SUMMARY OF INFORMATION

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

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U.S. GOVERNMENT PRINTING OFFICE

41-307 O WASHINGTON : 1974

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IMPEACHMENT INQUIRY

FRIDAY, JULY 19, 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., minority counsel; Samuel Garrison III, deputy minority counsel; Bernard Nussbaum, counsel; Richard Cates, counsel, Evan Davis, counsel; and Richard Gill, counsel.

Committee staff present: 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, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee members will please take their seats. We are going to allow the cameras to take one picture of the committee.

OK, thank you, gentlemen.

John, are those documents being distributed?

Mr. DOAR. We thought we would wait until the press was through.

The CHAIRMAN. Let's have them distributed now.

Mr. DOAR. Could you distribute the materials?

The CHAIRMAN. I would like to advise the committee that these documents that are being distributed will be made public in order to assure that they won't just be released piecemeal, and I have assured Mr. Hutchinson that the document that will be presented by Mr. Garrison will also be made public as such.

So, I would advise Mr. Doar that as soon as possible after this morning's presentation that these documents be released to the press.

Mr. RANGEL. Mr. Chairman, has Mr. Garrison been established for the record? I know that you referred to him several times as making a presentation.

The CHAIRMAN. I have been advised by Mr. Hutchinson that Mr. Garrison has been requested to present a memorandum, Mr. Garrison has been requested to prepare a presentation of arguments which he

will make, and I don't know whether they are going to be ready until tomorrow some time; is that correct, Mr. Hutchinson?

Mr. HUTCHINSON. Mr. Chairman, they probably will not be ready until Sunday night. Is that right, Mr. Garrison?

Mr. GARRISON. Yes, Mr. Chairman, and ladies and gentlemen of the committee. After taking an inventory of the rate of progress of the staff members working on that memorandum, I recommended to Mr. Hutchinson that we not attempt to have the memorandum ready for distribution before Sunday night or Monday morning, rather than doing it piecemeal, because as the members are aware, this project was only instituted in the past few days, and accordingly, any presentation that I might make to the committee today and tomorrow would be strictly oral. And frankly, I wouldn't anticipate that it would be very extensive at that.

The CHAIRMAN. Mr. Doar, will you kindly proceed? And before you do, would you kindly, first of all, advise us as to which documents contain what so that the members may be able to follow you? And, as we have done in the past, it is my hope that the committee will follow the procedure of permitting Mr. Doar to make this presentation, which I believe he has established would take about an hour. Mr. Doar, an hour?

Mr. DOAR. Perhaps a little longer.

The CHAIRMAN. A little longer. And then Mr. Jenner will join you, is that correct?

Mr. DOAR. That is correct.

Mr. SMITH. Mr. Chairman, what is to be released to the press?

The CHAIRMAN. These draft Articles of Impeachment, together with another notebook which contains the actual detailed material which supports the Articles of Impeachment on which the proposed articles are based.

Mr. SMITH. They will be released to the press?

The CHAIRMAN. Yes.

Mr. SMITH. Has Mr. St. Clair's argument yesterday been released to the press yet, Mr. Chairman?

The CHAIRMAN. That hasn't been. That's a part of the transcript.

Mr. SMITH. Isn't this going to be a part of the transcript?

The CHAIRMAN. No; this, as you will recall, Mr. Smith, is the committee staff's presentation. Mr. St. Clair's argument or response that he made is going to be made a part of the total hearings when released accordingly.

Mr. DENNIS. Mr. Chairman, is it fair to release draft articles before we adopt them?

The CHAIRMAN. Well, they are designated as proposed articles. They are not anything that anyone will say is the product of the committee, of what the committee accepts or doesn't accept, and it's not unlike any other document or resolution that is considered for purposes of debate before the House.

Mr. DENNIS. I would respectfully submit, Mr. Chairman, that it is quite all right to have that here in the committee and to debate it, but it is prejudicial to the case to put it in the papers as an unadopted draft more or less of the committee. I don't think you ought to do that.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, members of the committee, two books have been distributed to you this morning. One is a small book titled, Draft Articles of Impeachment. This is for your study and examination and consideration. There are five sets of proposed articles. They differ in form to some extent, they differ in substance, but they largely overlap with respect to theories of impeachment. The purpose of distributing the draft articles was to give the committee the opportunity to consider various forms of articles and various substantive provisions so that the committee would have today and tomorrow the opportunity to examine a wide range of possibilities in connection with their deliberation.

It was our thought, Mr. Jenner's and mine, that over the weekend we would, in an attempt to reflect members' views, try to work through these various articles to see if there were certain draft articles that met, in our judgment, the best reflected judgment and wisdom of the committee.

I would say to you that you should mark up your books on the draft articles, and that it is very easy to take one article out of one of the sections, there are five different sections, another article out of another section, strike language from one section, and it is designed to serve you to be helpful for you, and at the same time to reserve for you the opportunity to consider various choices of words and various manners of presenting articles of impeachment.

The other book that we have distributed to you is called a Summary of Information, which is briefly in four parts, and not all of the parts are in the book yet, it will be by noon, or when you get back that we will ask you to leave your books at your desk, or just before the noon recess. That is the section on abuse of power, and a section dealing with criminal statutes, which some members indicated that they would like to have to consider so that they could see how criminal statutes relate to the overall picture.

And it would be our thought, Mr. Jenner's and mine, that in the next few days out of this summary of the evidence we would produce for you a far shorter document that sets forth our judgment, the law, and the ultimate facts and conclusions that would support whatever position the committee desired to take or to consider when they went into public session next Wednesday.

Now, I would like to speak to you briefly about a kind of a broad overview of the case.

Mr. SEIBERLING. Mr. Chairman, parliamentary inquiry before we begin.

The CHAIRMAN. Mr. Seiberling, I would hope that we would just permit Mr. Doar to go on. Any parliamentary inquiry——

Mr. SEIBERLING. This does not relate to his presentation, but to the matter which was discussed before. Has the question of releasing the draft articles been decided? I thought Mr. Dennis raised the question of substance which the committee——

The CHAIRMAN. Mr. Seiberling, that was decided.

Mr. SEIBERLING. Well, I think it's a very unfortuante decision.

Mr. DENNIS. Mr. Chairman? Mr. Chairman? Mr. Chairman, may I be recognized for an inquiry?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. I thank you, Mr. Chairman. I have no desire to interrupt Mr. Doar. However, I don't understand that that matter has been decided. I think at the appropriate time, and not now, but after Mr. Doar has concluded, that the committee should consider that matter, and I would hope that that would be done. That was my theory. I haven't waived anything, and I think it takes a committee action to release that type of material. I think it's a very serious question. I think we ought to hear Mr. Doar, but I agree with the gentleman from Ohio, that we haven't decided that matter, and it's got to be decided, but not by you in this case but by vote, I would respectfully suggest.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. Mr. Chairman, before I begin I would like to say to you that what you have before you and what you have had before you for the last 6 months is the product of the work of 100 people. I think it's been a cooperative, unified group of 100 people, not all of us bringing to this task the same views, the same backgrounds, the same biases, conscious or unconscious. But, your staff, as I say, has worked together long and hard on what you are going to have now and what you have had. It is not my product. It is not Mr. Jenner's product. It is not the product of any one individual, but it is the best that all of us, all of us on your Inquiry staff can give to you. And that includes Mr. Garrison, and the other members of the Minority Staff who have undertaken this special project, with which I fully agree. But, I wouldn't want it to be said that the work product, that the hard work of digging out the facts and testing the facts and measuring the facts, the logic, the common sense of the facts, whether they were consistent, whether they made sense, that what is in this product has not been the work of every single member of your Inquiry staff.

Now, what we are trying to do for you, as we understand our direction, is to assist you in finding out what has happened with President Nixon's administration as President, and why it happened so the committee can perform its inescapable constitutional responsibility in a way that is explicable now and explicable in the future to the American people.

As an individual, I have not the slightest bias against President Nixon. I would hope that I would not do him the smallest, slightest injury.

But, I am not indifferent, not indifferent to the matter of Presidential abuse of power, by whatever President, nor the identification and proof of that abuse of power, if I believe that it has existed.

And if, in fact, President Nixon or any President has had a central part in the planning and executing of this terrible deed of subverting the Constitution, then I shall do my part as best I can to bring him to answer before the Congress of the United States for this enormous crime in the conduct of his office.

If any President, if President Nixon or any President has committed high crimes and misdemeanors against the Constitution, then there has been manifest injury to the confidence of the nation, great prejudice to the cause of law and justice, and subversion of constitutional government.

Members of the committee, for me to speak like this, I can hardly believe that I am speaking as I do or thinking like I do, the awe-

someness of this is so, is so tremendous. But, with the awesomeness of the task it seems to me that the careful inquiry that you have made, lasting the last 6½ months, has been no disservice, but rather great service to the American people.

Let me speak for a minute about Mr. St. Clair's response. Mr. St. Clair said to you you must have clear and convincing proof. Of course there must be clear and convincing proof to take the step that I would recommend this committee to take, not as a standard for this committee, and again I think I can talk in shorthand, as Mr. St. Clair said, because we are all lawyers, not as a standard. And I must be also careful here because there is a political factor in your decision that there is not nor could there be in mine.

But, the concept is clear, as I understand it, to all of us as lawyers. That is, that you don't go forward in serious matters unless you are satisfied in your mind, and heart, and judgment that legally and factually, reasonable men acting reasonably would find the accused guilty of the crime as charged.

Now, that's different than the standard, but so far as a practical matter I am saying, of course the proof must be clear and convincing. It is just a matter of prosecutorial judgment or legal judgment, or congressional judgment. Of that I have no doubt.

Now, as I listened to Mr. St. Clair yesterday, and I have listened him before, I must be candid with you that I have had this one observation. It has occurred to me time and time again that Mr. St. Clair has things upside down. He's had things upside down throughout these entire proceedings.

Mr. LATTA. Mr. Chairman? Mr. Chairman? Mr. Chairman, I don't like to object, but it seems to me that these statements outside Mr. St. Clair's presence are uncalled for, and I think Mr. Doar can make his presentation without attacking Mr. St. Clair.

Mr. BROOKS. Regular order, Mr. Chairman.

Mr. LATTA. That is regular order.

The CHAIRMAN. Mr. Doar.

Mr. DOAR. I apologize. I apologize, Mr. Latta. I don't mean to attack Mr. St. Clair. Personally, I have nothing but the highest respect for him. But, I am talking about his concepts, his theories of the case, and I just want to say that, and it seems to me that his concept has been that the enormous power and authority of the Presidency, it was permissible to use that on behalf of an individual who might be the subject of criminal charges. But, that is my opinion and only my opinion, really; it is the facts, direct evidence, circumstantial evidence, time tested inferences, and, of course, judgment and common sense in the analysis of the factual information that we are trying to present to you.

