIRMAN. Discussion on the motion? Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I think in response to the points Mr. Sandman was listing, the record ought to reflect that in the briefs submitted to us by Mr. St. Clair, there is absolutely no mention that these tapes do not exist and it would seem to me that in fairness to the committee and in fairness to the proceedings, if those tapes do not exist, he should have advised us of them. I think the failure to advise us of them gives us very good basis for assuming that they in fact to exist.

I have a technical question to ask counsel. I am glad Mr. Cohen raised the question about the use of alternative language. I am concerned about specifying the times of the conversations as we do.

Do you take it that if a conversation started a minute before the time we specified and ended a minute after or before the time we specified, that the entire tape would be covered by this subpena, or would it be better, in fact, to use the language "on or about 2:20," for example, using the language in item 2? Would you comment on that, please, because I am concerned that the subpena in fact reach the materials that we are seeking, which are conversations starting on or about these times.

Mr. DOAR. Ms. Holtzman, I believe that the subpena could be fairly read to mean on or about those times. Those times are obtained from the logs of the 20th of June, for example, from the official diary of the President. If there were a few minutes off the time and we got a recording that started where it appeared that the participants were in the conversation, I think that we would be entitled to go back and request further conversations. But that has not occurred with respect to recording that have been furnished to date.

Ms. HOLTZMAN. Mr. Jenner?

Mr. JENNER. Thank you, Ms. Holtzman. You will recall that yesterday, I pointed out on the logs the preciseness, but that we were not certain that those log days and times were always precise. There is this factor for the committee and you to consider, if you please, that if a taped conversation is produced and we listen, we do have the help in that we can tell reasonably that the conversation started off in, let us say, the sort of normal chitchat that you would expect. If we look at the end of the taped conversation supplied, we see the normal leave taking. If we do not see the normal commencement of a conversation

and the normal leave taking, we will be alerted that we need more of the tape or we will then consult with Mr. St. Clair and determine what——

Ms. HOLTZMAN. Do you not think we can obviate that problem by using such language at this time that would enhance the effectiveness of the subpena to include language before the time and after the time, "on or about"?

Mr. JENNER. Ms. Holtzman, I must say it would be a somewhat better way of doing it.

The CHAIRMAN. Before we go any further, I am going to for the record ask the clerk to read the subpena referred to in this motion. If anyone would want to make a unanimous consent request to not read, to dispense with the reading, he may in order to save time.

Mr. SEIBERLING. I make such a motion, Mr. Chairman.

The CHAIRMAN. Will you identify the subpenas?

The CLERK [reading]:

By authority of the House of Representatives of the Congress of the United States of America, to Benjamin Marshall or his duly authorized representatives:

You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official, or employee——

The CHAIRMAN. Excuse me. This refers to the conversations of April 4 and June 20 and June 23.

Is that correct?

The CLERK. Yes sir.

Mr. SEIBERLING. Mr. Chairman, I ask unanimous consent to dispense with further reading of the subpena.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, an inquiry to make things clear. We are talking only about the subpena now which deals with the conversations of April 4, June 20, and June 23?

The CHAIRMAN. That is correct.

Mr. DENNIS. And the other subpena dealing with the daily diaries will be separately considered in a separate motion; is that correct?

The CHAIRMAN. That is correct.

Mr. MEZVINSKY. Mr. Chairman?

Mr. SEIBERLING. I renew my unanimous consent request.

The CHAIRMAN. Without objection, it is so ordered and reading, further reading is dispensed with.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I should like to ask a question of counsel.

Counsel, this is in the nature of a hypothetical question. Hypothetically, let us suppose that the tapes requested in fact exist. And hypothetically, let us suppose further that all or a portion of the tape contains material totally and absolutely unrelated to an impeachable offense. I ask you to assume that. What is the proper response of the President to the subpena with respect to that matter?

Mr. DOAR. Under the subpena, the President would be required to produce the recorded conversation.

Mr. WIGGINS. In its entirety?

Mr. DOAR. In its entirety, but could call to your attention at the time of compliance with the subpena that the material was totally

irrelevant and ask the committee to adopt a procedure whereby it would not consider that material.

Mr. WIGGINS. For my information, by what authority does the House of Representatives command the President to produce irrelevant material to an impeachable offense?

Mr. DOAR. The resolution that the House of Representatives passed provided that it authorized this committee to produce all necessary material and that it is in the judgment of the House of Representatives, exercising its constitutional authority power, to make that request.

Mr. WIGGINS. I will not argue that point, but I do not believe the resolution is quite that broad.

One further thing. I will only take a moment.

The CHAIRMAN. Go ahead. Mr. Wiggins.

Mr. WIGGINS. Counsel, why do we not resolve this question of what the President possesses and what he does not possess by written interrogatories to him? Why do we continue to guess on this matter?

Mr. HUNGATE. Will the gentleman yield?

Mr. WIGGINS. Of course I will yield.

Mr. HUNGATE. On that point, there is some very interesting transcripts and statements written for the public. In statements you can handle interrogatories, but you cannot handle examination.

Mr. WIGGINS. I will repeat the question. Why do not we find out what he possesses and what he does not possess?

Mr. DOAR. I think we are reasonably satisfied that these recordings do exist. In the tape hearing, down before Judge Sirica, there was material produced that indicated that the recording system was operating during that particular period. I do not think it is necessary, in view of the desire of the committee to move expeditiously, to serve interrogatories to find out whether or not documents exist before you request them or ask for a subpena duces tecum. We have had conversations about these materials since the 18th of April and if they do not exist, it is a simple matter for the person who has them to advise us.

Mr. WIGGINS. If this committee should elect to proceed by way of contempt, then I think you will find that we do need that kind of hard information independent of all sorts of inferences drawn from communications from counsel. I think we are going to proceed——

Mr. DOAR. I think at the time when the matter of compliance is determined, I think is a matter that should be determined.

The CHAIRMAN. Mr. Lott.

Mr. LOTT. Mr. Chairman, I have three brief questions.

First of all I would like for counsel to confirm for me that the material included in this subpena that we are now discussing, all this material was included in the letter that was sent on April 19 requesting various other material, but specifically these tapes, and all that is included in the subpena, this absolutely was all included in the letter of April 19, is that correct?

Mr. DOAR. That is correct.

Mr. LOTT. From the best you can determine, how many tapes are we talking about? Eleven, or do you have any way of knowing that?

Mr. DOAR. The tapes run for 6 hours, so that I would think that there might be three or four tapes since there's 3 days here, and the conversation of the twentieth runs from, the ones we request run from the afternoon until late at night.

Mr. LOTT. OK, sir. And finally, the crucial question from me, has this request been specifically or tacitly rejected by counsel for the President? I think that's important. It's been requested. Has there been a response?

Mr. DOAR. Yes; there has been a response. I wrote Mr. St. Clair the week before our hearings began and asked him if he could reply to our letter of April 19 by the following Tuesday. Mr. St. Clair and Mr. Buzhardt, Mr. St. Clair called me and said he would like to see me Tuesday afternoon, and he came up and met with Mr. Jenner and I at 3 o'clock in our office. And he said that the President of the United States determined that no further information with respect to Watergate would be furnished. It was a specific refusal to furnish this information.

Mr. LOTT. Thank you.

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. A question to counsel if I may, Mr. Chairman. Of course I think that we do not know whether this exists or not, but there is certainly a reasonable inference if the transcripts exist that the tapes exist. My question to you is, what would be your reaction to the suggestion that the word "transcript" be deleted from the subpena so that we direct our subpena directly to the question of the presentation of tapes? That, it seems to me, it was what we want, what we ought to be asking for, and I would hate to run into the question that we ran into before that a presentation of the transcripts was the compliance when, in fact, it was in all probability not. I would like, if counsel does not resist it strongly, to offer an amendment that would strike the word "transcript" at the appropriate time.

Mr. DOAR. I think, Congressman Butler, I would think that if the President has already made a transcript of that conversation, I think that that should be included in the subpena. I do not think that the subpena is indefinite or uncertain about the fact that we are requesting the tapes just merely because we have the transcript, and so that I would recommend not striking the word "transcript."

Mr. BUTLER. Mr. Jenner, do you have a comment on that?

Mr. JENNER. Yes, Congressman Butler.

One other thing I am thinking about is the possibility that a transcript may exist, and perhaps the tape presently is defective, or in some fashion rather a transcript came into existence and the tape is no longer in existence.

It also occurs to me to be helpful to the members of the committee to see what interpretation of a tape was made by Presidential staff in preparing a transcript.

Second, in that connection, it would be very helpful to you and your staff to have a transcript, at least in the early stages of listening with our sophisticated devices to the tape originally.

We also have the word "transcript" in there in the broader sense, as well as a transcript of a tape. You will notice the word "transcript" is by itself, and that is somewhat a word of legal art. And a transcript may be something of a conversation in the White House not recorded, but a transcript made by a stenographer or something of that character.

Mr. BUTLER. Counsel, would not a transcript, the type of which you refer to, come under the category of memorandums, or notes, or other writings?

Mr. JENNER. Well, we would hope so. But, if I may associate myself with you, when you are drafting, as a lawyer, I mean, in drafting a subpena or any kind of request including interrogatories, as you know we lawyers try to make it or use enough words with legal art and otherwise to assure that we have actually covered everything.

Mr. BUTLER. Well, Mr. Chairman, if I may be permitted the observation, I am not satisfied with the response of counsel to my question. I think we have got ourselves in trouble here by putting too many words into this, into this description, and putting the disjunctive there when the conjunctive would have been more effective. And at the appropriate time, Mr. Chairman, I would like to move that the subpena be amended to strike the word "transcript." If that's in order at this time, I so move.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. The Chair is going to declare at this time a recess since there is a Democratic caucus and it is imperative that the Democratic members get to the caucus. But, we will recess for 15 minutes.

[Short recess.]

The CHAIRMAN. The committee will come to order.

I recognize the gentleman from California, Mr. Waldie, for question.

Mr. WALDIE. Mr. Chairman, in a continuing effort to attempt to find out precisely what are the limitations of Mr. St. Clair's participation, it struck me in this discussion as to whether or not the tapes are even in existence, that Mr. Sandman initiated and others carried on, that there really is one person in the room here that might very well know that, and that would be the counsel for the President, who has made certain representations already to the committee in writing as to this particular matter. And I am wondering if it would be in order and proper for the Chair to address to Mr. St. Clair or propound a question as to whether he knows whether the tapes, in fact, are in existence or they are not?

The CHAIRMAN. No. That question is not in order and the Chair will not direct such a question to Mr. St. Clair.

Mr. WALDIE. Would any member of the committee be permitted to address a question to Mr. St. Clair?

The CHAIRMAN. No. Mr. St. Clair is not a part of these proceedings this morning. Mr. St. Clair is sitting as a spectator as any other member of the public.

Mr. MEZVINSKY. Will the gentleman yield? Will the gentleman yield?

Mr. WALDIE. Yes, I yield.

Mr. MEZVINSKY. Mr. Chairman, can we at least find out whether in any conversation with our counsel, Mr. Doar and Mr. Jenner, whether or not Mr. St. Clair has indicated that the tapes do not exist?

Mr. DOAR. The answer is no, he has not so indicated.

Mr. MEZVINSKY. So there is no information that we have in our possession that they do not exist? And I am especially concerned since our last subpena we found that two tapes supposedly were lost. But, we have no information whatsoever as far as any communications

from Mr. St. Clair or anyone from the White House that, in fact, the taped conversations do not exist? Is that correct?

Mr. DOAR. That's correct. I think, Congressman, that you misunderstood the response by Mr. St. Clair. It was not that the tapes were lost. It was that there was no evidence on the tapes that that conversation that we requested was there, and there was no indication the tapes were lost.

Mr. MEZVINSKY. Well, maybe I should—of the 11 conversations that we did not receive there were 2, you are saying that of those 2 they were not lost, but they could not find them? Were there not two conversations that they indicated that they could not find? Wasn't that on that little appendix that we have?

Mr. DOAR. That is right. But, there is a difference between finding a conversation and finding a tape. On these I presume, and I assume Mr. St. Clair, I know, in fact, Mr. St. Clair made an effort to listen to the tapes on those particular days. As you know, they are located in a safe, and they have been filed by date, and he listened on 2 or 3 days before and after the date we specified, and he could not locate the conversation. But, there was no suggestion that there was no—that they were not able to locate the tape.

Mr. MEZVINSKY. Do you know, in fact, Mr. St. Clair has listened to every one of these conversations or taped conversations that we are requesting?

Mr. DOAR. No. We don't know that.

The CHAIRMAN. I recognize Mr. Butler for the purpose of offering an amendment.

Mr. BUTLER. Mr. Chairman, prior to when we had to go to our caucus, I had indicated that I wanted to strike the word "transcript" from the subpena. I have offered a different amendment which I think will accomplish my same objective, and I would like to ask the clerk to read the amendment.

The CHAIRMAN. The clerk will read it.

The CLERK [reading]:

Amendment by Mr. Butler.

On the attachment to subpena No. 1, strike "all tapes, dictabelts or other electronic and/or mechanical recordings" and insert in lieu thereof, "all tapes, dictabelts, other electronic and mechanical recordings and".

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, the purpose of this amendment is to make certain that our use of the words tapes and transcripts are in the conjunctive and not in the disjunctive so what we have done is rewrite the first line of the schedule to take out the word "or" and "and/or" and put at the end of the sentence the word "and," so that now we are talking in effect and we say all tapes and transcripts. I felt that this question was raised by Mr. Cohen and was raised in our earlier discussions of the earlier subpena, and I felt while we had the opportunity we ought to make perfectly clear that this is what we want. So, I move the amendment.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. We would have no objection to that.

The CHAIRMAN. No objection to the acceptance to this amendment?

Mr. DOAR. No objection.

The CHAIRMAN. Does this suggest, Mr. Butler, that transcripts would be included and not exclusive of transcripts?

Mr. BUTLER. Yes, sir. It does not strike the word "transcripts" as I had earlier intended.