Well, yesterday when I listened to Mr. St. Clair's argument and followed its symmetry and logic, I found myself writing in the margin of my notes, as incident after incident flashed back through my mind as to some of the things that Mr. St. Clair dealt with and didn't deal with, I thought to myself, if what Mr. St. Clair says is true, then why, why did that happen. Why did this other incident happen. Some of the instances, and I am just going to touch on a few, seem to me inexplicable in terms of the picture or the portrait Mr. St. Clair sketched for you.

I think everyone wants to believe our President. I wanted to believe that he had nothing to do with Watergate. But, event after event clicked through my mind, events that seemed, as I say, totally inexplicable within the logic of the case in the response of the President's lawyer.

What was his logic? As I see it, Mr. St. Clair argued that the proof showed that President Nixon believed his policy as President was to be carried out, right or wrong. In the ITT matter, you remember he said he was the elected official. It was his right and responsibility to make the judgment; that the country expected the President to take action which in his judgment he felt sound to protect the country; that he was a President concerned with national security; a President victimized by the stupidity of faithful but less than average subordinates, fooled by men into believing that they were innocent of an involvement, and mistaken in his judgment perhaps as to how to act, but acting humanly, too slow perhaps, but doing the right thing eventually in upholding the Presidency, the Constitution, and there having been no real harm done to our country.

Now, when I say the why, I thought back, I thought back to a number of things. The first thing that occurred to me was the President's dictation on the evening of March 21. During the evening of March 21 the President dictated his recollection of that day. You remember that memorandum. He dictated, he discussed the information that he had received from John Dean that Jeb Magruder was likely to acknowledge to the Watergate prosecutor that he had committed perjury, and that that would implicate his associates, John Mitchell, Mr. Strachan and also possibly Mr. Haldeman.

He said that John Dean felt he was guilty of some criminal liability due to the fact that he had participated in actions which resulted in taking care of the defendants under trial. Dean was concerned, the President said, because everybody was getting their own counsel, looking out for themselves, and as the President said, one would not be afraid to rat on the other.

The President said that Mr. Haldeman backed Dean up on this and advised the President that even Magruder would bring Haldeman down.

And then the President said, you know, to himself, Mr. Haldeman's selection of Jeb Magruder is a hard one to figure out. He said Bob made few mistakes, but in this case, Rose was right. He picked a rather weak man, regardless of his appearance, who really lacked it when the chips were down.

He said to himself, the one option is perhaps, taking it to a grand jury, but not for his key aides to appear, but he said that if they don't do that that puts the buck back on the President. And he also saw very grave danger that somebody like Hunt was going to blow.

He recognized Hunt's problems. He needed $100,000 to pay attorneys and handle other things, or else he was going to do and say things that would be very detrimental to Colson and Ehrlichman. The President labelled these in Dean's words as blackmail. He recognized that Hunt was in a bad position, he might be figuring on the benefit to himself by turning state's evidence.

The President said he felt bad because all of these people had done what they had done with the best of motives. He said he didn't think

that Haldeman and Ehrlichman actually knew about the actual bugging of the Watergate. He knew that Dean didn't know. But, what he figured happened was it was Colson who was the pusher, and the driver, had pushed Magruder on behalf of Hunt and Liddy, and had followed what the President termed their natural proclivities, and taken that extra step and gotten everybody in trouble.

He said, he told himself how he learned about the Ellsberg break-in, and he said that Ehrlichman said he was about three or four steps away, but that Krogh had a problem that put him in a straight position of perjury. The President remarked that it would be a tragedy because Krogh was involved in national security work, nothing to do with Watergate.

He said finally that Strachan was really courageous. Strachan had knowledge of the matter, and according to Dean, he had transferred the $300,000 that Haldeman had, back to the committee. Then he said finally John Mitchell was coming down in the morning so that they could figure out what to do next.

Now, that was what he dictated to himself that night.

Presented, confronted with serious charges of obstruction of justice by his key aides and associates, on the next morning, he called his Attorney General and he talked to him. What did he say to his Attorney General? He said to his Attorney General he would like him to give Senator Baker some guidance, he would like him to hold Baker's hand, to babysit him, starting like in the next 10 minutes.

The next day he called his Director of the FBI and he talked to him. That was after Mr. McCord had read his letter in open court, and he called his Director of the FBI and he gave him no information, he gave him no facts, no allegations, but he reminded him that he had told him in early July, Pat, I told you to conduct a thorough and aggressive investigation.

And then I thought of Henry Petersen, and that remarkable 10 days between the 15th and the 25th of April, and again I asked myself why. Here we had Henry Petersen dealing directly face to face and man to man with his President, the chief law enforcement officer of the country with respect to the Watergate affair. The present Attorney General had recused himself. Mr. Petersen himself was the President's Attorney General. They spent in those 10 days seven, eight, nine meetings, 20 phone calls. During that time Mr. Petersen was very forthcoming with his President, told him everything that was being developed, not the details of the grand jury information, but he sketched out sufficient so that the President had a clear idea of the nature of the charges that were being brought against the President's men, and an outline of the facts that would support those charges.

On the 10th day the President met with John Ehrlichman and H. R. Haldeman at noon for 2 hours. Following that meeting the President directed H. R. Haldeman, one of the two men that Mr. Petersen had been telling him for the last 10 days was a subject of this criminal investigation, and very likely, very likely to have criminal charges brought against him, and what does the President do? The President directs Mr. Haldeman to ask for some 20 of the tape recordings and to go and listen to the tape recordings all afternoon that day.

And the President—it is explicable perhaps of the President to call in some independent person to listen to the tapes and to test and

see what exactly was said on those tapes so the President could review his recollection. This is the 25th of April. This is the 25th of April, and on that day Mr. Haldeman listened to the tapes and made detailed notes for 3 hours that afternoon, and then he reported back to the President and talked to him for another hour after that.

And then the President's chief law enforcement officer, the man charged with investigating this matter, comes in and sees the President for 1 hour and 20 minutes.

Does the President tell Mr. Petersen that I have a tape recording system that will assist you and assist you in getting to the bottom of this? Does the President tell his Attorney General, his chief law enforcement officer that Mr. Haldeman has been listening to the tapes, the man Mr. Petersen says is a suspect, the subject of this investigation? He does not.

Mr. Petersen and he discuss generally, and maybe on that occasion, certainly on an occasion the day before or the day after, the President gives Mr. Petersen his view of what he and John Dean talked about on the 21st about the payment of the money and how he had told John Dean after drawing him out, in a series of questions, as was his custom, that that was wrong.

I find that also inexplicable within the logic of Mr. St. Clair's argument.

A third example, and as I say, these are just examples that I just touch on briefly, a third example is the events of the 20th of June 1972. On the 20th of June 1972, it was 3 days after the Watergate break-in. You remember when the Watergate break-in occurred there were three centers of government at that time or political activity at the direction of the President.

The President and his party, that is, Haldeman and Ziegler, were at Key Biscayne. John Ehrlichman and Gordon Strachan and Higby were in Washington. John Mitchell, Mardian, LaRue, Magruder were in Los Angeles. We will develop for you the events and the activities of each of these groups between the 17th and the 20th of June. For now I want to only mention just briefly the 20th.

On the morning of the 20th, Mr. Haldeman, and you have got this all in the books, the logs and everywhere, Mr. Haldeman meets with Ehrlichman and Mitchell at 9 o'clock in the morning. Dean and Kleindienst join that meeting, and they meet from 9 to 10 o'clock. This is the first day that the President has come back faced with a possibility of certainly a very serious scandal within his administration.

What does the President do while his people, his key advisors are discussing this matter? The President is alone in his office, except for a 3-minute talk with Mr. Butterfield during that morning until John Ehrlichman comes in and talks to him about 10:20. He does not participate, does not inquire, does not question, does not search out for facts from John Mitchell, or Richard Kleindienst, his Attorney General, or Mr. Ehrlichman who had been assigned to the case the day before to make an investigation, or 2 days before, or from John Dean who had been called back to get into it.

It is not until, it is not until 11:20 that morning that he has his first discussion, because there was no discussion with John Ehrlich-

man on the tape that the Special Prosecutor requested that went to court, and Judge Sirica found that there was no discussion of Watergate on that tape, so the President has no discussion with anybody until he has this discussion with Haldeman at 11:20 that morning. And he has an 18½-minute discussion with Mr. Haldeman. We know that it was about Watergate, and then a year and one-half later that tape has been erased.

Those three things, plus one more that I want to mention to you, and that is that when you look into this, and think about this, and look at what everyone of the officials knew you ask yourself why wasn't Gordon Liddy fired? Why wasn't Gordon Liddy fired? It's just inexplicable within the logic of Mr. St. Clair's argument.

Now, I want to turn to the outline of this brief, and I want to call your attention to what President Nixon said on April 30, 1973. And it's in the introduction to the Watergate section of the brief. He said:

> In recent months, members of my administration and officials of the Committee for the Re-Election of the President—including some of my closest friends and most trusted aides—have been charged with involvement in what has come to be known as the Watergate affair. These include charges of illegal activities during and preceding the 1972 Presidential election and the charges that responsible officials participated in efforts to cover up that illegal activity.
>
> Last June 17, while I was in Florida trying to get a few days rest after my visit to Moscow, I first learned from news reports of the Watergate break-in. I immediately ordered an investigation by appropriate government authorities. On September 15, as you will recall, indictments were brought against seven defendants in the case.
>
> As the investigations went forward, I repeatedly asked those conducting the investigation whether there was any reason to believe that members of my administration were in any way involved. I received repeated assurances that there were not. Because of these continuing reassurances, because I believed the reports I was getting, because I had faith in the persons from whom I was getting them, I discounted the stories in the press that appeared to implicate members of my administration or other officials of the Campaign Committee.
>
> Until March of this year, I remained convinced that the denials were true and that the charges of involvement by members of the White House staff were false. However, new information then came to me which persuaded me that there was a real possibility that some of these charges were true, and suggesting further that there had been an effort to conceal the facts both from the public, from you and from me.

President Nixon, before entering on the execution of his office has twice taken, as required by article II, section 1, clause 7, of the Constitution the following oath:

> I do solemnly swear that I will faithfully execute the Office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

Article II, section 3 in article II of the Constitution requires that the President "shall take care that the laws be faithfully executed." Under the Constitution, the executive power is vested in the President. But, of necessity, the President must rely on subordinates to carry out his instructions in the execution of his office.

In his statement of April 30, President Nixon told the American people that he had been deceived by subordinates into believing that none of them were implicated and that none had participated in the efforts to cover up. The President said he recently received new information that persuaded him that there was a real possibility that some of the charges were true and he declared his determination to "get to the bottom of the matter."

Fifteen and one-half months later this committee is now faced with the responsibility of making recommendations whether or not the House of Representatives should exercise its constitutional power of impeachment.

And the critical question in the Watergate matter, it seems to me, what the committee must decide, is whether the President was duped by his closest political associates or whether, in fact, they were carrying out his policies and his decisions. I think this question must be decided one way or the other.

In short, the committee has to decide whether in his statement of April 30, the President was telling the truth to the American people or whether that statement was part of a pattern of conduct designed not to take care that the laws were faithfully executed but rather to impede their faithful execution in the President's personal interest and in his behalf.

This committee has found that much of the evidence pertinent to this question and other questions is within the custody and control of the President. In defiance of subpoenas legally authorized, issued and served by the committee, President Nixon has denied the committee access to this evidence. Nevertheless, the committee has considered evidence that is substantial, and this report summarizes that evidence.

Now, when we consider this evidence, we must proceed with caution. We must not find the President responsible for offenses of others. But likewise, we must not forget that we are dealing with an awesome crime, a constitutional crime of high crimes and misdemeanors.

Now, I would like to talk just a minute about conspiracy. You know the crime of conspiracy consists of several distinct elements.

Mr. BUTLER. Are you referring to any part of the book?

Mr. DOAR. No, these are just my notes. That will be in the material you will get this noon. It hasn't yet been printed.

Mr. BUTLER. Thank you. Excuse the interruption.

Mr. DOAR. There must be a combination of two or more persons to constitute a conspiracy. The person may plot or plan alone, but he cannot conspire alone.

The second element is that there must be a real agreement or a confederation with a common design. Mere knowledge, or negative or passive acquiescence is not enough. The agreement need not be in writing. It usually is not. Most often in these kinds of cases, as you all know, it is a matter of inferences deducted from the actions of the conspirators.

The third element is the existence of an unlawful purpose. Anyone who takes part in any part of the conspiracy is liable as a conspirator. What that means is that if four or five individuals join together for an unlawful purpose, that if a sixth individual comes along later on, and casts his lot, as the court cases say, joins with the conspirators, he is as much responsible for the acts of the conspiracy and the subject of criminal liability as are the other five.

I am sure that this is all very, very clear to all of you as lawyers.

The point I want to make, however, is that in this case, as I view it, this is not a conspiracy case. This is not a conspiracy case. I don't believe that it is possible to have a conspiracy involving the President of the United States. The President of the United States is differ-

ent. He is supreme because of his awesome power granted to him under the Constitution. Those that work for him as subordinates are more extensions of him than co-conspirators if there is a crime. I make that distinction, because I think it is an important one as we review the evidence.

This is not to suggest that the matters, the seriousness or the wrongness of the conduct that occurred is not similar to that which occurs in a criminal conspiracy. But, you just don't have co-participation. You don't have co-equals when you are dealing with the President of the United States. There is just one President, and one man when he is using his official, or performing his official duties, that is in charge and directs the operation. And the other people that serve him as subordinates and associates, as I say, are extensions of that one man.

We all know that in cases of this kind that the patterns are the same whether it involves the question of impeachment of the President for abuse of power or whether it involves the question of co-conspiracy, that there is much circumstantial evidence that you have to look for. It is understandable that crimes of impeachment, at least the ones that we are considering today, must be proved in that way because the essence of the crime is concealment, duplicity, dissembling, pre-requisites to the success of the unconstitutional venture.

Now, there is another part of this proof that I think is important and that is that we have to distinguish as we go through the facts the difference between decisions and executions of the decisions.

The President can establish a policy, can lay out a broad plan that there will be a certain cover-up.

Then in executing that cover-up, the means used, the execution of that, will be carried out by subordinates.

And one of the difficulties that we have, in analyzing this case it seems to me, is that we first have not looked at the Presidential decisions, but we have looked at the means for carrying out those decisions.

We have gotten into such questions as payments and perjury and interference with official investigations, all means of carrying out this plan rather than analyzing whether, in fact, the President established the plan. When you get into the proof and try to find the proof of the means, you find yourself down in the labyrinth of the White House in that Byzantine Empire where "yes" meant "no" and "go" was "stop" and "maybe" meant "certainly," and it is confusing, perplexing and puzzling and difficult for any group of people to sort out. But, that is just the very nature of the crime, that in executing the means, everything will be done to confuse and to fool, to misconstrue so that the purpose of the decision is concealed.

Mr. WIGGINS. Mr. Chairman. Mr. Chairman, may I ask a word of clarification only?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. For my understanding only, Mr. Doar.

When you use the word crime, are you using it in the sense of a statutory crime, or are we talking about a constitutional crime?

Mr. DOAR. I am talking about a constitutional crime, but I am emphasizing, by using the word "seriousness," that it is similar in gravity, it has the quality of conduct that is in the judgment of the vast majority of the people now, and since this country was founded, wrong, bad and improper.

Now, as I say, we are going to go over a great deal and try to help to put together and fit together the circumstantial evidence. Two **of**

the young—not young, but two of the best people we have, or three of the best people we have, Mr. Cates, Mr. Davis, Mr. Garrison, will be talking about circumstantial evidence and its meaning to you as we go through this proceeding. But, what I want to talk about first is direct evidence because yesterday Mr. St. Clair said there was no direct testimony that the President directed this plan of the cover-up. And I want to state my thesis, my conviction, my judgment now.

My judgment is that the facts are overwhelming in this case that the President of the United States authorized a broad, general plan of illegal electronic surveillance, and that that plan was put into operation by his subordinates.

Of course, he did not know of the actual facts that the Watergate had been broken in on the 17th of June. There is no proof that he even knew that there had been a bugging operation going on there, no clear and convincing proof, although there is some reference in the transcript that he had some knowledge that information was coming from an intelligence operation. But, with respect to the plan, with respect to the plan, I say that decision came direct from the President, implemented through his two closest associates, Haldeman and Mitchell. Following that, I say that he directed, made the decision, the President made the decision to cover up this shortly after the break-in on June 17th and he's been in charge of the cover-up from that day forward.

Now, what is direct——

Mr. LATTA. Mr. Chairman, point of clarification.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. As you go along on this direct evidence, would you cite the authority if you have it?

Mr. DOAR. Yes, I would.

Mr. LATTA. I think this is pretty important on this direct evidence.

Mr. CONYERS. Mr. Chairman, can't Mr. Doar proceed without interruption in the same way that we permitted Mr. St. Clair, in fairness?

The CHAIRMAN. Well, I think that this is important, and I think it will be helpful to all of us.

Mr. CONYERS. What I am saying, Mr. Chairman, is perhaps we ought to waive points of clarification until after the gentleman has made his presentation. We didn't raise clarification yesterday.

Mr. DOAR. On the morning of March 21, 1973, just before the meeting ended—it is on page 129 of the book of transcripts—and the President is speaking and he says, and Haldeman and Dean are there, and he says:

> All right. Fine. And, uh, my point is that, uh, we can, uh, you may well come—I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan—John—and you had the right plan, let me say, I have no doubts about the right plan before the election. And you handled it just right. You contained it. Now, after the election, we've got to have another plan, because we can't have, for four years, we can't have this thing—you are going to be eaten away. We can't do it.

Now, during that same conversation and in a number of other conversations, the President refers several times to the containment, the containment. Containment was the plan, containment was the decision. Containment was the decision that was made early on, shortly after the break-in.

On the 21st of March, he talks about having John Mitchell come down the next day. It's urgent he come down. Why does he want him to come down? He wants him to come down so that they can have a new strategy, not to develop for the first time a strategy, but to have a new strategy. All of that is direct evidence that the President directed and made the decision to cover up back shortly after the break-in.

Now you move back to the September 15th conversation, and I won't go into that, but I say to you, anyone reading that as a whole, and taking into consideration what the President knew at that time, can only conclude that that too is direct evidence that the President made the decision to have a plan of containment or cover-up shortly after the break-in.

You remember that when John Dean comes into the room, he says: "Well, you have had quite a time, John, you have finally got Watergate on the way." And he says, John Dean says: "Quite a three months."

In the President's transcript, the quote "quite a three months" which happens to go right back almost to the 17th of June, it's not there. And then you read the June 30th excerpt of the transcript and you see the discussion between Haldeman and Mitchell and the President. And if that isn't direct evidence of a Presidential decision to cover up, then I am badly mistaken.

So, those are direct evidence, proof of what I say is the matter that you have to consider, and weigh and decide in connection with the Watergate part of this case.

Now, to briefly outline to you the summary of this that I have made, if you will look at the outline——

Mr. HOGAN. Mr. Chairman, I hate, I really hate to slow it down, but, Mr. Doar, if you could give us the citation similar to these you just gave us for the statement where you say——

Mr. CONYERS. Mr. Chairman, I wish to register an objection.

Mr. HOGAN [continuing]. Facts overwhelming that the President authorized the overall plan of electronic surveillance, could you give us the citation of that?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I believe that Mr. Doar should make his presentation and I think that the citations will all be presented in due course.

Mr. DOAR. The citation of that is set forth in the second section of the brief called Approval of Political Intelligence Plan Including the Use of Electronic Surveillance. That's circumstantial evidence, Mr. Hogan. I don't purport and I didn't mean to suggest there was direct evidence of that. There is not, but if you look at that evidence, I believe it to be clear and convincing.

At any rate, with respect to the contents of the outline, if you look at the very beginning of the book, the first material deals with Watergate.

Mr. SMITH. Mr. Doar, which book?

Mr. DOAR. I am on the summary of information the first page. And if you look there, you will see that section 1 is the Watergate A through J. Among the points that I want to call your attention particularly to is Section I, The President's Contacts with the Department of Justice, March 21 through April 30, and also the Section E, Containment—July 1, 1972, to the Election.

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The reason that I set those forth and mention those is that as we have presented this to you, as we have understood our responsibility and our assignment, we have not given you any help in analyzing the Presidential transcripts, either the ones that we have recordings in this book of or in the blue book. We took it—Mr. Jenner and I took it to be our instructions that you wanted to have no filtering of that information between you and the words that the President actually spoke with his associates. You will remember that we did not characterize those conversations, did not suggest to you what they proved or did not prove. And that is one of the reasons why it has been so difficult for you to work through the material which we have given to you because this and this book are essential to your understanding of this case. And what we have tried to do, in the best way we can in this book, is to pull that together in an orderly way for your consideration and to summarize, to quote, to cite, to pull together fairly, objectively, forcefully if we believe that force is required, in a way that would be helpful to you in making your decision.

Now, I will summarize with just one more observation.

I realize that most people would understand an effort to conceal a mistake. But this was not done by a private citizen, and the people who are working for President Nixon are not private citizens.

This was the President of the United States. What he decided should be done following the Watergate break-in caused action not only by his own servants, but by the agencies of the United States, including the Department of Justice, the FBI, the CIA and the Secret Service.

It required perjury, destruction of evidence, obstruction of justice, all crimes. But, most important, it required deliberate, contrived, continued and continuing deception of the American people.

It is that evidence, that evidence, that we want to present to you in detail and to help and reason with you, and this Summary of Information is the basis, or a work product, to help you.