Mr. WIGGINS. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. WIGGINS. I would ask that the clerk read the subpena in the amended form, please.

The CHAIRMAN. The clerk will read.

The CLERK [reading]:

All tapes, dictabelts, other electronic and mechanical recordings and transcripts, memoranda, notes or other writings or things relating to the following conversations.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia, Mr. Butler.

All those in favor of the amendment say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[No response.]

The CHAIRMAN. And the amendment is agreed to.

The question now occurs on——

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Another amendment if I may, sir.

The CHAIRMAN. Mr. Butler.

The CLERK [reading]:

Amendment by Mr. Butler.

On the attachment to subpena No. 1 strike "as follows" wherever it occurs and insert in lieu thereof "referred to in logs as occurring at the following times."

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. This is in response to the question raised by Mr.—by the gentlelady from Brooklyn in her colloquy with the counsel in which she raised some question as to whether we did not have the exact times for the conversations which we are subpenaing. We arrive at these times, as I understand it, because the logs describe them by this time. And so, rather than refer to them as these exact times, my purpose would be at the end of the first sentence of paragraph No. 2, at the end of the first sentence of paragraph No. 3, to strike the word "as follows" and insert "referred to in the logs as occurring at the following times." Here again, my purpose is clarification.

Mr. SEIBERLING. Would the gentleman yield?

The CHAIRMAN. Would the gentleman yield?

Mr. BUTLER. And I yield.

The CHAIRMAN. I would like to address a question on that amendment to counsel. Does this in effect more specifically state the times for these conversations?

Mr. JENNER. I think it is a combination of having the specific as picked up from the Presidential logs, and also is an improvement in that it affords, it identifies the conversation as it would appear to us to have occurred at a particular time. But, it may have occurred a few months ahead and it may have run on a few months later, and this

accommodates Congresswoman Holtzman's concern, and I think it is an improvement.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I agree with that.

Mr. SEIBERLING. Will the gentleman yield?

Ms. JORDAN. Mr. Chairman?

The CHAIRMAN. Ms. Jordan.

Ms. JORDAN. Mr. Butler's amendment simply says referred to in logs. Now, we have seen many, many logs, and if he means referred to in Presidential logs as follows, I think that word Presidential ought to be added.

Mr. DOAR. I think——

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I think that does make it more specific. The exact words would be "President Richard Nixon's daily diary."

Mr. MCCLORY. If the gentlelady would yield. I ask this question of counsel? Or the gentleman from Virginia. Isn't it a fact that some of this information is taken from Mr. Haldeman's logs?

Mr. DOAR. No, Congressman. It is my belief that the summary of the meetings between Mr. Haldeman and the President were probably taken, abstracted off President Nixon's daily diary. But, it was an abstract from the complete diary of Nixon's day. Mr. Haldeman did have a log. He did have it, but——

Mr. MCCLORY. Well, what is the source of our information for specifying these times? Is it not Mr. Haldeman's log?

Mr. DOAR. Well—on April 4 it is Mr. Haldeman and Mr. Mitchell's log. On June 23 it is Mr. Haldeman's log. On June 20 it is President Nixon's daily diary, because we do not have a daily diary for the 23d or for April 4.

Mr. MCCLORY. So, we could not say the Presidential logs because we do not have information as to that. It is more accurate to just say logs, is it not?

Mr. DOAR. Well, I think the fact that we do not have the day, I do not think would forbid the committee from specifying that the conversations as set forth in the daily diary, but it is true that we do not have them for those 2 days.

Mr. MCCLORY. Well then, it would be better to say in the President's daily dairies, or logs, logs or Presidential diary?

Mr. DOAR. Well, or logs or Mr. Haldeman and Mr. Colson.

Mr. MCCLORY. Would the gentleman from Virginia permit an amendment to his proposed amendment to include the reference to or Presidential diaries?

Mr. BUTLER. I say in response to that, my purpose here is to strengthen this subpena by being specific as to identifying what we are after. And if counsel is satisfied that this is responsive to the objection raised by Ms. Holtzman, then, of course, that is what I want to do. And if we can further strengthen it by the suggestion from the gentleman from Illinois, then that is what I want to do also. So, if that is the opinion of counsel, I would certainly accept the amendment.

Mr. SEIBERLING. Would the gentleman yield?

The CHAIRMAN. The gentleman still has the floor.

Mr. BUTLER. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Well, if we are going to do this, to be consistent, should we not make a corresponding change in paragraph 1 of the schedule?

Mr. HUNGATE. Mr. Chairman, would the gentleman yield to me briefly?

Mr. BUTLER. In response to that, I will be glad to.

Mr. HUNGATE. Mr. Chairman, many of us have offered helpful suggestions. I think a story might outline our problem at this point. A couple went to get married, and at the place where the judge——

Mr. BUTLER. I take back the rest of my time. We can't have any dirty stories here, Mr. Chairman. We have enough of that already.

Mr. HUNGATE. Mr. Chairman, I intend to speak to the very point that the gentleman raised.

Mr. BUTLER. Of course, I yield.

The CHAIRMAN. I recognize the gentleman.

Mr. HUNGATE. This couple still went to get married, and at the place where the judge could marry them they handed up the license, and the judge looked at it, and he said that the date is on the wrong line, you will have to get that straightened out, go to see the clerk. So they went to see the clerk and he fixed it, and then the judge looked and there is this little kid there about 4 or 5 years old standing there, and he says, "Is that child with you?" "Why," he said, "yes, judge, that's my son." The judge says, "You realize he's a technical bastard?" And he says, "That's funny, that's what the clerk said about you."

Mr. Chairman, we must not be too technical with this amendment and get right on with it.

Mr. BUTLER. Mr. Chairman, would the gentleman from Missouri please explain why that is relevant to this discussion?

Mr. DRINAN. Mr. Chairman? Mr. Chairman?

Mr. HUNGATE. I believe it is self-explanatory. I would like to see us vote on this amendment.

The CHAIRMAN. All this committee has to do is determine it is necessary.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. Father Drinan.

Mr. DRINAN. Mr. Chairman, I want to raise with counsel some fundamental questions that bother me. There are 172 other tapes that we are not subpenaing today, and in all candor, I cannot justify the subpenaing of 11 and allowing the President not to be required by subpena to give the others, and I wonder, and I am troubled as to whether we are consciously or otherwise allowing our priorities to be established, and how can I answer the contention that is made to me by more than one that I personally and others are acquiescing in a delay. It was on February 25 when we asked the President for what we needed. It was on April 19 that we stipulated more, and now on May 15 we have finally subpenaed 11 tapes.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DRINAN. No, not yet.

How many more times are we going to go through this? The White House counsel says this morning in his brief that we are either seeking to "satisfy curiosity" or we are seeking to "seek the confirmation of

undisputed facts." Are we going to go through this every fortnight for how many weeks or how many months? What could happen if we subpenaed everything that we need? The worst that could happen is that they would comply with another set of transcripts, maybe more than 1,300 pages. And it seems to me that the result would be better than the delay which I am afraid I am acquiescing in by allowing counsel and the committee to subpena 11 rather than 150 or 172.

I wonder if Mr. Doar could reply to that?

Mr. DOAR. Yes, Congressman, I will.

A meeting has been scheduled for tomorrow morning where we will ask the committee to authorize the issuance of the materials requested with respect to the dairy matter and with respect to ITT. That takes care of about 40 conversations in dairy and I think 22 in ITT. We did subpena 79 or requested 79 conversations with respect to the Watergate matter. It seemed to counsel that an appropriate way to justify these requests clearly and unequivocably for the committee was to present, as we have been doing, chronologically the information dealing with the Watergate break-in and the coverup, the alleged coverup, and so that as we go forward in that period, from time to time we would ask the committee to issue subpenas in the Watergate and the information that the committee received in executive session would have a bearing on the justification for that request. Now, we won't do this every day. And the next time there would be quite a number of additional requests. There might be three times that we would do this rather than once.

I do not think it is a delay at all, Congressman.

Mr. DRINAN. You would say, therefore, that we will in due course, rather promptly, subpena virtually all of those 172 that are outstanding?

Mr. DOAR. We will in due course, very promptly request the committee to authorize the issuance, yes.

The CHAIRMAN. And the Chair would like to state that this matter will be under consideration, and we will proceed in an orderly manner. And I am sure that the gentleman from Massachusetts will be satisfied.

Mr. DRINAN. If I still have the time, Mr. Chairman?

Mr. SEIBERLING. Would the gentleman yield?

Mr. DRINAN. If I still have time, I would like to ask counsel one further question. Will the White House be asked to submit a brief or a statement on the subpenas that we will request tomorrow? I am very interested to know that they have started apparently the rehabilitation of John Dean. Apparently in the statement we received today they say that "Dean concluded that that was the end of the Liddy plan," and that we are, therefore, supposed to believe Mr. Dean. Will the White House be asked to submit a brief tomorrow?

The CHAIRMAN. I think I have to respond to the gentleman from Massachusetts that that is not a proper question for the counsel to reply to, since the counsel was not making up the mind of the committee. If the committee seeks to request this kind of information from the White House——

Mr. COHEN. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. The question is on the amendment of the gentleman from——

Mr. COHEN. Mr. Chairman, may I inquire? I have a question to ask.

The CHAIRMAN. On the amendment?

Mr. COHEN. On this motion.

The CHAIRMAN. Yes.

Mr. COHEN. Mr. Chairman, in view of the questions raised by the other members of the committee as to whether or not this refers to Presidential logs, since I understand Mr. Doar's response is that it refers, that some refer to the President's logs and others to Mitchell's or to Haldeman's, it seems to me if we leave it just as logs, you are going to create even more confusion, and for the sake of simplicity and the absence of technicality, it would be better to state "on or about" as originally suggested from the gentlelady from Brooklyn. And I would like your response. I think we are creating more problems than we are solving with it.

Mr. DOAR. Well, I think the "on or about" language would be satisfactory. But, I also think that referring to the logs and the Presidential diary would——

Mr. COHEN. But what about those conversations which come from Mr. Haldeman's logs or Mr. Mitchell's logs or Mr. Ehrlichman's?

Mr. DOAR. Well, you could say Presidential diary or other logs under the control of the President.

Mr. COHEN. All right. Well——

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Mr. Chairman, I have been subjected to a lot of abuse here, and my purpose was most well motivated. And I do not want to create any problems for anybody. And certainly I do not want to reflect on the title of any person here, including myself. So, in the interest of proceeding with this hearing this morning, I would respectfully ask unanimous consent to withdraw the amendment which I have just offered.

The CHAIRMAN. Without objection, it is so ordered.

Ms. JORDAN. Question.

The CHAIRMAN. The question is on the motion.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. The motion is the motion of the gentleman from Massachusetts. All those in——

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. This is the first subpena.

Mr. FROEHLICH. Mr. Chairman, I request a rollcall.

The CHAIRMAN. The question is on the motion and a rollcall is demanded. All those in favor of taking the vote by rollcall will please say aye.

[Chorus of "ayes."]

The CHAIRMAN. Opposed?

[No response.]

The CHAIRMAN. And the ayes have it, and a rollcall is demanded. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. Aye.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.

Mr. DENNIS. Aye.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye. The clerk will report the vote.

The CLERK. Mr. Chairman, 37 members have voted aye, one member has voted no.

The CHAIRMAN. And the motion is agreed to.

I recognize the gentleman from Massachusetts, Mr. Donohue.

Mr. DONOHUE. Now, Mr. Chairman, I move that this Committee on the Judiciary authorize and direct the issuance and service upon Richard M. Nixon, President of the United States, a subpena to be signed by the chairman, the text of which is at your desk, and copies of which are now before the members of the committee.

The CHAIRMAN. The clerk will read the text of the subpena.

The CLERK [reading]:

By authority of the House of Representatives of the Congress of the United States of America, to Benjamin Marshall, or his duly authorized representative: You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or——

Mr. SEIBERLING. Mr. Chairman, Mr. Chairman? I ask unanimous consent that we dispense with further reading of the subpena.

The CHAIRMAN. Without objection——

Mr. DENNIS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard. The clerk will continue to read it.

The CLERK [continues reading]:

Or any subordinate officer, official or employee with custody or control of the things described in the attached schedule, to be and appear before the Committee on the Judiciary of the House of Representatives of the United States, of which the Honorable Peter W. Rodino, Jr., is Chairman, and to bring with him the things specified in the schedule attached hereto and made a part thereof, in their chamber in the city of Washington, on or before May 22, 1974, at the hour of 10 a.m., then and there to produce and deliver said things to said committee, or their duly authorized representative, in connection with the committe's investigation authorized and directed by House Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons. Witness my hand and the seal of the House of Representatives of the United States at the city of Washington, this 15th day of May, 1974, Peter W. Rodino, Jr., Chairman.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, could we have a justification for this request, or could we have an explanation from counsel as to the justification?

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, the clerk did not read the schedule.

The CLERK. [reading]:

Schedule of things required to be produced pursuant to subpena of the Committee on the Judiciary. The President's daily diaries (as reflected on U.S. Government Printing Office form "1972 O–472–086" or any predecessor or successor forms) for the period April through July 1972, February through April 1973, July 12 through July 31, 1973 and October 1973.

Mr. CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, I have here a copy of Government's exhibit 130 in the hearing before Judge Sirica which is an example of President Nixon's daily diary for June 20, and I would like to ask that that be distributed to the members.

The CHAIRMAN. The clerk will distribute those.

Mr. McCLORY. May I ask this question, Mr. Chairman, is this in the public domain?

Mr. DOAR. Yes; it is. In the course of our investigation we learned that the President kept, maintained a daily diary, and the Archivist for the White House had this responsibility located in the Executive Office Building and a very detailed dairy of the President's daily schedule was maintained and prepared the following day with respect to the President's previous day's schedule.

We have among the committee records the dairy for June 20, July 6, January 4, April 10 through 20, June 4, September 29, October 1 through 7, and November 15, 16, and 17, those diaries. These diaries were produced in response to requests by the Special Prosecutor or in response to a subpena in connection with hearings on the question of the 18½-minute gap in the June 20 tape.

Your staff feels that these diaries are tools which we can use to more precisely identify persons with whom the President conferred with respect, or might have conferred with respect to matters relating to the matters that are the subject to our inquiry. We have not asked for the diaries for complete periods. That is, we have not asked for the diary annually, but the period April through July 1972, is a critical period with respect to the Watergate break-in and the Watergate investigation.

The period February through April 1973, is a critical period with respect to the President's action or inaction with respect to the Watergate investigation. The transcripts that the President's counsel furnished to us covered transcripts of conversations in March and April 1973. And there were 36—no, wait a minute. There were more than that. There were about 51 conversations furnished during the period of March and April. The period July 12 through July 31, 1973, is the period just before and after the time that it was first disclosed that there was a recording system operating in the White House, in the Oval

Office, and in the President's office in the Executive Office Building. In October 1973, is the month in which the President instructed the Attorney General to discharge Mr. Cox, the Special Prosecutor.

All of those periods are important to the committee's inquiry, and these documents are documents that could lead to information that would be pertinent to the committee's inquiry. For that reason we feel that the committee should authorize the issuance of the subpena.

The CHAIRMAN. Mr. Doar, might I inquire if these daily diaries specified in the subpena, and as indicated in the schedule, were these requested along with the other requests that were made specifically as they are requested now?

Mr. DOAR. Yes, they were.

The CHAIRMAN. And was there any compliance at all with regard to those requests, or was there a refusal, a denial?

Mr. DOAR. No. Since these diaries relate to the Watergate matter, there was a refusal to produce them.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Was this called specifically as well to the attention of Mr. St. Clair at the time that discussions took place with regard to the requests that were made?

Mr. DOAR. Yes, they were.

The CHAIRMAN. And was the same answer, that the President had instructed Mr. St. Clair that he could not comply?

Mr. JENNER. Mr. Chairman, Mr. St. Clair stated to us, as Mr. Doar has stated to the committee, that there would be no Watergate material, whether documentary or taped, delivered to the committee. Mr. St. Clair did say as to other phases of the investigation, and this I say only as examples, ITT, dairy, tapes and things of that character, that he would undertake to assemble those documents, first discover whether they existed and assemble them, and would take the latter up with the President and advise us in the premises as to whether he could or they would be produced. And we have had no response from Mr. St. Clair.

Mr. MCCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, as I interpret the justification, it would call for a great deal of general information covering a broad period of time. And my only concern is that it might, it might reveal a great deal of information that would be completely irrelevant to our inquiry. Do I understand, that if received, these diaries of which we have an example here, would be held under our rules of confidentiality, and only released to the public if they became part of our, a necessary part of our report?

Mr. DOAR. That is correct.

Mr. DENNIS. Mr. Chairman?

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, thank you. Counsel, would a photographic reproduction of a daily diary be an adequate response to the subpena?

Mr. DOAR. Yes.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Doar, these diaries, of course, show everyone who visited the President during the time required, do they not?

Mr. DOAR. Yes they do. They purport to be complete and accurate, and I believe they are.

Mr. DENNIS. Many of whom who would have nothing to do with our inquiry whatsoever?

Mr. DOAR. I agree with that.

Mr. DENNIS. Now, you have made no effort in this subpena to specify the times Haldeman called or Ehrlichman called, or Colson called, or any individual called, is that correct?

Mr. DOAR. That is correct.

Mr. DENNIS. Now, you have asked for several rather lengthy periods of time, I think for 4 months in 1972 and a total of about 4 months and 19 days in 1973. In your justification a moment ago you did make some specification as to certain periods, directing your attention to the period July 12 through July 31, 1973. My understanding of what you said there was that this was a period before and after it was first discovered that there was a recording system. Was that your statement?

Mr. DOAR. That's correct, disclosed, first disclosed.

Mr. DENNIS. Yes. And would you explain to the committee why the fact that that represents a period before and after the existence of a recording system first being discovered or disclosed, why that makes that period relevant for this purpose?

Mr. DOAR. Well, I think that these diaries are necessary. I cannot represent that they are relevant. I think that information with respect to the recording system, an examination of tapes during that period might very well be relevant to this inquiry. But, I cannot tell you the reason for that.

Mr. DENNIS. Why is the reference to the time when the existence of this system was first disclosed, why does that have any indication or any bearing on the relevance of conversations in that particular period? What is the connection between disclosure and relevancy?

Mr. DOAR. Congressman, this was a period when the fact of the recording system was first disclosed to the country. Counsel have operated on the theory that it is in the best interest of everyone if there be a full and complete disclosure in a straightforward way of all relevant material in connection with this inquiry. I mean, by asking for this, we mean to suggest that it may turn up with nothing, but I just feel that it might turn up some indications and that it might not have some discussions with respect to the tape recording system that might bear on the matters that are before the committee with respect to the recording system.

Mr. DENNIS. Well, let me shift a moment to October 1973, since our time is limited. Your statement and justification there was that was the month in which Mr. Cox was discharged. Now, that happened over one weekend, as I recall. On what basis do you conclude from the fact that that occurred in October, that every entry for the month of October is relevant to our purposes?

Mr. DOAR. I don't conclude that every entry is relevant. I conclude that some entries might be relevant. It did not occur just over a weekend. The discussion with respect to the special prosecutor occurred

during the entire week of October 20, and we just believe that it is necessary to examine those diaries to just see with whom the President conferred that might be relevant to this inquiry.

Mr. DENNIS. Now, in the period February through April 1973, that is a 4-month period, and you are asking for everything during that period on the basis of the general statement that that was a period in which there was considerable activity on the Watergate investigation, if I understand you?

Mr. DOAR. That is correct.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman, I have a motion I wish to make under rule 16, section 6, section 791, of the rules. I move that this subpena be voted on separately as to the different periods put forth in the subpena.

Mr. FLOWERS. Mr. Chairman?

Mr. DENNIS. I make that motion. I think under the rule we are entitled to separate this.

The CHAIRMAN. The gentleman is making a demand to divide the question?

Mr. DENNIS. That is right.

The CHAIRMAN. The gentleman is correct in his demand. How does the gentleman propose to divide the question?

Mr. DENNIS. I propose that we divide them as the schedule divides them in one, two, three, and four separate parts.

The CHAIRMAN. The Chair would like to put a question to the counsel. In light of the fact that the gentleman makes a demand under the rules of the House, under rule 16, section 6, where a member may demand before the question is put that the question should be divided, if it includes propositions so distinct in substance that one being taken away, the substantive proposition shall remain. The Chair would like to put the question to counsel, in the event that there is this division, would this subpena, in effect, provide for dividing it so that a substantive proposition would still remain? In other words, if this were divided in such a way as to take in those portions of April, and then go on through July, and then to October, the three portions as I see them—there are three areas or four areas.

Mr. DENNIS. Four, yes.

Mr. JENNER. Mr. Chairman, if I may respond, the striking, if that should eventuate, one segment, that is, for example, the period April through July 1972, that would not affect subsequently the remainder.

The CHAIRMAN. Well, the next question is, would this in effect prejudice the intent and purpose of this subpena in its entirety?

Mr. DOAR. The answer to that would be it would not. It would not affect the subpena.

However, I should say that all of the periods were selected because they relate to the matter of the Watergate break-in and the aftermath, in our opinion, and that we feel that all of the periods are necessary.

Mr. BROOKS. Mr. Chairman, would the gentleman yield? Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. I would ask Mr. Dennis if it is your intention to have a separate demand for a separation of this subpena on each of these four?

Mr. DENNIS. That is my intention, yes. I want a vote on each period separately, because I think myself that some of them are relevant and proper, and sustainable, and others are not.

Mr. BROOKS. All right, Mr. Chairman. I would ask that we consider the four, consider the amendment, his motion. He has a right to demand that under the rules. Obviously, you can divide these four. Our counsel agrees, and it is an obvious fact. Let's just vote four times on them and get it done, and not quibble about his right to do it, which is clearly delineated in the rules.

The CHAIRMAN. The gentleman has that right.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I wish to make a comment with respect to the motion. I am going to oppose the motion——

Mr. DENNIS. I have a request. It is a right.

Mr. WIGGINS. I am going to oppose the suggestion by the gentleman from Indiana. I recognize he has a right to divide this issue. But, looking at this entire matter, this is in the nature of casual discovery, and I can understand the desirability of the committee having in its possession the Presidential logs for the purpose of making perhaps a more precise subpena of conversations in the future. But, I do not want my vote in support of this subpena to be understood that I am going to support at all any subpena of a conversation at some future time without a great deal of justification, which has not yet been presented to this committee, and I think we all ought to look at this more or less as a casual act of discovery, which is normal. But, when we get down to the precise question of whether a given conversation with an individual, within this time frame, is relevant to our inquiry, that our staff is going to have to come up with a great deal of justification which is not even purportedly offered at this time.

Mr. FLOWERS. Will my friend yield?

The CHAIRMAN. The gentleman has put a demand to the Chair. The Chair will have to recognize the demand of the member and put the question into the divisible parts and, therefore, the Chair will put the question to the members and will have to divide the portion for the period April through July 1972. And the question is as to whether or not the committee will approve the demand of the gentleman from Indiana.

All those in favor of the gentleman's demand——

Mr. BROOKS. Mr. Chairman?

Mr. MCCLORY. Mr. Chairman?

Mr. BROOKS. Mr. Chairman, parliamentary inquiry. Is not our position that a demand is one which he is eligible to make, upon which we would not vote, because it is a rule of the House, and that the question would be the adoption of the subpena to cover the period April through July 1972? As demanded, under the rules he has a right to it, and we can only put the question. And if we want the subpena for that period, we will vote twice, and if we do not, we do not.

The CHAIRMAN. The Chair thought that that was what he had conveyed, and the Chair was misunderstood.

The question is on the issuance of the subpena for the period April through July 1972.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. All in favor——

Mr. MAYNE. Mr. Chairman? I have not had an opportunity to speak on this newly raised issue.

The CHAIRMAN. I will defer until the gentleman makes his point.

Mr. MAYNE. Yes. It seems to me, Mr. Chairman, that in this revised procedure, under which we are now voting, this is not just a casual discovery, but it is now seeking to obtain information from these logs over a period of 4 months as distinguished from the 9 months in the original subpena, and to obtain logs, whether they have anything to do with an impeachable offense or not. In other words, we are seeking to pry into every meeting, every appointment of any kind, foreign or domestic, that the President of the United States held during that period.

Now, one of our members, as I recall, sought some reassurance that if this were done the committee's rules of confidentiality would protect those items which are irrelevant from the impeachment issue. But, there has been a very regrettable and substantial erosion of our committee rules of confidentiality, as witnessed by the fact that although we all very clearly agreed that Mr. St. Clair's brief or submission was not to be released by us, it appeared verbatin in the Washington Post of this morning. And confidentiality also went down the tube last week, so I find no comfort or protection at all.

Mr. MCCLORY. Would the gentleman yield?

Mr. MAYNE. That these matters which have nothing to do with impeachment over a period of 4 months are not going to be spread and speculated about throughout the press of the United States. And I have no objection at all to logs which refer to relevant matters concerning impeachment. But, it is a fishing expedition, and an invitation to go out and ransack the Presidential files of every subject whatsoever and to ask for these logs on every conceivable subject.

Mr. RAILSBACK. Will the gentleman yield?

Mr. MAYNE. Whether they have anything to do with impeachment or not.

Mr. RAILSBACK. Will the gentleman yield?

Mr. MAYNE. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I thank the gentleman for yielding.

I would like to ask the counsel that if it is not true that we subpena those logs they will be subject to the same initial screening process that we have set up for our rules of confidentiality?

Mr. JENNER. Congressman Railsback, you are absolutely correct. The logs, if received, will be received by Mr. Doar and me, and disclosable to the chairman and Mr. Hutchinson as the ranking member under the rules of confidentiality that apply to the staff.

Mr. RAILSBACK. Am I correct that that screening process is to assure that we will only be presented the relevant and necessary items?

Mr. JENNER. That is true.

The CHAIRMAN. The time of the gentleman has expired.

And the question is on the issuance of the subpena for the period April through July 1972.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it.

Mr. DENNIS. Mr. Chairman, let us have a rollcall.

The CHAIRMAN. A rollcall is demanded, and under the rules there is a requirement that at least one-fifth of the members of the committee would be necessary to demand a rollcall.

All those in favor of taking this vote by rollcall, recorded vote, please raise your hands.

[Show of hands.]

The CHAIRMAN. A sufficient number. The call of the roll is demanded.

Mr. HUNGATE. Parliamentary inquiry. Are we going to be voting on four subpenas or four times on one subpena?

The CHAIRMAN. No, it is four times on one subpena.

Mr. HUNGATE. Thank you, sir.

The CHAIRMAN. And the clerk will call the roll. All those in favor please say aye, and all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. On this one, aye.
The CLERK. Mr. Dennis votes aye. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. Aye.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. Aye.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The clerk will report the vote.

The CLERK. Mr. Chairman, 36 members have voted aye, 2 members have voted no.

The CHAIRMAN. And the motion is agreed to.

The question now occurs on the period February through April 1973. And all those in favor of issuing a subpena for that period say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it.

Mr. FROEHLICH. Mr. Chairman, I request a rollcall.

The CHAIRMAN. Call of the roll is demanded. The clerk will call the roll.

The CLERK. Mr. Donohue.
Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. Aye.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.

Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. No.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. Aye.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.

The CLERK. Mr. Chairman, 32 members have voted aye, 6 have voted no.

The CHAIRMAN. And the motion is agreed to.

And the question now occurs on the issuance of a subpena for the period July 12 through July 31. All those——

Mr. DENNIS. Mr. Chairman? Mr. Chairman, I would like to be heard on that one briefly.

The CHAIRMAN. The gentleman has been heard.