I appreciate your giving me the opportunity to express these views. And, Mr. Chairman, that concludes my statement.

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, and thank you ladies and gentlemen.

I had an evidentiary commentary to make today and I have decided not to make it. I am going to talk about this matter, but not make the presentation that I had prepared the last couple of days. The reason for that is that I do not want my junior, Mr. Garrison, to be influenced by his senior in his senior's comments in summation of the evidence. I ask your leave, Mr. Chairman, and members of the committee, to permit me to defer the statement that I had in mind until that fine young lawyer, Mr. Garrison, has completed his presentation, uninfluenced by me. I do not know one word of what he is going to say and I advised him that I did not wish to know.

Nor, as the responsible lawyer that he is, has he asked me, as he said to his great credit when the assignment was given to him to prepare a pro and con presentation, that he had better not look at the staff presentation so that he would not, in turn, be influenced by it.

But, there are some things I wish to say in connection with this particular matter. These are not prepared comments. They will be *ad lib*. They are only thoughts that have come to me as Mr. Doar was

speaking. They will relate in large part to Mr. Doar's presentation.

First, I wish to say to all of you that what Mr. Doar has said he has spoken not only for himself but for me as well, not only as a member of the staff but as Albert E. Jenner, Jr., a member of the Bar of this country.

I wish to emphasize with you that the staff has been an organized, single unit, including Mr. Garrison, who worked willingly and exercised fine leadership primarily by way of administration, which I could not undertake.

The summary evidentiary presentation to be made to you in the next few days is a staff presentation, nothing partisan about it whatsoever.

Each of you, when admitted to the Bar of this country and when you became a Member of Congress, took the same oath that Richard M. Nixon took when he became President of the United States. You swore, as did he, to preserve, protect and defend the Constitution of the United States. You are presently engaged in the discharge of that responsibility. You are inquiring as to whether the President has been true to the oath.

We are all imbued with the awesomeness of this, not awesomeness in the sense of fear and misgivings, but the kind of awesomeness that was present in 1787 in a small gathering of dedicated men who were creating a new Nation from scratch. They were wrestling with all of the problems that were brought to your attention by the staff's presentation originally as to impeachable offenses. From "The Federalist Papers" and the notes of Madison, sincerity and dedication characterize every moment, every line of the Nation-creating Convention of 1787. But you need not stop there. There was also brought to your attention by staff the debates in the Ratification Conventions of the 13 States respecting the proposed Constitution as well as the Bill of Rights. What is more, ladies and gentlemen, the members of the First Congress of the United States, your first counterparts, also played a part in creating this country. They met in 1789 and promulgated the Bill of Rights for action by the States. What is before you is whether that country and that Constitution have been seriously endangered; whether institutions of our free and open society have been adversely affected by conduct of the President of the United States.

In recent days and recent weeks I have detected more and more concern on your part, as good lawyers as well as responsible members of Congress of the United States, respecting the 220 million people you represent; their liberties, their constitutional rights and privileges, and those as well of Richard M. Nixon, both as President and as a citizen. I have no animus towards him. In the 1960 campaign, I was co-chairman, as I recall, of Mr. Nixon's Lawyer's Committee for Illinois, and in the 1964, 1968 and 1972 campaigns I was a member of Nixon Lawyer's Committee for Illinois working for his election and re-election as President of the United States. So, I have no animus.

May I say that it has been a tremendous honor to me, to have been selected to assist you, just to bring to bear the few skills I have to aid you to discover the truth and to reach your ultimate judgment in this matter.

This is history in the happening. It is not the Nation-creating history of 1787 when that band of dedicated men drafted our Consti-

tution, or the 2 years that followed during which the State ratifying conventions met to debate, ratify and adopt that work, or 1789 when the First Congress convened and adopted the Bill of Rights as the first 10 amendments to the Constitution to be submitted to the States for ratification. These three courses of events created this Country. What is before you is whether that country shall persevere. I have no fear but that each of you will discharge that obligation.

I am not a politician. I do recognize, however, that there are political considerations involved in this process, and I mean political with a big P not a little P. Big P politics is the science of government, political science. Government is something created by the people themselves, and only the people, to assure to the extent practicable their living together in a free and open but ordered and stable society with accommodation to all others who seek the same ends, liberty and life and the pursuit of happiness. That is what a constitution is. But as Abraham Lincoln said, as all of you remember, that as soon as you create a government, you must turn at once to working and slaving and being vigilant to preserve and protect that government and that Constitution so they do not become subverted and destroyed or seriously eroded, and thus result in impairment of that for which the government was created in the first instance. You are engaged in that task as representatives of the people.

I turn now to evidentiary principles and rules. This committee last year considered the Proposed Federal Rules of Evidence submitted to it by the subcommittee of this committee chaired by the distinguished gentleman from Missouri, Mr. Hungate. I suggest that in your consideration and weighing of the evidence before you, you give attention to certain provisions of the Rules of Evidence contained in your Bill which is now pending before the Senate Committee on the Judiciary.

In section 102 of that bill, it says: "these rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." It is that truth finding process in which you are now engaged. You are functioning as triers of the facts in this matter. Your rule 102 is a sound principle by which to be guided. It is the rule that the Hungate committee approved and you in committee and on the House floor voted for.

There is another sound rule of evidence, which you included in your Federal Rules of Evidence bill, by which you would well be guided. It is rule 401, entitled, Definition of Relevant Evidence. This rule is your judgment—and a very sound judgment it is:

> Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

That test of relevancy goes to admissibility. You are the judge of the weight to be given to the evidence once admitted. You are experienced lawyers. You know the distinction between admission of evidence on the one hand and, once admitted, the weight to be given to that evidence on the other. You give consideration not only to its weight but how it fits into the warp and woof of the entire body of the

evidence with relation to the ultimate issue or issues that you are going to have to determine.

Now, one more pertinent Rule of Evidence you adopted to which I wish to call your attention. It has a direct bearing upon an issue of fact which you must resolve. Little did you know when you adopted those Federal Rules of Evidence that one or more of them would come into play in this awesome endeavor of yours. The rule is No. 401, entitled: "Habit and Routine Practice". It reads:

> Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or the routine practice.

Now, as Mr. Doar said to you, it is very difficult for any man or woman to put himself or herself in the shoes of another. Especially is this so as respects a President of the United States. But, in part, there must be an effort on your part to do that. You will instinctively do this in order to gain a feel of the President's perspective. Understandably, this will be difficult. But you are all professionals who have been trained throughout your professional lives to do your level best to take an objective viewpoint. That is a primary reason for the existence of the Bar, the people expect and demand that detachment. Lawyers are truly the privileged few of this Nation. The people of the Nation rely on members of the Bar, lawyers, to represent them personally but more importantly to preserve and protect their Constitution, their government, their liberties, their society, from erosion, from abuse, all according to the oath lawyers take to preserve, protect and defend the Constitution of the United States and thus to protect, defend and preserve the liberties of the people.

May I make one personal reference? I have been here now since January 7. I have been through all of these evidentiary materials, I have read those edited transcripts, I have listened to the tapes. And ladies and gentlemen, I have never heard the President of the United States or any of his aides ever say, as Mr. St. Clair is wont to say, by any manner or words, written or oral. "This is my country." "This is the Constitution of the United States." "These are my constitutional duties and responsibilities." "It is my duty to preserve, protect and defend the Constitution, to see that the laws are faithfully executed." "The people of the Nation will be affected one way or the other by what I do or fail to do with respect to that which I have been or should have been alerted." I haven't heard or seen any of that. There isn't a word. There isn't a phrase, there isn't an inference to be drawn from which that may be found in the record.

I turn now to another subject. We are talking not about Mr. Nixon per se. We are talking about the Office of the President of the United States. This is an office that all lawyers of the Nation represent in a very real sense. The people of this Nation revere the Office of the Presidency of the United States. We are sworn to preserve, protect and defend that office. The individuals who have been elected to the Office of the Presidency become to the people of this country almost deities. The people expect, and rightfully so, that the individual occupying the Office will at all times have in mind the oath of office, to preserve, protect and defend the Constitution, to take care that the laws are faithfully executed and that the Office of President

will also be faithfully executed, all to the end that their liberties, properties, freedom, their free and open society, and all other things the people hold dear will be preserved, protected and assured by whomever occupies the Office of the Presidency of the United States.

As I say, you take the same oath, not only as lawyers, but as Members of Congress when you are inducted into that high office as does the President when he is inducted into his.

And I have been thinking of something else. Constantly, throughout these proceedings, I have said to myself, yes, the President of the United States is elected in a general election throughout the country by some 220 million people. Did they know then what we all know now? There is also the Congress of the United States whose Members are elected by the same 220 million people concentrated, however, in voting districts. Because of that those who elect you are closer to you than they are to the President.

We learn as children in grammar school that the House of Representatives is one of the three co-ordinate and equal, and I emphasize the word "equal," branches of government that is so precious to all the people. We know that the Members of the House are the immediate and closest representatives of the people. You as those representatives are learning of unknown serious matters.

Those wise men, the drafters of our Constitution, realized what Abraham Lincoln said later, and perhaps others before him—Montesquieu, perhaps—that once you create government, you must take care, you must be diligent, to see that the government does not become a monster and destroy that for which the people whom you represent created their government in the first place.

The House of Representatives was granted the awesome power and responsibility of Impeachment to protect the people's government against misuse; evasion; and even destruction; it is the sword and shield against executive tyranny. The power was granted to keep the Presidency strong and healthy. The purpose of Impeachment, in the eyes of the framers and of the people who ratified the Constitution, was not to punish a bad leader, but rather to protect the Nation, the Constitution, the people. Regardless of what your ultimate decision, majority decision, may be either in this committee, or on the floor of the House, impeach or not impeach, the exercise of that constitutional function fairly and responsibly as you have been doing will strengthen, not weaken, the Office of the Presidency of the United States and the executive department. Preservation and protection of the Constitution and the Nation will have been accomplished, all in the interests of the people, and just as the framers and the people intended. In a very real sense you are today the guardians of the Republic. The Nation must be protected from a failure to charge the President when there are serious grounds to accuse him. On the other hand, both the Nation and the President must be protected from groundless accusations.