Mr. DENNIS. No; I haven't, Mr. Chairman. I was never heard except when I made my demand, and this is on a motion, which I have not been heard on. I would like to be heard briefly on the motion.

The CHAIRMAN. The gentleman will be recognized briefly.

Mr. DENNIS. I thank the Chair. And I would simply point out to my colleagues on the committee that this one is clearly irrelevant because the only suggestion which has even been made is that there is something relevant about it because it occurs both before and after a time when the existence of this system was disclosed. Now, if anyone can tell me what makes conversation in this particular period relevant because it is before or after, and unspecified with not the date that anything happened, but the date that the existence of the system was disclosed, if somebody will explain that to my satisfaction then I will vote for the subpena. But, I just think that this one is completely out of the ball park.

I thank the Chair.

Ms. JORDAN. Question.

Mr. DENNIS. Could I ask for a rollcall?

The CHAIRMAN. The question is on the issuance of a subpena, and the gentleman demands a rollcall, a recorded vote. All those in favor of the issuance of a subpena for the period July 12 through July 31 will please say aye.

[Chorus of "ayes."]
The Chairman. All those opposed?
[Chorus of "noes."]
Mr. DENNIS. Rollcall, Mr. Chairman.
The CHAIRMAN. A call of the roll is demanded and the clerk will call the roll.
The CLERK. Mr. Donohue.
Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. Aye.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. No.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. No.

The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK. Mr. Dennis.
Mr. DENNIS. No.
The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. No.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. No.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. No.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.
The CLERK. Mr. Chairman.
The CHAIRMAN. The clerk will report.

The CLERK. Twenty-nine members have voted aye, nine members have voted no.

The CHAIRMAN. And the motion is agreed to.

And now the question occurs on the issuance of a subpena for the period of October 1973.

All those in favor——

Mr. DENNIS. Mr. Chairman? Mr. Chairman? May I be heard briefly on this?

The CHAIRMAN. Mr. Dennis is recognized.

Mr. DENNIS. If this subpena were directed to the weekend, which has been suggested as the only justification for it, or even that period of time, or even to those individuals involved, I would be happy to vote for it. But here on the basis of certain events which happened on the 10th of October, to last for the whole month of October, everybody who appeared at the White House during that period of time, I suggest it is a faulty subpena.

The CHAIRMAN. The question is on the merits of the subpena.

All those in favor say aye.

[Chorus of "ayes."]

The CHAIRMAN. A rollcall is demanded. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.
The CLERK. Mr. Brooks.
Mr. BROOKS. Aye.
The CLERK. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.
The CLERK. Mr. Hungate.
Mr. HUNGATE. Aye.
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Eilberg.
Mr. EILBERG. Aye.
The CLERK. Mr. Waldie.
Mr. WALDIE. Aye.
The CLERK. Mr. Flowers.
Mr. FLOWERS. Aye.
The CLERK. Mr. Mann.
Mr. MANN. Aye.
The CLERK. Mr. Sarbanes.
Mr. SARBANES. Aye.
The CLERK. Mr. Seiberling.
Mr. SEIBERLING. Aye.
The CLERK. Mr. Danielson.
Mr. DANIELSON. Aye.
The CLERK. Mr. Drinan.
Mr. DRINAN. Aye.
The CLERK. Mr. Rangel.
Mr. RANGEL. Aye.
The CLERK. Ms. Jordan.
Ms. JORDAN. Aye.
The CLERK. Mr. Thornton.
Mr. THORNTON. Aye.
The CLERK. Ms. Holtzman.
Ms. HOLTZMAN. Aye.
The CLERK. Mr. Owens.
Mr. OWENS. Aye.
The CLERK. Mr. Mezvinsky.
Mr. MEZVINSKY. Aye.
The CLERK. Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. McClory.
Mr. MCCLORY. Aye.
The CLERK. Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Sandman.
Mr. SANDMAN. Aye.
The CLERK. Mr. Railsback.
Mr. RAILSBACK. Aye.
The CLERK. Mr. Wiggins.
Mr. WIGGINS. Aye.
The CLERK, Mr. Dennis.
Mr. DENNIS. No.

The CLERK. Mr. Fish.
Mr. FISH. Aye.
The CLERK. Mr. Mayne.
Mr. MAYNE. Aye.
The CLERK. Mr. Hogan.
Mr. HOGAN. Aye.
The CLERK. Mr. Butler.
Mr. BUTLER. No.
The CLERK. Mr. Cohen.
Mr. COHEN. Aye.
The CLERK. Mr. Lott.
Mr. LOTT. No.
The CLERK. Mr. Froehlich.
Mr. FROEHLICH. Aye.
The CLERK. Mr. Moorhead.
Mr. MOORHEAD. Aye.
The CLERK. Mr. Maraziti.
Mr. MARAZITI. Aye.
The CLERK. Mr. Latta.
Mr. LATTA. No.
The CLERK. Mr. Rodino.
The CHAIRMAN. Aye.

The CLERK. Mr. Chairman, 32 members have voted aye, 6 members have voted no.

The CHAIRMAN. The motion is agreed to.

There is no further vote required in accordance with the rules and the subpena will issue according to the motion of the gentleman from Massachusetts.

There being no further business before the committee, the committee will adjourn and the hearing which was supposed to take place sometimes after this meeting will resume at 2 o'clock this afternoon.

[Whereupon, at 11:50 a.m., the committee was adjourned.]

IMPEACHMENT INQUIRY

Executive Session

WEDNESDAY, MAY 15, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:30 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman), presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Albert E. Jenner, Jr., special counsel to the minority; Samuel Garrison III, deputy minority counsel; Evan A. Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; and Franklin G. Polk, associate counsel.

Also present: James D. St. Clair, special counsel to the President; John A. McCahill, assistant special counsel.

The CHAIRMAN. The committee will come to order, and we will resume with the presentation by Mr. Doar. I am advised that there is a bill on the floor, a conference report, and it may be necessary for us, should two bells ring, to report to the floor to vote, but we will declare a recess at that time and return in order that we may resume so that we may conclude at least with this portion of the presentation in volume 3.

Before Mr. Doar proceeds, I would like to announce that tomorrow morning's meeting, which had been scheduled for the consideration of subpenas in particular instances is being canceled, the reason for that being that I have discussed this matter with Mr. Doar and I find that we do not have a denial on the part of Mr. St. Clair from the White House with relation to the requests that have been made concerning some of the matters that have been requested in letters that Mr. Doar sent to Mr. St. Clair after approval by myself and Mr. Hutchinson, specifying certain documents and certain conversations that we were looking for with regard to ITT and the dairy industry. I feel it appropriate at this time that Mr. Doar and Mr. Jenner be instructed after this hearing today to discuss this matter

with Mr. St. Clair so that we might get an indication—not only an indication, but we might get a response as to whether or not there will be compliance by the White House in those areas, and which areas, if they will so designate. We will resume with our hearing when we adjourn this afternoon to recess until tomorrow at 10 o'clock.

Mr. LATTA. Mr. Chairman, I would like to raise a question as to our procedure here. I believe it was yesterday or the day before that we raised the same question about asking questions of Mr. Doar and Mr. Jenner as we proceed. The Chair indicated that the only time we could ask a question is at conclusion of the day. I notice a young lady over there taking this all down, which means that when this matter, if it does, comes on for hearing on the floor, we will be furnishing documents to the House. I think we are going to leave the wrong impression if we go through all of this and no questions are raised that no members of the committee had any questions. Now, yesterday, I noticed that several members of the commitee had questions to ask. They waited until the end of the day and the questions were not asked. I think if we are going to have a good inquiry here, and I am sure everybody wants that, I think questions should be raised and answered timely—not at the end of the day, but when the question appears. I would like to have the Chair reconsider his ruling that you cannot ask a question.

Nobody wants any dilatory tactics. We want to get this thing over with and I, probably more than anybody else on this committee, because we have floorwork and work on other committees.

The CHAIRMAN. The Chair will state that the rules of procedure under which we are proceeding specifically state that the presentation will be made and following the presentation, then members may be permitted to ask questions. I think that this would disrupt the orderly procedure that we contemplated in order that we be as expeditious as we can and yet reserve to members the right to ask questions of counsel which will be asked at a time and every right will be accorded them—as we have stated, the rights that are theirs under the rules of the House and under the rules of this impeachment inquiry procedure.

Mr. LATTA. Mr. Chairman, I would like the record to show that I dissent. I do not think this is a proper procedure to follow for a matter of this importance.

The CHAIRMAN. The dissent will be noted. I would also like to note for the gentleman that if he will read the impeachment inquiry procedures and read rule B, it says following the presentation of evidence by the staff, opportunity for the following has been provided and any committee member may bring additional evidence to the committee's attention, and then their questions may be addressed.

Mr. LATTA. We are not asking, Mr. Chairman, to bring additional evidence. We are merely asking the right that we ask our counsel that we hired as members of this committee and members of the House a proper question at the proper time. I do not think any rules adopted by this committee are so inflexible that they cannot be changed, and I think now is the time to consider changing those rules, because several members, not only this member, had questions yesterday that were not asked and not answered because we broke up in the fashion that we did.

The CHAIRMAN. The gentleman's dissent will be noted on the record.

Mr. HOGAN. Mr. Chairman.

The CHAIRMAN. Mr. Hogan?

Mr. HOGAN. There are questions in my mind for clarification. It is just unclear as to where we are and so forth. Is it possible that a member might, when such a question occurs, write it down and during the recess give it to counsel and when we come back in, have him clarify it?

The CHAIRMAN. I think that would be perfectly appropriate and certainly help the proceedings.

Mr. HOGAN. Thank you.

Mr. LATTA. Would the gentleman yield for a further inquiry?

Are we going to have one recess during the afternoon so we can do this, or are we going to have frequent recesses when we can do it?

The CHAIRMAN. The Chair has not decided whether or not recesses are going to be called or not, but the Chair contemplates that there will be recesses, since I think first of all, the presentation is going to take a period of time and we are going to be listening to tapes this afternoon, so it would be in order at that time.

Mr. DOAR.

Mr. DOAR. Mr. Chairman, yesterday, during the presentation of book II, volume 1, Mr. Jenner advised the committee that we would furnish to the commitee additional material with respect to paragraph 14. A member asked if we would also furnish the material that we had prepared for tab 27. In the envelopes at your places are those two sets of material. If we could go back and summarize briefly those materials, if Mr. Jenner would summarize the material that he wishes added in paragraph 14.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, you will recall that yesterday, I called attention to the fact that bearing upon Mr. Kehrli's memorandum to which Mr. Doar called your attention, there was a preceding—there was additional matter in the Senate select committee testimony that bore upon whether or not Mr. Hunt was a member of the White House staff as of the 1st of April or the 31st of March, since I thought there was some material that might be helpful to indicate that at least it was contemplated that his position with the White House was being terminated about that time, and that is what this addition is. It consists, under 14.11, which will be new in your book—you will insert that material at the end of tab 14. It consists of three pages. Page 791, which is Mr. Magruder's testimony—the reason we mark near the bottom of the page the reference to "In approximately mid-March, I had requested certain things from Mr. Liddy" is to give you a time-fix as to the testimony starting on page 792. Because you will notice that Mr. Magruder says in response to Mr. Dash's question at the bottom of page 792, "At that time." So what appears on the preceding page fixes the time, mid-March.

Then the apropos portion—well, it is all apropos, but particularly so at the top of page 793, Mr. Magruder says that: "He indicated that Mr. Hunt had completed his assignments at the White House and since we were now engaged in intelligence activities, he thought I would find Mr. Hunt very valuable. I only met Mr. Hunt once," and so forth.

So if you will just insert those materials under your tab 14.

The information sheet for tab 14 now supplied you is identical with the one already in your book, except on the second page in the annotations, the annotation 14.11 is included. In order to be more convenient

for you, we are duplicating the information in that paragraph and you may remove and destroy tab 14 and substitute the two information sheets which you have there. Then at the very end of that tab, insert the 14.11 material as an addition.

Mr. DOAR. Tab No. 27?

Mr. DAVIS. Tab 27. This is material in the brown envelope.

Mr. DOAR. This is the material in the brown envelope that one of the members asked yesterday to be furnished to the committee.

Mr. DAVIS. On or about June 22, 1972, John Ehrlichman met with John Dean and discussed the contents of Howard Hunt's safe and what to do with certain politically sensitive documents.

The CHAIRMAN. That is a record vote.

Mr. DOAR. The material behind tab 27 deals with a conflict in the testimony between John Dean and John Ehrlichman with respect to whether or not at this conversation on June 27, Mr. Ehrlichman told John Dean to deep-six the brief case and contents thereof that was taken from Howard Hunt's safe. There is no dispute about the fact that the two men met and discussed the contents. There is a clear dispute with respect to what was said.

On the one hand, Mr. Dean, in 27.1, describes how Mr. Ehrlichman suggested that he deep-six the material. Mr. Ehrlichman denies this before the Senate select committee.

On 27.2 and 27.3, we have also included a portion of John Dean's notes which he made at Camp David at the time he was ordered to go to Camp David to prepare a report after March 21. The material would really have to be read in full by the committee to evaluate this conflict.

Mr. DENNIS. Mr. Chairman, unless I am in error, the statement of fact has been omitted. I have all the supporting documents here, but I do not see the statement.

Mr. DOAR. Perhaps it was omitted from yours.

Mr. DENNIS. That is what I mean. I cannot find it.

Mr. DOAR. We will get you another one, Mr. Dennis.

Mr. DENNIS. It is supposed to be here, but I cannot put a handle on it.

Mr. DOAR. Tab 41. We are now turning to book III.

The CHAIRMAN. The committee will be in recess until such time as the committee members have had a chance to vote on this record vote.

[Recess.]

The CHAIRMAN. The committee will come to order.

Mr. Doar, will you proceed?

Mr. DAVIS. Tab 41.

On June 28, 1972, Helms wrote a memorandum to Walters stating the substance of Helms' conversation with Gray. Helms stated the CIA still adhered to its request that the FBI confine its investigation to persons already arrested or directly under suspicion and that the FBI not expand its investigation into other areas which might well eventually run afoul of CIA operations.

Mr. DOAR. Tab 41.1 is this memorandum. Inquiry has been made about the cover sheet of that memorandum which says or reads "basic data, St. George's allegations."

St. George is a writer who wrote an article about the CIA in Harper's magazine, and this resulted in an armed services investigation or armed services hearing and the CIA prepared some documents to

furnish to the Senate Armed Services Committee in connection with that hearing. The document behind 41.1 is the letter and pertinent language is in paragraph 2 in the last sentence of the paragraph to the effect:

> We still adhere to a request that they confine themselves to the personalities already arrested or directly under suspicion and that they desist from expanding this investigation into other areas which may well eventually run afoul of our operations.

Tab 42.

Mr. DAVIS. Tab 42. On June 28, 1972, Gray directed that the FBI interview Manuel Ogarrio and continue its efforts to locate and interview Kenneth Dahlberg. On that evening, John Dean telephoned Gray at home and urged that, for national security reasons, or because of CIA interest, Ogarrio and Dahlberg be held up. They thereafter canceled the interviews.

Dr. DOAR. Tab 42.1 is the testimony of Patrick Gray substantiating that. You will notice that page 3455 at the bracket in the first paragraph that Mr. Gray discusses with Mr. Felt and Mr. Bates whether this position of the CIA could be brought about because of security reasons or what is known as compartmentalization at the CIA, whereby one man in the agency does not know all that is going on nor does another operational man know all that is going on. And this apparently is a system that is followed in intelligence operations so that the information with respect to a particular case is known by as few people as possible.

Later on in connection with the Fielding break-in, we will bring information to you which will indicate that some officials in the CIA knew some parts of the investigation of Daniel Ellsberg and other officials knew other parts of the investigations of Daniel Ellsberg, but neither official knew what the other official was doing and these were relatively high officials within the CIA.

In this testimony, Gray emphasizes that he was concerned about the FBI's reputation, and that he would not hold back the investigation at anyone's request including the President of the United States in the absence of overriding and valid considerations.

And then he relates how in the afternoon of that day, John Dean called him and asked him to hold up the interview of Miss Kathleen Chenow for alleged reasons of national security. And he temporarily discontinued that interview. And then late that night on his way to San Diego and Phoenix for a field trip he got a call from John Dean at home. He was urged by John Dean to hold up these interviews that he had directed to be proceeded with, for national security reasons, or because of CIA interest. And he called and gave directions reversing his earlier instructions canceling the interviews. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen. As you see from these first two paragraphs, and those that follow, they are the resolution of this matter that you will ultimately be called up to determine which is whether the advancement of the national security reason was in good faith for that actual purpose or rather was for the purpose of preventing or inducing the FBI not to investigate the Dahlberg contribution and interview Ogarrio and others with respect to the cashing of those checks in Mexico City.

I voice no opinion on the subject. I merely call your attention to it so you, in reading these paragraphs, you will have that in mind.

It is interesting at page 3455, read by Mr. Doar, that perhaps at this point Mr. Gray was having some thoughts himself because you will notice in the fifth from the bottom line he said "Mr. Dean asked me to hold up the interview of Miss Kathleen Chenow for alleged reasons of national security."

Now, the word "alleged" is a word used by Mr. Gray during the course of his testimony, subsequent to the course of events that had transpired.

Mr. DENNIS. Mr. Chairman, who and what is Kathleen Chenow?

Mr. DOAR. We will come to that in a minute, Mr. Dennis.

Mr. JENNER. Almost immediately, Mr. Dennis.

Mr. DENNIS. All right.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab 43.

Mr. DAVIS. Tab 43, on June 28, 1972, FBI agents met with Gordon Liddy in the presence of SCRP attorney Kenneth Parkinson to question Liddy regarding the break-in at the DNC headquarters. When Liddy declined to answer the agent's questions, he was discharged by FCRP Chairman, Maurice Stans.

Mr. DOAR. Tab 43.1 is Mr. Liddy's deposition in the civil case of *O'Brien* v. *McCord* which is the only testimony we have from Gordon Liddy.

Yesterday a question was asked whether or not we attempted to interview Gordon Liddy. We did. He declined to give us any information.

The testimony of Gordon Liddy taken at this deposition shows that when he was interviewed by the FBI he told the FBI that before talking to them that he wanted to get a lawyer. And if you see on the bottom of page 39, 43.1, as he says, and this is the third paragraph from the bottom, he said:

> So I said to the agent that before he went any further, prior to any interview, I would like to obtain the services of an attorney, consult with him on what I believed was the possible legal problems involved and did desire not to have any further conversation with him or with his companion agent until I had the benefit of counsel.

And later on, as he relates, Mr. LaRue advised him that the policy of the committee was that all representatives or that any member of the committee cooperate completely with any representative of an official investigative body.

Mr. Liddy explained to him that he wanted to see his counsel, and that he said:

> I came to understand that this was not acceptable, and that if I were to persist in this position that I had taken it might well lead to my dismissal.

And then later he indicates that it was his best recollection that Mr. Stans fired him. And that was done I think on that day. Mr. Jenner.

Mr. JENNER. Mr. Chairman, ladies and gentlemen, if you will turn back to the statement of information you will notice that the second sentence reads "When Liddy declined to answer the agent's questions he was discharged."

You might make at least a mental note there that he declined to answer the questions absent his being permitted to consult counsel,

and though that was the basis upon which he put his refusal, he was discharged anyhow.

Mr. DOAR. Tab 44.

Mr. DAVIS. Tab 44, on or about June 28, 1972, John Dean was informed that the FBI was attempting to interview Kathleen Chenow, the secretary of David Young and Egil Krogh in the White House Special Investigations Unit, the Plumbers. The number of the telephone billed to Chenow at her home address, but located in the EOB, was contained in a personal notebook of telephone numbers of Eugenio Martinez and in an address book of Bernard Barker, found in the Watergate Hotel room that had been occupied by certain of the men arrested in the DNC headquarters. Dean has testified that he informed John Ehrlichman of problems connected with Chenow's interview and that Ehrlichman agreed that before her FBI interview, Chenow should be briefed not to disclose the activities of Howard Hunt and Gordon Liddy while at the White House. On June 28, 1972, Dean telephoned Acting FBI Director Gray and requested that Chenow's interview be temporarily held up for reasons of national security. Gray agreed to the request.

Mr. DOAR. Behind tab 44 we have included certain documents from Martinez and Barker's address books and also Kathleen Chenow's home telephone number. The purpose of that was, as I will explain to you, is to show that this was the number that had been given at some time to Barker and Martinez to call and it was the number that Martinez could reach George, which was Gordon Liddy's alias. We have no proof that the telephone was in operation at June 19 or June 17 and as a matter of fact the only records that we do have of Kathleen Chenow run through April 1972. I will explain that in detail as we go through the proof behind tab 44.

Tab 44.1 is John Dean's testimony identifying David Young and the fact that Miss Chenow had worked for David Young and Bud Krogh, the two people that were in charge of the Plumber's operation. This young lady, who is a secretary there, had been asked to take out a phone listing in her own name of a phone that was located in the Executive Office Building of the White House. And John Dean was concerned, as he testified, that Miss Chenow, if she testified about the Watergate, could cause the White House problems about inadvertently answering questions about the Plumbers. And David Young was concerned about Miss Chenow being caught off guard by an FBI agent.

So John Dean discussed the problem with Mr. Ehrlichman, and there was an arrangement made that Fielding, who was Dean's assistant, to go to London and bring back this young lady and brief her so that she would not get into Hunt and Liddy's activities at the White House. This was done prior to the time that she was interviewed by the FBI.

Tab 44.2 is Howard Hunt's testimony, and he is just identifying Kathleen Chenow as the secretary to the group specifically working for Mr. Young.

Tab 44.3 is Mr. Gray's testimony when John Dean asked him to hold up the interview of Kathleen Chenow.

Tab 44.4 is the description of the material that was taken from the people that were arrested at the time of the Watergate break-in, and behind that is the cover sheet of Mr. Barker's notebook. And if you turn to 44.7 for just a second, you will notice—this is 44.7—you will notice that this is the phone records of Kathleen Chenow, 501 Slaters Lane, Apartment 519, Alexandria, Va. That is at 44.7. And at the top right-hand corner of the first page you will see that her phone number is 347–0355. That is at the top right-hand corner of the page, 347–0355.

And then if you go back, turn back in your book to 44.4, and go to Mr. Barker's phone book, phone address book, and you look in there and you look at the right-hand column, there is a Miss Hastings, and then there is a phone, 642–5996, and then the next line, with two lines scratched through it, 347–0355.

And then if you turn over the next page it is a brown and yellow list finding, Donnie Martinez.

And if you turn to his phone logs, which is the last document under 44.4, consisting of three pages of this flip file and you look at the right-hand one of these, and you go down to the first telephone number, you will see the word "George" and the number 202–347–0355. Also under the first name there it is Howard Hunt on that list, and then the third or the first number is this telephone number.

We also note that there is a "George" in the middle folder, but I don't know the significance of that.

The next, 44.5, is Mr. Dash's, Samuel Dash's review of Kathleen Chenow's FBI interview, and relates her history of working at the Plumber's suite in the Executive Office Building and the fact that she was approached by David Young in October 1971 and requested to have a private telephone installed in the suite located in room 16 for the use of Howard Hunt. He said that the bills were paid by John Campbell, staff secretary to President Nixon. I think the words "staff secretary" there is a descriptive term of one of a great number of secretaries in the White House. And this phone, according to Miss Chenow, was in the suite for approximately 5 months and taken out in the middle of March 1972. And she said she saw Hunt the last of March 1972 and Liddy in February 1972. Tab 44.6——

Mr. JENNER. Excuse me, John. In connection with the issue of when Mr. Hunt left the White House, the items to which Mr. Doar has just called your attention are pertinent. That is, she testified she last saw him in the White House in March 1972, and the telephone taken out in her name and originally installed in Mr. Hunt's office, was removed in the middle of March 1972.

Mr. DOAR. Tab 44.6 is just a summary of his telephone calls, search of the telephone records by Patrick Gray. Tab 45.

Mr. DAVIS. Tab 45 on June 28, 1972, Gray met with John Ehrlichman and John Dean. At this meeting Gray was given two folders containing documents which he was told had been retrieved from Howard Hunt's safe and had not been delivered to the FBI agents when the remainder of the contents of the safe was delivered on June 27, 1972. Gray was told that these documents were politically sensitive, were unrelated to Watergate, and should never be made public. Dean did not deliver to Gray the two notebooks and popup address books that had been found in Hunt's safe. Dean has related that he discovered

these items in a file folder in his office in late January 1973 at which time he shredded the notebook and discarded the address book.

Mr. DOAR. Tab 45.1 is John Ehrlichman's log of the meeting between Gray and Dean.

Tab 45.2 is Mr. Gray's description of the conversation and that meeting. He said, "After the usual greetings were exchanged, Mr. Ehrlichman said something very close to 'John has something he wants to turn over to you'." And then he said:

> I noted that Mr. Dean had in his hand two white manila legal sized folders, and he then said Mr. Dean told me these files contained copies of sensitive and classified papers of a political nature that Howard Hunt had been working on. He said they had national security implications or overtones, had absolutely nothing to do with the Watergate and had no bearing on the Watergate investigation whatsoever. Then he said that either Mr. Dean or Mr. Ehrlichman said that these files should not be allowed to confuse or muddy the issues in the Watergate case.

Mr. WIGGINS. Mr. Chairman, I want to make a marginal note and I do not have the facts. They relate to a prior book. This material is a product of that safe I take it. What was the date that the safe was opened?

Mr. DAVIS. It was opened on the 19th.

Mr. WIGGINS. On the 19th. Thank you.

Mr. DOAR. Tab 45.3 is Mr. Ehrlichman's testimony about that meeting. He testified that he did not know what was in the packet except that Mr. Mr. Dean had told him that there were sensitive materials, politically sensitive materials.

Tab 45.4 is Mr. Ehrlichman's testimony that he was concerned about leaks and that it could be very embarrassing for a lot of people, and that John Dean suggested that the way to handle this was to divide the material into two parcels and give one to the FBI agents and the other to Mr. Gray. That he concurred in that suggestion as a way of making sure that the documents did not leak.

And he describes again that the discussion was there were politically sensitive documents.

Tab 45.6 I have already read to the committee. This is Mr. Ben-Veniste's statement to the court with respect to John Dean's shredding of the two notebooks that he did not turn over to the FBI. Tab 46.

Mr. DAVIS. Tab 46, on June 30, 1972, the President met with H. R. Haldeman and John Mitchell. A portion of their discussion related to the Watergate break-in.

Mr. DOAR. Now, members of the committee, this is a very short, this is a very short recording, tape recording. We will come to about a 40-minute tape recording at tab 53. I would like to explain before you put on your earphones that the way this procedure worked before Judge Sirica was that we, after the court of appeals decision, the President decided to turn over certain recorded conversations to the court. The procedure was for Judge Sirica to listen to the conversation in camera and to exclude parts of the conversation that were not related to the Watergate investigation. And the part that you have here is that part of that conversation that Judge Sirica felt was relevant to the Watergate break-in and the investigation and the alleged coverup. We have two tape recordings of that conversation, and we would like to play them both for you. Neither of them are of the best quality.

This tape is by far the worst quality of tape.

The reason for that is that when we went down and made a recording of the conversation at Judge Sirica's chamber, because we found there we could get the best copies, and a slight portion of the recording was not recorded. Now, that was inadvertence as to the setting of the recording equipment. As I understand it, you are going to play which tape first? The one recorded in the district court will be played first. The first tape that you hear will start with Mr. Haldeman on the first page and run down to the speaking, where the President is speaking at the bottom of the first page, and then we will go on and it starts with Mr. Mitchell on the second page and runs down to the bottom of page 2. And then we will play the other tape where you will have the entire conversation on it including the President's statement at the bottom of page 1, the top of page 2, and the material on page 3.