I wish to join with Mr. Doar—I join with him in all the remarks he has made, his analysis of the evidence, his recommendations, but I wish to emphasize the aspect of conspiracy and concealment and containment. And, in this regard may I make a personal reference? When I was senior counsel to the Warren Commission, back just 10 years ago this year, my first major assignment was to investigate whether there was a conspiracy of persons operating with Mr. Oswald to bring

about the assassination of John Fitzgerald Kennedy, then the President of the United States of America. My team of fine young lawyers worked with me through a virtual mountain of evidence. We had all the resources of this Nation working with us. I did not see, nor did my team, nor did the other senior counsel, among them Joe Ball—known to the Californians as a great trial lawyer and investigator—any evidence indicating the existence of a planned pattern involving others, and no secrecy or cover-up typical of conspiracy. And the conclusion was, if you have read the conspiracy chapter of the Warren Commission Report, as I am sure you have, that there was no conspiracy. It starts out by emphasizing the fact that Oswald's course of conduct was attended by accident, disorganization, spontaneous, erratic, bizarre, and irrational decisions. There was an absence of co-conspirators. There was no organized, consistent plan; there was no flow, there did not seem to be any co-conspirators, that is, second or third persons, around except Marina, who was experiencing personal difficulty with her husband all the time and resisting what he was doing. He was an erratic loner. The footprints of a conspiracy were absent. In the case of a conspiracy, you lawyers, and I knew many of you have been able trial lawyers in civil and criminal cases and conspiracy cases, you know that central to a case of conspiracy is secrecy, concealment, planning and consistent policy and objective.

The facts and circumstances here have a cast quite different from those present with respect to Oswald. You must resort to the drawing of inferences from the evidence. You don't find the conspirator with his hand in the cookie jar when you open the door suddenly, but you can see the pieces of the cookie, the crumbs, perhaps, off in the corner of the room when you suddenly open the door.

Now, in the light of all that, and with your permission again, Mr. Chairman, I emphasize that this is history. You are not recreating the Constitution; you are preserving it; you are strengthening it, and irrespective—and that is the way I wish to conclude these comments—irrespective of what your ultimate decision may be, as lawyers and Members of Congress of objectivity, experience, responsibility and dedication, you will have made the Constitution work as its framers and those who ratified it intended and the people expect. In doing so you will have honored and adhered to the constitutional tenets of the highest privilege in the people's gift and furthermore, you will have restored honor to and confidence in the legal profession, and maintained the honor of the Congress.

Thank you, Mr. Chairman. Thank you, ladies and gentlemen.

The CHAIRMAN. Thank you, Mr. Jenner.

[The Summary of Information presented to the Committee on the Judiciary by the Impeachment Inquiry staff on July 19, 1974, follows:]

SUMMARY OF INFORMATION

WATERGATE

Introduction

On April 30, 1973 President Richard M. Nixon addressed the Nation:

> In recent months, members of my Administration and officials of the Committee for the Re-election of the President—including some of my closest friends and most trusted aides—have been charged with involvement in what has come to be known as the Watergate affair. These include charges of illegal activity during and preceding the 1972 Presidential election and charges that responsible officials participated in efforts to cover up that illegal activity. . . .
>
> Last June 17, while I was in Florida trying to get a few days rest after my visit to Moscow, I first learned from news reports of the Watergate break-in. . . . I immediately ordered an investigation by appropriate Government authorities. On September 15, as you will recall, indictments were brought against seven defendants in the case.
>
> As the investigations went forward, I repeatedly asked those conducting the investigation whether there was any reason to believe that members of my Administration were in any way involved. I received repeated assurances that there were not. Because of these continuing reassurances, because I believed the reports I was getting, because I had faith in the persons from whom I was getting them, I discounted the stories in the press that appeared to implicate members of my Administration or other officials of the campaign committee.
>
> Until March of this year, I remained convinced that the denials were true and that the charges of involvement by members of the White House Staff were false. . . . However, new information then came to me which persuaded me that there was a real possibility that some of these charges were true, and suggesting further that there had been an effort to conceal the facts both from the public, from you, and from me.

Richard M. Nixon, before entering on the execution of his office as President of the United States, has twice taken, as required in Article II, Section 1, Clause 7 of the Constitution, the following oath:

> I do solemnly swear that I will faithfully execute the Office of the President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.

In Article II, Section 3, the Constitution requires that the President "shall take care that the laws be faithfully executed." Under the Constitution, the executive power is vested in the President. Of necessity, the President must rely on subordinates to carry out his instructions in the execution of his office.

In his statement of April 30, 1973, President Nixon told the American people that he had been deceived by subordinates into believing that none of the members of his Administration or his personal campaign committee were implicated in the Watergate break-in, and that none had participated in efforts to cover up those illegal acts. The President had said he recently received new information that persuaded him there was a real possibility that some of the charges were true. He declared his determination to "get to the bottom of the matter."

Almost fifteen months later the Committee on the Judiciary is faced with the responsibility of making recommendations concerning

whether or not the House of Representatives should exercise its Constitutional power of impeachment.

The critical question the Committee must decide is whether, as he claimed in his statement of April 30, 1973, and in other statements, the President was, in fact, constantly deceived by his closest political associates, or whether those associates were in fact carrying out his policies and decisions. This question must be decided one way or the other.

It must be decided whether the President was duped by his subordinates into believing that his personal agents and his key political associates were not involved in a program of illegal electronic surveillance for his political purposes; or whether, in fact, Richard M. Nixon, in violation of the sacred obligation of his Constitutional oath, authorized illegal intelligence-gathering activities against his political opponents.

It must also be decided whether the President was duped by his subordinates into believing that his personal agents and key political associates had not been engaged in a systematic cover-up of the illegal political intelligence operation, of the identities of those responsible, and of the existence and scope of other related activities; or whether, in fact, Richard M. Nixon, in violation of the sacred obligation of his Constitutional oath, has used the power of his high office for over two years to cover-up and conceal responsibility for the Watergate burglary and other activities of a similar nature.

In short, the Committee has to decide whether in his statement of April 30, 1973, and in other statements, the President was telling the truth to the American people, or whether that statement was part of a pattern of conduct designed not to take care that the laws be faithfully executed, but to impede their faithful execution, in his political interest and on his behalf.

The Committee has found that much of the evidence pertinent to this question and other questions is within the custody and control of the President. In defiance of subpoenas legally authorized, issued and served by the Committee on behalf of the House of Representatives, President Nixon has denied the Committee access to this evidence.

Nevertheless, the Committee has considered evidence that is substantial. This report summarizes that evidence. The report begins with an account of how President Nixon organized his personal staff to implement his policies and instructions in his execution of the office of President of the United States.

The Organization of the White House and Its Relationship to the Committee for the Re-election of the President

I

From January 1970 until February 1973, Alexander Butterfield was personal aide to the President. His office was next to the Oval Office; his responsibilities were to insure the "smooth running of the President's official day." (House Judiciary Committee, Testimony of Alexander P. Butterfield, "Testimony of Witnesses", Book 1, 9–10, hereinafter cited as Butterfield testimony, 1 HJC) He was thus in a unique position to know how President Nixon operated his Presidency.

Butterfield testified that during his first term President Nixon spent almost all of his working time with one of a handful of Assistants: on domestic matters, John Ehrlichman; on political matters, Charles Colson; on foreign affairs, Henry Kissinger; and on all matters of policy, direction, implementation, politics, public position and strategy, his chief of staff, H. R. Haldeman—but the vast majority of his time with Haldeman. (Butterfield testimony, 1 HJC 14–16, 40) According to Butterfield, Haldeman "was an extension of the President":

> . . . [T]here was no question in anyone's mind at any time that he [Haldeman] was, in effect, the chief of staff. He was far and away the closest person to the President. There was never any competition with regard to Mr. Haldeman's role. He was everything that Sherman Adams was to President Eisenhower, in my view. He was an extension of the President, in my view. (1 HJC 13)
>
> Haldeman was the alter ego. Haldeman was almost the other President. I can't emphasize that enough. (1 HJC 66)

Haldeman had no independent schedule. He was always at the call of the President. (Senate Select Committee on Presidential Campaign Activities, H. R. Haldeman testimony, Book 7, 2871, hereinafter cited as Haldeman testimony, 7 SSC) Haldeman ordinarily spent several hours a day with the President—a "good six to seven times as much time with the President as anyone else." (Butterfield testimony, 1 HJC 40) Except for daily press summaries, virtually all written material addressed to the President was screened and transmitted through Haldeman. (Butterfield testimony 1 HJC 36–37.) When the President made a decision he would authorize one of his aides, almost always Haldeman, to see that it was executed.[1] (Butterfield testimony, 1 HJC 42) Butterfield testified:

> [The President] communicated by telephone with a great many people at night, in the evenings and during the day. But his normal communications, oral and in

[1] Haldeman implemented Presidential decisions through his own staff assistants. Lawrence Higby, Haldeman's personal aide and chief administrative assistant, supervised the flow of persons, papers, telephone calls and correspondence to Haldeman. Gordon Strachan served as Haldeman's principal political assistant; he regularly prepared Political Matters Memoranda for Haldeman on the status of the 1972 election campaign, and often carried out Haldeman's decisions. Dwight Chapin acted as the President's Appointments Secretary and reported directly to Haldeman on matters concerning the President's schedule and travel. Bruce Kehrli, the White House Staff Secretary, who oversaw the day-to-day flow of papers within the White House, worked under Butterfield, but frequently reported directly to Haldeman. (Butterfield testimony, 1 HJC 14–16.)

writing, were just to Haldeman, Ehrlichman and Kissinger. It would be quite unusual for him to communicate with anyone else—perhaps a few times to Colson during that 1972 campaign year. But almost always with Haldeman, almost always with Haldeman. (1 HJC 66)

Butterfield testified that Haldeman was not a decisionmaker, but an "implementer." All important information in Haldeman's possession was relayed to the President; all decisions of consequence were made by the President. Butterfield testified that it would have been "altogether out of character" for Haldeman to have done anything, except to decide minor staff management questions, without the knowledge of the President:

Mr. JENNER. Was there any occasion during all of the time that you were at the White House that there came to your attention that Haldeman ever did anything without the knowledge of the President?

Mr. BUTTERFIELD. No, never.

Mr. JENNER. Dealing with White House affairs?

Mr. BUTTERFIELD. No; never, nothing unilaterally at all. He was essentially—I may have said this—but an implementer. Mr. Haldeman implemented the decisions of the President as did Mr. Ehrlichman but perhaps to a lesser extent. But Haldeman especially was an implementer, because the President ran his own personal affairs. He was not a decisionmaker. . . . I can hardly recall the decisions, any decisions that he made, unless that it was that the White House staff mess personnel would wear jackets or something along that line. He implemented the President's decisions. The President was the decisionmaker. The President was 100 percent in charge. (1 HJC 69–70) (See also Haldeman testimony, 7 SSC 2872)

Mr. Mitchell's testimony is to the same effect:

Mr. THORNTON. Did you ever check to determine whether or not the information relayed to you through Mr. Haldeman was a correct reflection of the President's instructions?

Mr. MITCHELL. There may have been occasions, Congressman, but I would have to say that in most all instances that I can recall, Mr. Haldeman's representations to me of the President's position were truthfully and fully stated.

Mr. THORNTON. Did you ever check with the President to determine whether information you had passed toward him through Mr. Haldeman had been received by him?