[A tape recording, previously described, was played.]

Mr. Doar. Turn to page 2. Now we will play the entire tape again, which we have obtained from either the White House or from the Special Prosecutor's Office, that has the entire conversation. Again I remind you that this quality is the poorest tape by far that you will listen to. The tape that you will hear later on this afternoon will be much more satisfactory to listen to. You will not have the strain that you have in listening to this particular conversation.

But this will be a worse tape, a worse recording, than you have just heard.

[The second tape recording, previously described, was played.]

Mr. Doar. Tab 47.

Mr. Seiberling. Mr. Chairman, I wonder if Mr. Jenner and Mr. Doar have anything in this conversation that they think ought to be highlighted before we leave it.

Mr. Doar. Well, we have followed the practice with respect to all these conversations throughout all of them of not highlighting anything in the conversations for the members until they have finished them all on the ground that it was our understanding that that was the way that the committee intended to have us present them.

Mr. Wiggins. Mr. Chairman?

The Chairman. I would like to remind the member that all that counsel can present to us is the raw tape as it is without being highlighted in any way whatsoever. Otherwise I do not think they would be conveying to us what we have to judge on our own.

Mr. Wiggins. Right. But, Mr. Chairman,——

Mr. Seiberling. I just wondered if we are going to follow this throughout?

The Chairman. Well, I would think it would be perfectly inappropriate for counsel to do anything of that sort.

Mr. Wiggins. Mr. Chairman?

The Chairman. Mr. Wiggins.

Mr. Wiggins. Can counsel tell me also for the purpose of a marginal note the date on which Mr. Mitchell left the committee?

Mr. Doar. He left on this date. This was the day he left.

Mr. Wiggins. All right.

Mr. Fish. Mr. Chairman, do I understand from what counsel has just said that we will be going over this material at another time?

The Chairman. There will be another tape which is a longer tape.

Mr. Fish. No, this same tape, we will be going over it at another time?

The Chairman. Yes. That's correct.

Mr. Danielson.

Mr. Danielson. My question does not have to do with substance or background here but I listened and I don't understand why we got this twice and there are different versions? Are the tapes from different sources? I do not understand why there are two tapes here.

Mr. Doar. I can explain that. In trying to get the best quality of tape for you, we went through in some instances five generations of making rerecordings. We would get a tape from the White House, and we would play it and it would be very difficult to hear anything. And we proposed to Mr. St. Clair, and he agreed, that we go down to the White House and make our own rerecording.

Now, you can make a better recording of a recorded conversation if you speed up the rerecording to twice or four times the speed and you can also do it if you set the needle of the rerecording in a way which is as close to the way the needle was set when it was recording the conversations, as I understand it, and our electronic consultant went down to the White House and he made, off of a copy of a tape, as we understand it, not the original because the originals were, we believe, were in Judge Sirica's chambers and we made a copy of that tape. We found that we got a much, much better recording of that tape. Then we decided to go down and ask Judge Sirica if we could do the same thing with the tapes that he had. And in the meantime we had gotten Mr. Jaworski's tape and then we found that was not as good as the tape that we had made, and so we went down to Judge Sirica and we made a rerecording of that tape, all of the tapes there. Now, just as an oversight, when we made the rerecording of the tape that was in Judge Sirica's chamber and because he had edited out portions of the conversation, he only gave to the Special Prosecutor a very small part of this conversation, and the technician who set the needle at the time with Judge Sirica set it and cut it off before the President's conversation here on the bottom of page 1 and the top of page 2, and cut the recording off before the last 2 lines that we have gotten on the other tape. And as a result that is why there was less on the better recording than on the second recording.

Mr. Danielson. Thank you.

Mr. Chairman, I do not think I am inquiring into the merits here, but I did not understand why we would have two different tapes and in effect, two different versions. Am I correct now in my present understanding which is that we are not dealing with the original tapes at all? We have been dealing with copies of tapes or copies of copies of tapes, as the case may be?

Mr. Doar. That is right, although I think that some of the tapes in Judge Sirica's chambers were the original or believed to be the originals. The six that we copied in Judge Sirica's office were the originals.

Mr. Danielson. And the reason why there may be a difference in the intelligibility or the clarity of some of the tapes is just due to the efforts of technicians to record at different speeds and in different manners in order to enhance the audibility? Is that the idea?

Mr. Doar. Yes. The techniques, but——

Mr. Danielson. But it does not change the substance of what is on the tapes?

Mr. DOAR. No, sir. It does not. It does not.

Mr. DANIELSON. All right. Thank you.

Mr. DOAR. Tab number 47.

Mr. JENNER. Mr. Chairman. John, excuse me. Ladies and gentlemen, not highlighting this, you will notice that this is the first occasion that the President, at least to our discovery, has made any remarks with respect to Watergate. And whether you call it highlighting or not, that is one of the major purposes here.

Now, as to the thrust you will give to this language, there are a number of sentences that your counsel prefer not to discuss, but we will be discussing—we would have to discuss it in terms of interpretation of the language, and perhaps down the road somewhere you may wish us to observe that. At the present moment, as the chairman has stated, we wish only to give you the bare conversations, and tell you to study it so that you will be able to raise questions yourself.

Mr. SEIBERLING. Mr. Chairman, may I ask one question?

The CHAIRMAN. Is it with relation to a clarification of the presentation that is being made?

Mr. SEIBERLING. Well, it relates to the nature of the tapes, which is that—is this all the tape that there is that we know of with respect to this subject on this particulate date? Because it seems to start in the middle of the conversation with respect to Wategate. If not, has consideratiion been given to subpenaing a tape for this——

The CHAIRMAN. I believe, Mr. Seiberling, that question has already been addressed. There is a reason for the two different transcripts—the one transcript, I think Mr. Doar has already explained.

Mr. DOAR. As I understand it, Judge Sirica, under the order of the court of appeals, listened to the conversation between the President and Mr. Haldeman and Mr. Mitchell on June 30, 1972. He determined that it was this portion of the conversation that was relevant. Therefore, he permitted copying only of that portion. I agree with the Congressman; this observation that you made has puzzled me, too. It does appear that there should be more of the conversation, but the material which the grand jury received from the White House, which the grand jury received pursuant to subpena, was that which Judge Sirica permitted them to receive. That is the material we received from the White House and from the grand jury. The entire conversation is still on that tape.

Mr. SEIBERLING. My question is, are any of your requests for taped conversations, do they cover this particular conversation in an effort to determine whether there was anything more in that conversation that related to Watergate than what is presented in this particular transcript?

Mr. DOAR. We have not yet made such a request. We have delayed doing that until the committee heard this tape and heard the next tape.

I will say that on the next tape, on the tape you will hear in 10, or 15, or 20 minutes, when we went down to the White House and made the rerecording, inadvertently, the Secret Service people set the needle 15 minutes before the time that Judge Sirica had, the conversation between the President and John Dean on September 15. There is in the last 4 minutes of that 15 minutes pertinent conversation with respect to this inquiry. We will ask the committee to permit

us to play that to you today as a basis for a further request for an additional part of that recorded conversation.

As soon as we learned of that fact, that this incident had occurred, Mr. Jenner and I advised Mr. St. Clair of it, after having advised the chairman and the ranking minority member. At their direction, we advised them that we did have an additional 15 minutes of conversation on September 15 beyond that which was intended to be given to us.

Mr. SEIBERLING. I am simply suggesting that we consider also requesting this particular entire conversation.

The CHAIRMAN. Mr. Seiberling, I think that the questions that ought to be addressed ought to be questions that merely are seeking clarification of the presentation that is being made. What we will be then deciding to do I think we can defer until after the presentation or during the recess if there are any questions; then I think the members may make those suggestions as to what additional evidence or what may be the question in their mind that would suggest they need some further information to clarify.

Mr. SEIBERLING. Mr. Chairman, if I may simply respond to that, we have at various points in the presentation so far had occasions when Mr. St. Clair—excuse me, when Mr. Doar pointed out that there was an appropriate point for requesting or subpenaing additional material and I thought perhaps this was an appropriate time to discuss it. But I agree that under our rules, we can do it later on.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Tab 47.

Mr. DAVIS. Tab 47—on July 2, 1972, Fred Fielding, staff assistant to John Dean, flew to England where Kathleen Chenow was vacationing to bring Chenow back to Washington. On or about July 3, 1972, Chenow discussed her forthcoming FBI interview with Fielding and Plumbers unit member David Young. Dean and Fielding were present when the FBI interviewed Chenow.

Mr. DOAR. Tab 48.

Mr. DAVIS. Tab 48—on July 5, 1972, at 5:54 p.m., Acting FBI Director Gray phoned Deputy CIA Director Walters and stated that, unless the CIA provided by the following morning a written rather than the verbal request to refrain from interviewing Manuel Ogarrio and Kenneth Dahlberg, the FBI would go forward with those interviews. At 10:05 a.m. on July 6, 1972, Walters met with Gray and furnished Gray a memorandum indicating that the CIA had no interest in Ogarrio or Dahlberg. Gray then ordered that Ogarrio and Dahlberg be interviewed. At 10:51 a.m., Gray called Clark MacGregor, campaign director of CRP, who was with the President at San Clemente, Calif. Gray has testified that he asked MacGregor to tell the President that Gray and Walters were uneasy and concerned about the confusion during the past 2 weeks in determining whether the CIA had any interest in people who the FBI wished to interview in connection with the Watergate investigation.

Gray also has testified that he asked MacGregor to tell the President that Gray felt that people on the White House staff were careless and indifferent in their use of the CIA and FBI, that this activity was injurious to the CIA and the FBI, and that these White House staff people were wounding the President. MacGregor has denied both

receiving this call and the substance of it as related by Gray, but has testified to receiving a call from Gray on another subject the previous evening or possibly that morning. By letter of July 25, 1973, to Archibald Cox, J. Fred Buzhardt stated that the President's logs do not show any conversations or meetings between the President and Clark MacGregor on July 6, 1972; the President's log for that date shows meetings between the President and MacGregor from 10:40 a.m. to 12:12 p.m. Pacific time.

At 11:28 a.m., the President telephoned Gray. Gray told the President that he and Walters felt that people on the President's staff were trying to mortally wound the President by using the CIA and the FBI. The President responded by instructing Gray to continue to press ahead with the investigation.

Mr. DOAR. Tab 48 really deals with two subjects: one, the conversation between Gray and Walters on July 5, and the other the conversation between Gray and the President on July 6.

Referring first to the conversation on July 5, you will see that 48.1 is Mr. Gray's log, 48.2 is Mr. Gray's testimony. At page 3457, you will see that Mr. Gray had prepared a memorandum in writing requesting in writing that the FBI refrain from interviewing Ogarrio or Dahlberg because of CIA interest, and that Mr. Gray tells, testifies in the second-to-last paragraph on that page that he expressed the thought—

> That the leads to Ogarrio and Dahlberg were clear and that their interviews were a necessity which only the clearest expression of national security interest should prevent, and that the FBI, for the sake of its own integrity, would refrain from conducting the interviews only if we received such a written request from the CIA.

Mr. Gray goes on to tell that Mr. Walters had indicated to him that he would resign if he had been asked or directed by his superior to give the FBI such a writing. He recalls the general—he says at page 3458, in the fourth paragraph, he recalls that "General Walters indicated a feeling of irritation and resentment at the extent to which the White House aides had involved themselves in the question of CIA interest."

He said that he expressed his own concern and he mentioned the abrupt cancellation by Mr. Ehrlichman of a meeting he had scheduled with Director Helms and General Walters on June 28. He said "I undoubtedly so expressed myself to General Walters." Mr. Gray says "General Walters and I engaged in a general discussion of the credibility and position of our respective institutions in our society and of the need to insure that this was maintained."

General Walters said he was old enough now and he was not concerned about his pension and he was not going to let "these kids" kick him around anymore.

Tab 48.4 is General Walters' testimony before the Senate select committee and 48.5 is General Walters' memorandum. I think it is important that I call the committee's attention to page 2913 of 48.5. It is a memorandum for record, dated July 6, 1972. General Walters said he had given Mr. Gray the memorandum and he said:

> In all honesty I could not tell him to cease future investigations on the ground that it would compromise the security of the United States. Even less so could I write him a letter to this effect. He said that he fully understood this. He him-

self had told Ehrlichman and Haldeman that he could not possibly suppress the investigation of this matter. Even within the FBI there were leaks. He had called in the components of his Field Office in Washington and "chewed them out" on this case because information had leaked into the press concerning the Watergate case which only they had.

Mr. Walters then continued:

I said that the only basis on which he and I could deal was absolute frankness and I wished to recount my involvement in this case. I said that I had been called to the White House with Director Helms and had seen two senior staff assistants.

He puts in parentheses, ("I specifically did not name Haldeman and Ehrlichman.")

Then he continues:

I said that we had been told that if this case were investigated further, it would lead to some awkward places, and I had been directed—

The implication being that the President had directed this although it was not specifically stated.

To go to Acting Director Gray and tell him that if this investigation were pursued further, it could uncover some ongoing covert operations of the agency.

Then if you look on the next page, you will see that Mr. Gray states he had explained all this to Dean as well as to Haldeman and Erlichman. Walters says:

He said he was anxious not to talk to Mitchell because he was afraid that at his confirmation hearings, he would be asked whether he had talked to Mitchell about the Watergate case and he wished to be in a position to reply negatively.

Earlier in the memo you see that Gray told Walters he did not see "why he or I should jeopardize the integrity of our organizations to protect some middle level White House figure who had acted imprudently. He was prepared to let this go to Erlichman, to Haldeman, or to Mitchell for that matter."

Tab 48.6 is a memo from General Walters.

Tab 48.7. I have not gone into any particular things yet because I would like to explain it for a minute, if I might. It is a memorandum from Walters on July 6, 1972.

There are five different versions of what happened with respect to this. They are all not mutually inconsistent, but they are inconsistent in parts. The principals involved are Acting Director of the FBI, Patrick Gray; Clark MacGregor, who was then Director of the Campaign to Reelect the President; John Erlichman, Mr. Buzhardt, and President Nixon.

Turning first to Mr. Buzhardt, because he was not there but he furnished some information to the Special Prosecutor at 48.8, on July 10, Mr. Cox wrote Mr. Buzhardt and asked him for—this is at 48.8 on the second page, paragraph 1.

Copies of or excerpts from logs, diaries, or similar records of telephone conversations and meetings between the President and Clark MacGregor on July 5 and 6, 1972.

On July 25 Mr. Cox was replied to by Mr. Buzhardt, in which he says on July 25, "Dear Mr. Cox." Looking at the second paragraph of that letter "We have searched the logs and they do not show any conversations or meetings on those dates." I am at 48.8, the letter to

Mr. Cox. It is a letter in response to the request letter. I am looking at the second paragraph. It says at the top, 48.8, Fred Buzhardt letter.

"The White House, Washington, 25 July, 1973."

Then 48.9 is the President's daily diary at San Clemente for July 6. You will see at the top of the page a bracket there at 8:28 to 8:33, where the President talked long distance with Acting Director of the FBI Gray.

You will see at 10:40 to 12:06 that the President had a meeting with Clark MacGregor, Campaign Director.

And again at 12:06 to 12:08, there was a meeting—really from 12:12 with Clark MacGregor.

Mr. JENNER. May I, Mr. Chairman and members of the committee. Mr. Garrison reminded me of the discussion this morning respecting Presidential logs and particularly here is an example of the usefulness of obtaining a Presidential log so as to fix the time of conversations and of conferences, because you will see that the testimony, when Mr. Doar proceeds, is conflicting.

Ms. HOLTZMAN. On that log, on 48.9, below the item, on the item marked 48.9, whether anything has been deleted under the sentence "The President talked long distance with Acting Director of the FBI." On my copy, it seems as though there may have been something there and it was deleted.

There has been something deleted?

Mr. DOAR. No; that is not a deletion.

Mr. JENNER. It is a defect in the Xerox drum so that—it is an overprint and it is nothing but a smudge.

Mr. DOAR. Now if we can turn back to 48.3, you will see that at 11:25, Mr. Gray's log indicates that he spoke with President Nixon. This ties into President Nixon's diary with the 3-hour time difference between Washington and California. Tab 48.4 deals with the meeting with General Walters which I have already covered; 48.5 does the same.

Then we come to 48.7, which is Clark MacGregor's testimony. His testimony is that he believes that shortly before 11 p.m., California time, when he was staying at the Newport Beach—the Newporter Inn at Newport Beach, Calif., that Mr. Gray called him and congratulated him with respect to his appointment as Campaign Director for the Committee to Re-Elect the President. This would be at 2 a.m. Washington time. He did say that Mr. Gray indicated to him that he was concerned about his impact on the campaign, of the Watergate matter. But he did say that he did not have any recollection—this is on the next page, 4915—that Mr. Gray talked in any sense about the "wound". And he said:

> He did not, to my recollection, mention the CIA to me. He did not mention the FBI. He did not mention General Walters, Dick Helms, John Ehrlichman, or Bob Haldeman. He did indicate great concern. There was agitation in his voice. He repeated himself.

He did not think there was anything unusual about the call. He said he may have had some complaints about White House aides, but a lot of people had those complaints. He said he did not request me to call the President "and I did not call the President; I did not speak to the President."

Then Senator Weicker, on 4916, calls Mr. MacGregor's attention to John Ehrlichman's testimony before the House Armed Services Committee on October 23 last year, in which——

Mr. BROOKS. Mr. Chairman, did our staff ever ascertain whether or not there were recording devices and a recording setup at San Clemente or possibly at Key Biscayne?

The CHAIRMAN. I might address the question to counsel.

Mr. DOAR. My understanding is that there were no such recording devices, but we have not, I could not state that we have made a full investigation of that. Congressman Brook. We will attempt to ascertain that for you. We do not know that.

Mr. BROOKS. I will assure you that they have a pretty extensive communications setup out there.

Mr. WIGGINS. I will take your word for it.

The CHAIRMAN. Mr. Doar?

Mr. DOAR. Then on 4917 of Clark MacGregor's testimony, he recalls that during a reception following a Presidential conference on export trade, he was in a receiving line and he went to the President and the President said to him, "Clark, you did not mention the Pat Gray matter to me on July 6." This is 4917.

Senator Weicker inquired of Clark MacGregor, "Was there any further conversation?"

And he said, there were just some general remarks, but he did say, "I did not talk to you on July 6 about Pat Gray." That is President Nixon conferring with Clark MacGregor 3 weeks before he testified.

Then we come to 48.9, which is the President's log. Then we have 48.10, John Ehrlichman's testimony. This is at 2784.

Senator Weicker says to Mr. Ehrlichman at the top "Why did the Director call the President?" Ehrlichman says, "Because he received—I assume because he had this memorandum."

Senator Weicker says, "Oh no, oh no, why did the Director call the President?"

Mr. EHRLICHMAN. In point of fact, I think the President called the Director.

Senator WEICKER. That is correct. The Director had called Mr. MacGregor.

Mr. EHRLICHMAN. That is true.

Senator WEICKER. And he had expressed to Mr. MacGregor doubts as to this situation. He felt that this was the best way to go ahead and get in touch with the President, and the President called him back shortly thereafter.

Mr. EHRLICHMAN. I was not at the meeting between Mr. Gray and Mr. MacGregor so I don't know what they said but, I do know what the President told me.

Senator WEICKER. But you do know——

Mr. EHRLICHMAN. That Mr. MacGregor told him when he came and called on the President on July 6 that he had been talking to Pat Gray and Pat Gray felt it was important that he talk to the President right away and the President picked up the phone immediately and called him.

Then on 4811, the President, in a statement on May 27, 1973, on the second page, said:

On July 6, 1972, I telephoned the Acting Director of the FBI, L. Patrick Gray, to congratulate him on his successful handling of the hijacking of a Pacific Southwest Airlines plane the previous day. During the conversation, Mr. Gray discussed with me the progress of the Watergate investigation, and I asked him whether he had talked with General Walters. Mr. Gray said that he had, and that General Walters had assured him that the CIA was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him to press ahead with his investigation.

Tab 48.12 is Mr. Gray's testimony before the grand jury. Beginning on page 101, Mr. Gray says in the second answer there in connection with the Watergate investigation—

That both General Walters and myself felt that this was due to an indifference and a carelessness on the part of White House staff people and a failure to appreciate the position of these agencies in our society, and that we both felt that this could be injurious to our agencies and could be wounding to the President.

Now, these are certainly not my exact words, but they are certainly close to them and they are certainly close to the thought that I intended to convey. And I said to him, "Clark, would you please pass this to the President."

And he said either, "I will handle it" or, "I will take care of it." And that was the substance of that conversation.

And the question "Now, your logs reflect that that call took place at 10:15 a.m. Washington time, Thursday, July 6."

The 10:51 would be 7:51 California time.

Your logs reflect that at 10:28 a.m. Thursday—I am sorry, 11:28 a.m., Thursday, July 6, 1972, you received a call from President Nixon. Is that correct?

That is correct, sir.

Do you recollect speaking to President Nixon some 30 to 35 minutes after you spoke to Mr. MacGregor?

I do indeed, yes sir.

He relates that the President started off by congratulating him on the successful termination of the hijacking which had occurred in San Francisco the day before.

Then he says:

Before we get to that, just tell us all the conversation. You said you appreciated it and you had passed it on?

Right. And then I said, Mr. President, there is something I want to speak to you about. And really, I just blurted it out. That was my reaction at the time.

I said, and I have written this down, and I have written it down because I think it is very important, and this is my best recollection. I know that precision is impossible to obtain, but this is my best recollection, after having given it much thought and consideration—to this call.

And I said, Dick Walters and I feel that people on your staff are trying to mortally wound you by using the CIA and FBI and by confusing the question of CIA interest in or not in people the FBI wishes to interview.

Then I said I have just talked to Clark MacGregor and asked him to speak to you about this.

There was a perceptible pause, a notable pause, and the President said to me, Pat, you just continue to conduct your aggressive and thorough investigation. And that was the end of the telephone call.

Tab 48, this is a matter that is—we feel is still unresolved—we are continuing our investigation, the staff is inquiring further with respect to his unresolved part of 48. Tab 49.

Mr. DENNIS. Did the part you say is unresolved refer to Tab 48 or 49?

Mr. DOAR. 48.

The CHAIRMAN. I think before we go on, this would be a good time to take a break for 10 minutes.

[Recess.]

The CHAIRMAN. Come to order.

Mr. Doar, you are on tab 49?

Mr. DOAR. Right.

Mr. DAVIS. Tab 49, in July 1972, Dean obtained from Gray various interview and investigative reports of the FBI investigation of the

break-in at the DNC headquarters. Dean has testified that he showed these reports to the attorneys for CRP and to CRP officials. Previously, Dean had asked Attorney General Kleindienst for access to FBI interview reports and Attorney General Kleindienst had refused his request.

Mr. Doar. The material behind this tab is the material that details the information. It shows that on two occasions in July, Gray made available to Dean I think 82 of the 186—302 forms. It also shows that Mr. Dean made these available to Mardian, O'Brien, and Parkinson of the Committee to Re-elect the President.

Mardian told the Committee to Re-elect the President that he thought Gray had gone hog wild, was too vigorous in his investigation, and was critical of the entire matter. This is in the testimony of John Dean and also in 49.2 and 49.3.

Tab 49.4 is Attorney General Kleindienst's testimony that he was not aware that Mr. Gray was furnishing to Mr. Dean 302 forms, interview sheets, and that when Mr. Dean raised the question—this is at 3764, tab 49.4, when Mr. Dean raised the question, that he had told him that Mr. Gray would not give him them.

He goes on to say that only under the most restrictive circumstances should raw FBI data be given to anybody, that if there was a particular file that the President of the United States personally wanted to see, I would be willing to take that file personally up to the President, sit down and let him look at it, and then bring it back.

That seems to me to have been the practice that was followed during the 7½ years that I was in the Justice Department. He said:

I am sure that if the President of the United States wanted to look at an FBI file, that there was an arrangement made whereby the FBI would furnish that file to the President. I know for a fact that in former Administrations, there was a liaison agent assigned to the White House. But it was not my experience nor was it the experience in the Justice Department that other senior officials in the White House could make claims not only on just raw FBI reports—not raw FBI files but FBI reports that came to us in the Justice Department.

Mr. Rangel. Do we have the 302's?

Mr. Doar. We do not have the 302's. We can obtain them.

Mr. Rangel. It seems to me that this would be the initial investigation conducted by the FBI, that it might be helpful to find out what the responses were to the agent's questions.

Mr. Doar. Tab 50.

Mr. Davis. Tab 50. On or about Friday, July 28, 1972, a grand jury subpena was served on Maurice Stans, Chairman of FCRP to testify in connection with the investigation of the break-in at the DNC headquarters about his knowledge of the purpose for which campaign funds were spent. The President requested that John Ehrlichman determine if Stans could testify by deposition instead of being subjected to a personal appearance before the grand jury. John Dean called Henry Petersen, Assistant Attorney General in charge of the Criminal Division, and requested that Stans testimony be taken at the offices of the Department of Justice rather than before the grand jury. Petersen had previously agreed to this arrangement in the case of testimony by members of the White House staff.

Petersen told Dean that this procedure could not be used for Stans, and Dean reported that response to Ehrlichman.

On Saturday, July 29, 1972, Ehrlichman called Petersen and requested that Stans not be compelled to appear before the grand jury. Ehrlichman accused the prosecutors of harassing Stans.

On Sunday, July 30, 1972, Ehrlichman called Attorney General Kleindienst. Ehrlichman reported that Petersen had refused to follow his instructions.

The next day, Kleindienst, Petersen, and Assistant U.S. Attorney Earl Silbert met in Petersen's office. They agreed that Stans would be questioned under oath at the Department of Justice and not before the grand jury.

On August 2, 1972, Stans was questioned in Petersen's conference room. According to Stans, in August, the President called Stans and told him that he appreciated the sacrifice that Stans was making in not answering questions for the press and hoped that he could continue to take it.

Mr. DOAR. Tab 50.4 is the testimony of Henry Petersen with respect to the call from Mr. Ehrlichman. This is at page 3618. At the middle of the page, Mr. Petersen testifies that he received a call at 11:45 at his home. He was sitting at the kitchen table and it was Mr. Ehrlichman. He charged Earl Silbert with harassing former Secretary Stans—

And I told Mr. Ehrlichman that it was not harassment, that Mr. Silbert was not responsible that I had approved of that, and that it was not harassment, that it was true he had been interviewed at least twice by the FBI but we simply—I am hesitating because I want to be fair to Mr. Stans—basically, his testimony, his interviews were the same as he gave the committee. Let me put it that way.

As I recall his appearance up here, there was some question about whether the committee believed his statement that he did not know what happened to the money, that all he did was collect it. We had some difficulty, the same difficulty, and we felt that if that was his story, that we ought to have it under oath. So to that extent, we called him basically the third time, and it was right——

Mr. DASH. What did Mr. Ehrlichman want?

Mr. PETERSEN. What did he want? I asked him that question twice and he never spelled it out, except to stop harassing Mr. Stans and I said we were not harassing him and he charged that Earl Silbert was acting like a local prosecutor. Well, Mr. Silbert is a local prosecutor.

In tab 50.5, Mr. Kleindienst recounts on 6534 that he got a call from Mr. Ehrlichman. Mr. Ehrlichman was very upset with Mr. Petersen. Mr. Kleindienst defended Mr. Petersen and told Mr. Ehrlichman that he should stop, in essence, trying to push Mr. Petersen around and if he did not stop it, he would find that there would be some resignations in the Department of Justice.