Mr. MITCHELL. No, I don't believe I did, but I think there again, the record of actions coming from such line of communication would indicate that they were fully and faithfully conveyed. (Mitchell testimony, 2 HJC 209–10)

II

Haldeman's responsibility extended to the President's campaign. During the summer and fall of 1971, Haldeman personally reviewed and supervised plans for the development of the re-election committee and the assignment of staff to it. He established formal rules and procedures for the transfer of employees from the White House staff to the re-election committee; waiver of these rules required his personal approval. (House Judiciary Committee, "Background Memorandum: White House Staff and President Nixon's Campaign Organizations," 11–13, hereinafter cited as "Background-White House/CRP") John Mitchell had hiring authority once he became responsible for the day-to-day operations of the campaign committee in mid-1971; but Haldeman still reviewed the hiring of key personnel and vetoed several employment recommendations. (Political Matters Memoranda, 12/6/71, 1, 3–5; 1/18/72, 4; 7/29/72, 2–3)

Haldeman and other White House staff members were active in formulating campaign strategy. The highest level decisions on domes-

tic policy and campaign tactics were discussed by the "political group," consisting of Haldeman, Ehrlichman, Clark MacGregor, Bryce Harlow, Charles Colson, Mitchell, and Harry Dent. This group met regularly in the White House. Others, primarily White House personnel, handled other areas of the campaign. A group headed by Colson coordinated CRP press releases and speeches by surrogates for the President. (Political Matters Memorandum, 3/3/72, 5–6, and 2 29 72 attachment)

A copy of each document submitted to the campaign director (first Mitchell and later MacGregor) was also submitted to Haldeman's assistant, Gordon Strachan, who collected these documents and summarized them for Haldeman in "Political Matters Memoranda." (Political Matters Memorandum, 3/3/72, 5) These memoranda covered the whole range of the issues involved in running a campaign. (Strachan testimony, 6 SSC 2439) Butterfield testified that these memos "would not go to the President under normal circumstances," but Haldeman "would relay the information when he spoke to the President next." (Butterfield testimony, 1 HJC 111) After reviewing these memoranda, Haldeman would note the actions to be taken. Strachan would contact the appropriate CRP personnel to implement Haldeman's instructions. (Strachan's marginal notes, Political Matters Memoranda) In addition, Haldeman met with campaign director Mitchell on a weekly basis, to discuss such subjects as campaign financing, personnel and strategy. (Mitchell testimony, 2 SSC 202) Haldeman was regularly informed of even the most minor administrative decisions, including the rental of office space, (Political Matters Memoranda, 6/29/72, 5; 11/16/71, 3; 12/16/71, 4) rejecting press requests for interviews with campaign staff (Political Matters Memoranda, 8/11/72, 6) and the formulation of CRP's field organizational plan. (Political Matters Memoranda, 2/1/72, 6; 3/3/72, 1; 7/29/72, 8) Haldeman insisted upon clearing every piece of advertising and promotional material. (Haldeman testimony 7 SSC 2870; Political Matters Memoranda, 1/18/72, 2; 6/6/72, 1–2)

The President was attentive to the details of White House operations and directives. After certain Watergate disclosures, in late April 1973, the President stated that in 1972, for the first time in his political career, he left management of his campaign to others, concentrating instead on his duties as President. (House Judiciary Committee, "Presidential Statements on the Watergate Break-in and Its Investigation," 4/30/73, 16, hereinafter cited as "Presidential Statements," 4/30/73) The White House edited transcript of the April 4, 1972 Presidential conversation [2] and tape recordings of September 15, 1972 Presidential conversations, however, show that the President was fully aware of and actively participated in deciding the details of the campaign. The April 4, 1972 transcript reflects the President's knowledge of and dominent role with regard to specifics of the campaign. He, Haldeman and Mitchell discussed the details of the site for the 1972 convention (the President decides it will be changed to Miami), prospects in the Wisconsin Democratic primary, and the prospects for

[2] On June 5, 1974, the President produced an edited transcript of a conversation on April 4, 1972, between the President, Mitchell and Haldeman. This conversation had been subpoenaed on May 15, 1974, and also requested by letter in connection with the ITT matter.

various Democratic Presidential aspirants, a letter of support for the President from columnist William F. Buckley, the Ashbrook campaign, various individuals and their responsibility in the President's re-election campaign, and the President's prospects and organization in Wisconsin, California, Illinois, Ohio, Pennsylvania, New York, New Jersey, Texas, Ohio, Michigan, Minnesota, Massachusetts and Vermont. (Statement of Information Submitted on Behalf of President Nixon, Book I, 104–16)

Butterfield testified that the President "made the big decisions," "anything having to do with strategy would emanate from the President" and that the President was in charge. (Butterfield testimony, 1 HJC 111) Butterfield testified that the Committee was an extension of the political White House. (Butterfield testimony, 1 HJC 52)

III

Fred LaRue, John Mitchell, John Dean, Charles Colson, and Herbert Kalmbach testified before the committee. Their testimony fully corroborates Butterfield's description of how President Nixon conducted his Presidency. There are minor differences, most notably Colson's testimony as to the direct relationship he developed with the President by 1972.[3] But such differences are to be expected and seem only to add weight to the proof of the fact that President Nixon required discipline of himself and his subordinates; that he established orderly procedures; that he preferred to communicate his decisions through Haldeman and to receive information and reports from Haldeman; that he, as President, was in charge; that he made the decisions; and that he was running his staff and his re-election campaign for President.

[3] Colson testified, however, that Haldeman had a practice of asking for anything that went to the President, even from the few senior staff members who had access to the President. (Colson testimony, 3 HJC 412) He acknowledged that he was answerable to Haldeman. (Colson testimony, 3 HJC 468)

Approval of a Political Intelligence Plan Including the Use of Electronic Surveillance

The evidence available to the Committee establishes that on May 27 and June 17, 1972 agents of CRP, acting pursuant to a political intelligence plan (which included use of illegal electronic surveillance), authorized in advance by John Mitchell, head of CRP, and H. R. Haldeman, the President's Chief of Staff, broke into the DNC Headquarters at the Watergate for the purpose of effecting electronic surveillance; and that this was part of the President's policy of gathering political intelligence to be used as part of his campaign for re-election. The illegal activities contemplated by the plan were implemented and supervised by Howard Hunt and Gordon Liddy, who from July 1971 to the time of their transfer to CRP were employed by the President to conduct investigations, and who had been authorized to engage in illegal covert activity under the supervision of John Ehrlichman.

I

On August 10, 1971 H. R. Haldeman, Chief of Staff to President Nixon, gave instruction that Gordon Strachan, Patrick Buchanan, Dwight Chapin, and Ron Walker should develop recommendations for "political intelligence and covert activities" in connection with the President's campaign for re-election in 1972. (Political Matters Memorandum, 8/13/71, 2) It is a fair inference that Haldeman was implementing the President's policy with respect to the tactics he wanted used in his re-election campaign. The President endorsed the belief that in politics everybody bugs everybody else, and said that he could understand the desire for electronic surveillance, prior to the Democratic Convention. (House Judiciary Committee, "Transcripts of Eight Recorded Presidential Conversations." 4, hereinafter cited as HJCT) As a result of Haldeman's instructions, a political intelligence proposal, Operation Sandwedge, was developed. Operation Sandwedge contemplated electronic surveillance and "black bag" capability. (House Judiciary Committee, Statement of Information, Book VII, 1341, hereinafter cited by book and page number.) Dean was assigned responsibility for a planning study of Operation Sandwedge and other "covert" intelligence activities. (Book VII, 1363–64)

The planning study was completed in early October 1971. When Strachan reported to Haldeman that the then Attorney General Mitchell had not made the "hard decisions" on CRP planning studies, Haldeman instructed Strachan to arrange a meeting with Mitchell. (Book VII, 1363–64) Mitchell was one of the President's closest politi-

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cal associates, his former law partner, and Director of the President's 1968 campaign. Haldeman, Mitchell, Magruder, and Strachan met in November 1971 to discuss Operation Sandwedge. (Political Matters Memoranda, 10/27/71, attachment) The talking paper prepared by Strachan for Haldeman to use at this meeting notes that Sandwedge has received an "initial 50" and asks "are we really developing the capability needed?" and, "Should his [Dean's] involvement be expanded to something more than mere White House contact?" (Political Matters Memorandum, 10/27/71, attachment) The talking paper also listed topics to be discussed between Haldeman and Mitchell when Magruder and Strachan were not present. One topic asks, "Who should we designate to increase the surveillance of EMK from periodic to constant?" and "Is there any other candidate or group, such as Common Cause, about whom we should obtain damaging information?" (Political Matters Memorandum, 10/27/71, attachment) In the copy of this talking paper provided by the White House to the Committee a portion is cut from the bottom of the page. The missing section, as obtained by the Committee from other sources, contains the statement, "From Campaign funds I need 800–300 for surveillance. . . ." (Political Matters Memoranda, 10/27/71, attachment.)

On December 2, 1971, Haldeman was informed by his assistant, Gordon Strachan, that Sandwedge had been scrapped. (Book I, 34–35) Haldeman was also informed that "instead" of Sandwedge, Liddy, "who has been working with Bud Krogh," the head of the Plumbers unit, would handle political intelligence as well as legal matters at CRP, and would work with Dean on the "political enemies" project. (Book I, 34–35) Mitchell has testified he approved the transfer of Liddy to CRP. (Mitchell testimony, 2 HJC 125) Four days later, Haldeman approved Liddy's transfer to CRP at a salary increase of $4,000 over his White House salary, although a policy that there were to be no such salary increases was then in effect. (Book I, 49–50) With the selection of Liddy and the approval of his transfer by Haldeman from the White House to CRP, it was clear that the decision had been made and implemented to set up a political intelligence gathering unit for the campaign. All that remained was approval of a particular proposal and its funding.