Then the Attorney General called Mr. Petersen and they had a meeting about this and they resolved the matter by arranging to have Mr. Stans come to a conference room in the Criminal Division in the Department of Justice and there be examined under oath without his lawyer being present, without his counsel being present, but not before the grand jury.

Mr. Petersen indicated that when you are dealing with persons of high position, persons of great prestige or notoriety, it was not uncommon "depending upon the circumstances, instead of having them appear before the grand jury directly, to have them interrogated by an Assistant U.S. Attorney" in their conference room, they would not have a lawyer with them, their attorney could be in the next room.

Mr. Kleindienst said I told Mr. Ehrlichman if he did not stop what he was doing, he would be involved in an obstruction of justice complaint. Tab 51.

Mr. DAVIS. John Ehrlichman has testified that on July 31, 1972, Ehrlichman, John Dean, and Attorney General Kleindienst met and discussed whether Jeb Magruder was involved in the break-in at the DNC and that shortly thereafter, Ehrlichman discussed the meeting with the President. Kleindienst has testified that he does not recall the meeting.

In August 1972, after Magruder's testimony before the grand jury investigating the break-in at the DNC headquarters, Dean called Assistant Attorney General Henry Petersen to find out how Magruder had done when testifying. Petersen called Assistant U.S. Attorney Silbert and discussed Magruder's testimony. Petersen has testified that he told Dean that while Magruder was a very articulate young man, nobody believed Magruder's story that he did not know the purposes for which campaign funds had been spent.

Mr. DOAR. Tab 51.1 indicates Mr. Ehrlichman's testimony that he talked to the President, the comments of the Attorney General with Mr. Dean arising out of the meeting; Mr. Kleindienst indicates that he did not have any recollection of that meeting. He says on 51.4, page 952, in the bracketed paragraph—

> Following that Magruder's appearance before the grand jury I received a call from Higby requesting information for Haldeman as to how Magruder had done before the grand jury. I subsequently called Mr. Petersen, who said he would find out and call me back. Petersen called back and said he had made it through by the skin of his teeth. I called Haldeman and subsequently informed Mitchell and Magruder. I recall that Haldeman was very pleased, because this, of course, meant that the investigation would not go beyond Liddy.

Mr. Petersen verifies this call with Mr. Dean in which he said, and this is page 3617, tab 51.5, where Mr. Silbert said that Mr. Magruder had made a good witness but nobody believed the story about the money.

Then you have Mr. Silbert's testimony before the Committee of the Judiciary with respect to Magruder's testimony. Tab 52.

Mr. DAVIS. Tab 52, at the end of August 1972, John Ehrlichman met with the President and discussed what public statement the President should make about the White House and CRP involvement in the June 17 break-in. The President cited that he would state that there was no involvement of present White House employees. On August 29, 1972, in a press conference, the President stated that John Dean, under the President's direction, had conducted a complete investigation of all leads that might involve any present members of the White House staff or anybody in the Government.

The President said "I can say categorically that his investigation indicates that no one in the White House staff, no one in this administration, presently employed, was involved in this very bizarre incident." John Dean has denied conducting that investigation. The President also stated that the FBI and the Department of Justice has had the total cooperation of the White House and that CRP was continuing its investigation.

Mr. DOAR. John Ehrlichman's discussion with the President is in 52.1 at page 2726. There he said:

After our convention, when the President went to California, it seemed to me still very legitimate for us to make very clear the fact that the White House was not involved, even if we could not take the other leg of the argument and say that the Committee to Reelect had had a similar investigation itself. So I discussed this with the President. He agreed that this would be a very good thing. He questioned me closely on how certain he could be of the soundness of that assertion and I told him what I knew dating from July 31 through any subsequent events, and I vouched to him that everything that had been reported to me corroborated that what he was about to say if he were asked at this press conference, and so on August 29 he went out and spoke as to the White House only with regard to this.

Tab 52.2 is the President's news conference on August 29, 1972, and 52.3 John Dean's testimony before the grand jury which has already been called to your attention heretofore in connection with another paragraph of the statement of information, in which Dean said that he did not realize that until the President said that Dean had conducted an investigation, "I began to pretend that I had conducted an investigation." This is at the middle of Page 49 of Dean's grand jury testimony. Mr. Jenner?

Mr. JENNER. Mr. Chairman, members of the committee, would you please note in the white space on information paragraph 52 the following references to which you may give attention later. They are all references to the issue of the assignment, investigation assignment to Mr. Dean. The first is, return to information paragraph 11 when you have the time and you will notice that the first sentence of that is that on the morning of June 19, Mr. Ehrlichman told John Dean to look into the question of White House involvement in the break-in at the DNC and to determine current White House employees status. That is the first that we have of Mr. Dean beginning to conduct an investigation.

The next tab is tab No. 49.2 at page 621 of the printed material. There is testimony of Mr. Gray with respect to Mr. Dean having told him that he had received this assignment.

Then Tab No. 26.2——

Mr. RAILSBACK. Was that last one 49?

Mr. JENNER. Tab 49.2, there is a printed page in there numbered 621 in tab No. 2. I am sorry I gave you the wrong tab number. It is 49.1, page 621. Mr. Gray responds about 10 lines down "He told me that he was conducting an inquiry but he and I did not discuss the substance of his inquiry or the substance of the FBI inquiry."

Mr. RAILSBACK. I am glad you pointed that out to us because in your paragraph here, it appeared to me when you got that statement in there "John Dean has denied conducting that investigation." When you read his grand jury transcript, he is kind of wiggling, but it looks like at one place, he said "He just told me to keep my eyes and ears open and learn what I could."

Then there is another reference, "I was merely sort of catch as catch can" and then you read, go back and read where he did actually believe he was conducting an investigation. I believe our paragraph is kind of misrepresenting the fact there. It should point out this other fact.

The CHAIRMAN. I think that is what the member has to conclude on his own. I do not think counsel can point that out.

Mr. RAILSBACK. Mr. Chairman, I would agree with you were it not—I think there is another reference in an earlier paragraph, but he says here on page 49 "I would not say it was an instruction to conduct an investigation. He just told me to keep my eyes and ears open and learn what I could."

You know, that is—then taking what he did, it almost sounds like it is arguable that he was given——

Mr. JENNER. Mr. Chairman, I have two more references. The first reference is tab 11. It is the information sheet at tab 11. The second one was tab 49.1, page 621, which has just been commented.

The next is tab 26.2, the testimony of Mr. Gray again.

The CHAIRMAN. What is that tab you are referring to, Mr. Jenner?

Mr. JENNER. Tab 26.2.

The CHAIRMAN. That is not before us now.

Mr. JENNER. You would have to go back to an earlier book; that is why I do not seek to delay you.

Then two tabs under 33 : 33.7, the second page.

Mr. DANIELSON. Mr. Chairman?

The CHAIRMAN. Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, may I respectfully suggest that counsel give us these cross-references on a sheet of paper? They can be distributed? I want to have them available to me and I think they would be helpful to everyone.

The CHAIRMAN. I think counsel can do that.

Mr. JENNER. I think that is a good suggestion and we will do that.

The CHAIRMAN. Will you complete your reference now, Mr. Jenner?

Mr. JENNER. The last two are 33.7, the second page. It is not a numbered page. And 33.8, printed or numbered page 3408. We will supply these to you by way of a memorandum tomorrow.

The CHAIRMAN. Thank you.

Mr. DOAR. Mr. Chairman, this is not pertinent to the inquiry, but I am reminded of an incident that happened to me in the Department of Justice when I was working in Mississippi. One day, one of Mr. Hoover's key aides came down and said, there are some people down in Mississippi that are misrepresenting the FBI. And he said, I would like to see the credentials that you have of the Civil Rights Division lawyers to see what they are.

So I pulled out my pass and showed it to him and he said, well, that is nothing like the FBI badges. So it is not you and your staff that are down there misrepresenting the FBI.

But he said, Mr. Hoover takes the position that only the FBI conducts the investigation for the Department of Justice and only the FBI conducts that investigation. It is going to do it all or it is not going to do any of it.

I said to this fellow, who was Al Rosen's assistant, Jim Malley—I said, Jim, what are you talking about? I have been here in the Department of Justice for 4½ years and I have been investigating down South for those last 4 years. He said, John, you don't investigate, people just talk to you.

Well, we will turn to 53, which is the recorded conversation and we will distribute the long, 33-minute conversation. We will read the tab first.

Mr. DAVIS. Tab 53, on September 15, 1972, the President met with H. R. Haldeman and John Dean. Certain subjects were discussed in the course of the September 15, 1972, meeting:

Filing of indictment against seven Watergate defendants, transcript pages 4 to 6; manner in which Dean has handled Watergate matter, transcript page 17.

Human frailties and bitterness between Finance Committee and Political Committee, transcript pages 20 and 21; governmental power and political opponents, transcript pages 21 to 25, 35 and 36.

White House and Watergate matter, transcript pages 32 and 33.

Mr. DOAR. Members of the committee, this is the September 15 transcript and I will wait until you get the transcript, because I would like to explain it to you.

Mr. BUTLER. That footnote, should that be September 15, 1972?

Mr. DOAR. Yes. That is a typo.

Mr. BUTLER. I apologize for pointing it out.

Mr. RANGEL. I would like to point out that this conversation was reported in the public transcript that was issued by the President.

Mr. SEIBERLING. Mr. Chairman, before we go any further, in thinking about the previous tab and the cross-references that Mr. Jenner gave us, it crossed my mind that there are a lot of other cross-references that bear on this same point. I wonder if the staff, in preparing them, will give us the complete list of cross-references?

Mr. JENNER. We will do that, sir.

Mr. DOAR. I think it is really important for the committee also to not just look at what the people say, but consider what Mr. Dean did and consider what you do if you conduct an investigation. Any investigation I have ever conducted, I interviewed witnesses, I took statements, I tried to get signed statements, I made a file, I went through, examined documents. I set up a procedure whereby I would make an investigation. The words here about whether he was conducting an investigation or not I think have to be weighed against what Mr. Dean actually did. I do not see any reference in the record that there were interviews taken by Mr. Dean and that the kind of, if you use the word "investigation" as I use it as a lawyer, that he did conduct any kind of an investigation. Now, that is a judgment for the committee to make, but I think that is a relevant consideration.

With respect to the transcript now, the first 3 pages of the transcript are, pages 1, 2, and 3 are the last 4 minutes of a conversation between the President and Mr. Haldeman which were given when we made a copy of the tape recording at the White House. The Secret Service man under the direction of Mr. Buzhardt sat at the table, put a mark on the recording and it started to record. When we played the tape, we found that instead of 33 minutes, it was about 45 minutes. This is the last 4 minutes of that first 11 or 12 minutes before Mr. Dean enters the room.

If you look at page 4, at the top, you will see that Dean enters the room there. The conversation before Mr. Dean entered the room is a discussion, as you will see, between the President and Mr. Haldeman discussing John Dean. We will play that on the tape that we got the copy of from the White House and then we will stop the tape and

switch to a different tape for better listening, better audibility, and play the 33-minute conversation.

Mr. DOAR. Perhaps I should explain to the members of the committee that that characterization was eliminated by the chairman and the ranking minority member. It is on the tape, but their instruction was we eliminate it. That has been done in a number of cases through the tapes. Of course, it is available to any member who cares to listen to the entire tape over at our office. This is at page 24 of the transcript of the tape.

Mr. RANGEL. Mr. Doar, in order to avoid us listening to the whole tape, could you put out what the characterization are so that we can follow it on the transcript, you know, if we request it individually? I do not see why we should listen to the whole tape.

Mr. DOAR. If any member wanted to find out, we could tell them, yes.

Mr. RANGEL. Thank you.

[At this point a tape was played.]

Mr. DOAR. I wonder whether, Mr. Chairman——

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I wonder whether the Chair might consider recessing at this time because the last four things go into a different subject here and it would take some time to explain. This may be an appropriate time.

The CHAIRMAN. Well, we can resume tomorrow morning.

Mr. DOAR. Yes.

The CHAIRMAN. We will resume.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. May I just make a suggestion, if it could be done and I do not know if it could be done. It seemed to me, and I know in this tape there was an awful lot that was not in the released transcript that we had. Would it be at all possible for staff, when they provide us a transcript of the tape we are listening to, to indicate on that transcript that which was not in the edited transcripts we received from the White House. Is that——

The CHAIRMAN. I am sure that is possible. It will just take some more time.

Mr. WALDIE. Well, could the staff do it? It would be of enormous assistance to us.

Mr. DOAR. Would the committee like that on the transcripts they are following or would they like a separate one so that they have two transcripts, two documents?

The CHAIRMAN. Well, that would be something that I guess the committee members would have to determine, whether or not we would follow the tandem rule, whether you would have the original and then the way we have transcribed it.

Mr. WALDIE. That would be easier.

The CHAIRMAN. That would probably be the best way.

Mr. MCCLORY. Mr. Chairman, this is a very small matter I think but if the counsel would turn to tab 42 I think that the statement of information there is not accurately stated.

The CHAIRMAN. Which one is that?

Mr. McCLORY. Tab 42. It says "on that evening," the second sentence, "on that evening, Dean telephoned Gray at home and urged that, for national security reasons, or because of CIA interest, Ogarrio and Dahlberg be held up."

I think what it means is that you should insert the word further investigations in front of the word Ogarrio, further investigations of Ogarrio, and Dahlberg be held up. That is the way I interpret the transcript.

The CHAIRMAN. I think that is correct and I think that is probably the best way rather than being held up the way we understand it.

Why don't we include the word interviews instead in there on tab 42, for national security reasons or because of CIA interests interviews concerning Ogarrio and Dahlberg be held up.

Now, the committee will resume at 10 o'clock in the morning. We will recess until then.

Oh, yes. I must announce that the committee has been requested to sit for photographs for the AP, for UPI and other interested publications, and if the committee members would be here at 9:30 tomorrow morning I think we could dispose of that item, without earphones.

[Whereupon, at 5:44 p.m., the committee was recessed to reconvene at 10 a.m. on Thursday, May 16, 1974.]