In late January and early February 1972, after consultation with Plumbers unit member Howard Hunt, Liddy proposed a $1 million intelligence program to Mitchell, Magruder, and Dean at a meeting in the Attorney General's office. (Book I, 58–60) The proposal included the use of mugging, kidnapping, prostitutes, photography, and electronic surveillance. (Book I, 59) According to Dean and Magruder, Mitchell directed Liddy to prepare a revised and more realistic proposal. (Book I, 57, 60) Mitchell has denied this. (Book I, 58) However, in February 1972, Liddy returned with a $500,000 intelligence program which contemplated electronic surveillance at the DNC headquarters. (Book I, 66–67) After this meeting, which Dean reported to Haldeman, Dean expressed his opposition to a political intelligence operation that included activities like burglary and

wiretapping. (Book I, 66–74) Although he told Dean that he agreed with Dean's view, Haldeman did not order the termination of these projects. (Book I, 66, 73–75)

Sometime in February or March 1972, Liddy and Hunt met with Colson. (Book I, 105, 110–11) Hunt and Liddy had taken part in the Plumbers operation, including the Fielding break-in. Hunt was a friend of Colson. (Book I, 113) During this meeting, according to Colson, he called Magruder, the CRP Chief of Staff, and told him "to resolve whatever it was Hunt and Liddy wanted to do and to be sure he had an opportunity to listen to their plans." (Book I, 105) Magruder has testified Colson told him to "get off the stick" and get Liddy's plans approved, and that information was needed, particularly about Lawrence O'Brien. (Book I, 113)

II

On March 30, 1972, in Key Biscayne, Florida, the Liddy Plan was again reviewed at a meeting attended by Mitchell, Magruder, and Fred LaRue. They reviewed the proposal for electronic surveillance and, according to Magruder, approved its revised budget of either $250,000 or $300,000. (Book I, 115–25) Magruder's testimony that Mitchell approved the Liddy Plan is corroborated by Reisner's testimony that shortly after March 31, 1972 Magruder told him to tell Liddy that his plan had been approved (Book I, 129); by Strachan's testimony that Magruder reported the approval of a "sophisticated political intelligence gathering system" on March 31, 1972 (Book I, 148); and by Stans' testimony that Mitchell confirmed after March 31, 1972 Magruder's authority to authorize substantial cash payments to Liddy. (Book I, 182)

In a Political Matters Memorandum dated March 31, 1972, Strachan informed Haldeman that Magruder reported that CRP now had a "sophisticated political intelligence gathering systems including a budget of [$]300 [,000]." (Book I, 148, 150–53)

On April 4, 1972 Haldeman met with Mitchell. A talking paper which Strachan had prepared for Haldeman for that meeting included a question on the adequacy of the political intelligence system. (Book I, 162–64) Following this meeting, Haldeman and Mitchell met with the President. (Book I, 157)

The President has furnished to the Committee an edited transcript of this meeting. The edited transcript does not include discussion of the subject of a political intelligence operation. The April 4, 1972 transcript is the only material furnished by the President to the Committee in response to its subpoenas for recordings of Presidential conversations occurring prior to March 17, 1973.

The Liddy Plan was designed to be untraceable to CRP or the White House in the event something went wrong. Professionals (Liddy and Hunt) had been hired as chief operatives. Liddy had agreed not to use CRP employees in his operation. (Hugh Sloan testimony, 2 SSC 542) Cuban-Americans were used to make the entry: they could be portrayed

as anti-Castro extremists if discovered. But things did not go according to the plan. Contrary to his agreement, Liddy used CRP Security Director McCord to install electronic surveillance equipment. (Book I, 216–18) And at the scene of the crime the police discovered thirty-two sequentially numbered $100 bills (Book II, 85), part of the proceeds of CRP campaign contribution checks (Hugh Sloan testimony, 2 SSC 576–77), and documentation tying the burglars to Howard Hunt. (Book II, 84)

Implementation of the Political Intelligence Plan

The plan to gather political intelligence for use in the President's re-election campaign got under way in April 1972. (Book 1, 172–75) With Mitchell's approval, FCRP Treasurer Hugh Sloan disbursed approximately $199,000, in cash, to Liddy prior to June, 1972.[1] (Book I, 178–79) Of this sum McCord spent approximately $65,000 on technical equipment and related expenditures. (Book I, 190) Magruder, Mitchell, and Haldeman later received reports on the results of the illegal intelligence activities at the DNC. (Book I, 189, 192–94, 234–36)

The first break-in of DNC occurred on or about May 27, 1972. (Book I, 216–217) During the first or second week in June 1972, Magruder received transcripts of conversations intercepted at the DNC Headquarters transcribed on paper labeled "Gemstone." (Book I, 234–35) According to Magruder, these transcripts were shown to Mitchell. (Book I, 235) Magruder's assistant, Robert Reisner, corroborates this. (Book I, 237) On one occasion Magruder asked Reisner to place a group of the Gemstone papers in the file labeled "Mr. Mitchell's file," the file ordinarily used by Magruder in meetings between himself and Mitchell. (Book I, 238) Magruder also received prints of the documents photographed during the initial entry into the DNC headquarters.[2] (Book I, 234)

The White House received the reports obtained through the break-in and bugging. Through Strachan, Magruder forwarded the information to Haldeman's office. (Book I, 165–66, 168–69) In the March 13, 1973 meeting, there are two references to wiretap information. The President described the Watergate operation as "a dry hole, huh?" and then said "Yeah. Yeah. But, uh, Bob one time said something about the fact we got some information about this or that or the other, but I, I think it was about the Convention, what they were planning, I said [unintelligible]. So I assume that must have been MacGregor, I mean not MacGregor, but Segretti." (HJCT 72) Later in the conversation, Dean, referring to the DNC incident, stated that "People just, here, would—did not know that that was going to be done. I think there are some people who saw the fruits of it, but that's another story." (HJCT 74)

On March 21, 1973 Dean told the President the wiretap information was given to Haldeman.

DEAN. . . . The information was coming over here to Strachan. Some of it was given to Haldeman, uh, there is no doubt about it. Uh—

PRESIDENT. Did he know what it was coming from?

DEAN. I don't really know if he would.

PRESIDENT. Not necessarily.

DEAN. Not necessarily. That's not necessarily. Uh—

[1] Sloan testified that when he asked Stans the purpose for which the money would be spent, Stans, who had discussed the matter with Mitchell said, "I do not want to know and you don't want to know." (Book I, 179)

[2] Shortly after the June 17, 1972 break-in, Magruder told Reisner to remove the Gemstone files and other politically compromising documents from the CRP files. (Book I, 236, 239–40)

PRESIDENT. Strachan knew what it was from.

DEAN. Strachan knew what it was from. No doubt about it, and whether Strachan—I have never come to press these people on these points because it,

PRESIDENT. Yeah.

DEAN. it hurts them to, to give up that next inch. so I had to piece things together. All right, so Strachan was aware of receiving information, reporting to Bob. At one point Bob even gave instructions to change their capabilities from Muskie to McGovern, and had passed this back through Strachan to Magruder and, apparently to Liddy. And Liddy was starting to make arrangements to go in and bug the, uh, uh, McGovern operation. They had done prelim—

PRESIDENT. They had never bugged Muskie, though, did they?

DEAN. No, they hadn't but they had a, they had, uh, they'd

PRESIDENT. [Unintelligible]

DEAN. infiltrated it by a, a, they had

PRESIDENT. A secretary.[3]

DEAN. a secretary and a chauffeur. Nothing illegal about that. (HJCT 85.)

On April 14, 1973, Haldeman told the President that Strachan, at some time, had stopped reading the wiretap reports; but that they had been in the White House.

E He thought they were all junk to. "furnish a junk store". The one copy that Magruder had had pictures of the kinds of papers that you'd find around with campaign headquarters. He sent a synopses [sic] of the pictures to Mitchell. He thought it was so bad he picked up the phone and called Liddy and chewed him out. He called 'em "(expletive deleted)" "I told Strachan that the synopses were here. He may have come over and read them." and as I pressed him on that he got less and less sure of that. He says, "I told him they were there."

H Strachan says, "I stopped reading the synopses, and they were—we had 'em here. "Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, April 30, 1974," 586, hereinafter cited as WHT.

When, on April 14, 1973, the President asked Haldeman what he would say if Magruder testified that wiretap reports had come to Haldeman's office, Haldeman responded, "This doesn't ever have to come out." (WHT 520–21)

[3] This line does not appear in the White House transcript. (WHT 180)

The President's Response to the Arrests

At 2:00 a.m. on June 17, 1972 five of Liddy's men, including CRP Security Director McCord, were found in the DNC offices and arrested. Hunt and Liddy were elsewhere in the Watergate Hotel. Upon discovering that the others had been arrested, they left. (Book II, 72–76) Hunt went to the EOB office, placed a briefcase containing electronic equipment in his safe and removed from the safe $10,000 in cash which Liddy had given him in case it should be needed. (Book II, 76–77)

On the morning of June 17, 1972 Liddy telephoned Magruder in California and informed him of the arrests. (Book II, 106) Former Attorney General and Campaign Director John Mitchell; Robert Mardian, former Assistant Attorney General, Internal Security Division; Jeb Magruder, Deputy Campaign Director and former assistant to Haldeman; and Fred LaRue, all top officials in CRP, were in Los Angeles, working on the President's re-election campaign. Magruder immediately informed LaRue, who in turn informed Mitchell. (Book II, 106) Mitchell learned that McCord, an employee of the Committee, was one of the five persons arrested. He asked LaRue to get more information. (Book II, 108) Mitchell also ordered Mardian back to Washington to find out what he could about the break-in. (LaRue testimony, 1 HJC 194) After consulting with his aides, Mitchell issued a press release on the afternoon of June 17, 1972 stating:

> We have just learned from news reports that a man identified as employed by our campaign committee was one of five persons arrested at the Democratic National Committee headquarters in Washington, D.C. early Saturday morning.
>
> The person involved is the proprietor of a private security agency who was employed by our Committee months ago to assist with the installation of our security system.
>
> He has, as we understand it, a number of business clients and interests and we have no knowledge of those relationships.
>
> We want to emphasize that this man and the other people involved were not operating either in our behalf or with our consent.
>
> I am surprised and dismayed at these reports.
>
> At this time, we are experiencing our own security problems at the Committee for the Re-election of the President. Our problems are not as dramatic as the events of Saturday morning—but nonetheless of a serious nature to us. We do not know as of this moment whether our security problems are related to the events of Saturday morning at the Democratic headquarters or not.
>
> There is no place in our campaign or in the electoral process for this type of activity and we will not permit nor condone it. (LaRue Exhibit No. 2, 1 HJC 212)

LaRue testified that Mitchell directed that Liddy contact Attorney General Kleindienst. (LaRue testimony, 1 HJC 187) Later that day Liddy met with Kleindienst at the Burning Tree Country Club and told him that some of the people arrested were White House or CRP employees. Liddy said that Mitchell wanted a report on the break-in. Kleindienst refused to discuss the matter and ordered Liddy off the premises. (Book II, 111–12)

At the time of the break-in, the President was in Key Biscayne with his Chief of Staff, H. R. Haldeman, and his Press Secretary,

Ron Ziegler. (Book II, 118, 127) Chief domestic advisor to the President John Ehrlichman and Haldeman's assistants, Higby and Strachan, were in Washington. (Book II, 118, 132)

A White House telephone number of Howard Hunt had been found in a Watergate Hotel room used by the burglars. (Book II, 494) By the afternoon of June 17, 1972 this fact was reported to Ehrlichman. (Book II, 118) Ehrlichman was well aware of Hunt's previous covert operations for the White House. In fact, on July 7, 1971, when Hunt was first hired, Ehrlichman called the CIA and said.

> 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 some things for the President. He is a long-time 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. (Book II, 467)

Upon learning of Hunt's possible association with one of those arrested inside the DNC, Ehrlichman immediately called Colson, whom he knew to be Hunt's sponsor at the White House. (Book II, 118) Colson had recommended Hunt for his White House position (Book VII, 706; 3 HJC 199) and knew of Hunt's covert activities for the White House; (Book III, 208, 232) Ehrlichman had told him of Hunt and Liddy's unsuccessful attempt to get Ellsberg's psychiatric records by breaking into Fielding's office. Ehrlichman had told Colson not to talk about the matter. (Book III, 236) In this June 17, 1972 conversation Ehrlichman raised with Colson questions about Hunt's employment record at the White House and how it should be handled. (Book II, 118–20.)

In the late afternoon of Saturday, June 17, 1972 Ehrlichman telephoned Ziegler, who was then with Haldeman and the President in Key Biscayne, and told him about the documents linking Hunt to the Watergate burglars. (Book II, 118) On the next day, June 18, Ehrlichman placed another call to Key Biscayne, this time to Haldeman. He discussed McCord's and Hunt's involvement in the break-in and the problems posed for CRP and the White House. (Book II, 130) The arrests posed difficult problems: an investigation might reveal that Mitchell and Haldeman had authorized a plan to place the President's political opponents under electronic surveillance; that funds for the operation were campaign funds supplied by CRP; and that the participants in the Watergate break-in had previously engaged in illegal covert activities for the White House under the immediate supervision of Ehlrichman.

After this telephone conversation with Ehrlichman, Haldeman called Magruder in California and discussed the arrests. Haldeman directed Magruder to return to Washington from California to meet with Dean, Strachan and Sloan to determine what had happened and the source of the money found on the arrested persons. (Book II, 126) Thus Haldeman reversed Mitchell's decision that Mardian should be the one to return immediately to Washington. (LaRue testimony, 1 HJC 194)

Dean returned on Sunday, June 18, 1972. He had been on a trip to the Far East and planned to stay in California. He cancelled his plans after a conversation with his assistant Fred Fielding and re-

turned to Washington. (Book II, 144) On June 18 the President placed Ehrlichman in charge of Watergate. Ehrlichman in turn assigned Dean to work on the matter. ("Presidential Statements," 8/22/73, 45–46) Dean met with Liddy who told him that the break-in was a CRP operation. Dean reported this conversation to Ehrlichman, and on June 19 Ehrlichman, Colson and Dean met. (Book II, 145–146)

They discussed the fact that White House records did not reflect the termination of Hunt's consultant status. They also discussed the contents of Hunt's safe in the Executive Office Building. (Book II, 146, 190) Ehrlichman ordered that Hunt's safe in the E.O.B. be drilled open. Ehrlichman and Colson directed that Dean take possession of the contents of Hunt's safe. (Book II, 190, 201) The safe contained State Department cables Hunt had fabricated, materials related to the Plumbers, McCord's briefcase filled with electronic equipment which Hunt's had placed in the safe immediately after the arrests, and two Hermes notebooks. (Book II, 163)

On June 19, 1972 at about noon, the President called Colson. They talked for approximately one hour and discussed the break-in. (Book II, 156, 158–59) Colson testified that he told the President that Administration officials in Washington were holding a meeting to determine what they could do (Colson testimony, 3 HJC 264); and either during this conversation or one with the President the following day he told the President that he believed that Hunt was not employed by the White House at the time of the break-in. (Colson testimony 3 HJC 271) Later that day Magruder, Mitchell, Mardian and LaRue, who had returned to Washington, met in Mitchell's apartment. Dean joined the meeting later. They discussed the break-in and the need for a statement from CRP denying any responsibility for the burglary. (Book II, 224) Magruder has testified he was directed at that meeting to destroy sensitive documents related to the political surveillance operation. (Book II, 225–26) This testimony is confirmed by LaRue's testimony before the Committee. (LaRue testimony, 1 HJC 196)

The President and Haldeman returned from Key Biscayne on June 19, 1972. (Book II, 156, 240, 243) At least by June 19, 1972, CRP officials Mitchell, Magruder, Mardian and LaRue (Book II, 106–15) and White House officials Haldeman, Ehrlichman and Dean (Book II, 126–27, 144–45) all knew that the DNC break-in was an operation carried out under the direction of Liddy. Yet Liddy continued to serve as general counsel to the FCRP until June 28, 1972, when he was discharged by Stans for failure to cooperate with the FBI. (Book II, 478–82)

Early the following morning Haldeman met with Ehrlichman and Mitchell at the White House. Dean and Kleindienst joined this meeting about 45 minutes later. (Book II, 238, 240) The previous day Kleindienst had requested that Gray arrange for his briefing on the FBI investigation because Kleindienst had to brief the President that day or the next. (Book II, 137) They discussed the Watergate break-in. (Book II, 241) During this meeting in Ehrlichman's office the President remained alone in the Oval Office (with the exception of a three-minute meeting with Butterfield). At 10:20 a.m., at the end of the meeting on Watergate, Ehrlichman met with the President. (Book II, 243) Although the President had assigned Ehrlichman to handle Watergate

matters for the White House he did not discuss Watergate with Ehrlichman. (*In re Grand Jury*, Misc. 47–73, order, 12/19/73; Book II, 238; "Presidential Statements," 8/22/73, 45–46) Neither did he meet with Kleindienst or Mitchell that day. (Book II, 243–44)

Thereafter and for about an hour and a half, Haldeman—who by this time had been fully briefed and who, according to Strachan, had instructed Strachan to get rid of documents related to the Liddy Plan and other sensitive documents—met with the President. (Book II, 243, 265) At this meeting they discussed Watergate. (Book II, 249–50) A portion of the notes taken by Haldeman during the meeting read:

> Be sure EOB office is thoroughly checked regarding bugs at all times— et cetera. What is our counter attack? PR offensive to top this. Hit the opposition with their activities. Point out libertarians have created public what I believe is callousness. Do they justify this less than stealing Pentagon papers, Anderson file, et cetera. We shouldn't be on the attack for diversion. (Book II, 246–48)

The tape recording of this June 20, 1972 meeting between the President and Haldeman was subpoenaed by the Special Prosecutor in July 1973. The subpoena was resisted by the President on the grounds of executive privilege (Book II, 258), but the subpoena was upheld by the Court of Appeals. (Book IX, 748, 750–54) On November 26, 1973 when the recording was finally produced, it contained an eighteen and one-half minute erasure that obliterated the portion of the conversation which, according to Haldeman's notes, referred to Watergate. (Book II, 249–50) The report of the United States District Court's Advisory Panel on the White House tapes concluded that the erasure was produced by repeated manual erasures of the tape on the tape recorder used by the President's personal secretary, Rose Mary Woods. (See Appendix A)

On the morning of June 20, 1972, Magruder, as instructed by Haldeman, met with Sloan and determined that the source of the money found on the persons arrested was the Finance Committee to Re-Elect the President (FCRP). (Book II, 126) At 10:30 a.m., Mitchell, who had returned to his office, met with LaRue, Magruder and Mardian. (Book II, 239) Also on June 20, 1972 Mitchell's prepared statement denying any legal, moral or ethical accountability on the part of CRP for the Watergate break-in was issued. (Book II, 303) That evening the President telephoned Mitchell. They discussed the break-in. The tape of that telephone call was subpoenaed by the Special Prosecutor. The President responded that the conversation had not been recorded.[1] (Book II, 309) The President did, however, provide a dictabelt recording of his recollections of the day that included an interrupted account of his conversation with Mitchell:

> Paragraph. I also talked to John Mitchell in—late in the day and tried to cheer him up a bit. He is terribly chagrined that, uh, the activities of anybody attached to his committee should, uh, have, uh, been handled in such a manner, and he said that he only regretted that he had not policed all the people more effectively on a—in his own organization—[42 second silence] [unintelligible] (Book II, 310)

On June 22, 1972 the President—who had been with Haldeman in Key Biscayne when the news of the break-in first appeared, had re-

[1] The House Judiciary Committee on May 15, 1974 subpoenaed the tape recordings and other material related to six conversations on June 20, 1972 between the President and Haldeman, and the President and Colson. The President has refused to produce these recordings.

mained there with him on June 17, 18 and 19, and then had discussed Watergate with Haldeman and Mitchell on June 20—held a news conference. He was asked if he had ordered any sort of investigation to determine the truth of the charges "that the people who bugged [DNC] headquarters had a direct link to the White House." The President replied:

> 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. (Book II, 352–53)

III

By June 21, 1972 a decision to limit further Watergate disclosures had been made. Ehrlichman was in charge. Dean was assigned to cover the FBI investigation. Ehrlichman called Gray and told him that Dean was conducting an inquiry into the Watergate matter for the White House and to work closely with him. (Book II, 314)

The money found on those arrested posed a risk of exposure for the President and a danger to his re-election campaign. This was what caused Haldeman, on June 18, 1972, the day after the break-in, to direct Magruder to return from California to Washington and talk to Sloan, Dean, and Strachan about the source of the money. (Book II, 126) The FBI might be able to trace the $100 bills back to the bank that supplied the cash, and that in turn would lead to the bank account of Bernard Barker and the five checks, four of which were drawn on a Mexican bank, totaling $114,000. (Book II, 368–69) Liddy was well aware of such risk for he had shredded the $100 bills in his possession immediately after the break-in. (Book II, 289) The persons whose names appeared on the checks producing the cash, Kenneth Dahlberg and Manuel Ogarrio, could tell the FBI that they delivered them to the President's re-election campaign; in fact Dahlberg had handed his check personally to Stans. (Book II, 366–67) Liddy had obtained these checks while serving as general counsel to FCRP and had given them to Barker to cash. (Book II, 371)

The risk that the CRP link would be uncovered became more imminent on June 21 and 22, 1972 when Gray informed Dean that the $100 bills had already been traced to Barker's bank account in Florida and that Dahlberg and Ogarrio had been identified and the Bureau intended to interview them. (Book II, 339; Sloan testimony; 2 SSC 576–77) On June 23, Dean reported this information to Haldeman, who immediately reported it to the President. (Book II, 356) It is undisputed that on June 23, 1972 the President directed Haldeman and Ehrlichman to meet with Helms and Walters and express White House concerns and ask Walters to meet with Gray and communicate those concerns to him.[1] (Book II, 356–57)

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[1] The House Judiciary Committee on May 15, 1974 subpoenaed the tape recordings and other material related to this and other conversations between the President and Haldeman on June 23, 1972. The President has refused to produce these materials.

On that afternoon Ehrlichman and Haldeman met with Helms and Walters. (Book II, 357) Helms assured Haldeman that there was no CIA involvement in the Watergate break-in, and told him that he had given a similar assurance to acting FBI Director Gray. (Book II, 383–84) Haldeman said that the FBI investigation was leading to important people and that it was the President's wish, because an FBI investigation in Mexico might uncover CIA activities or assets, that Walters suggest to Gray that it was not advantageous to pursue the inquiry, especially into Mexico. (Book II, 380, 385–86) Ehrlichman testified that the Mexican checks traced to the Florida bank account were discussed as a specific example of the President's concern. (Book II, 392) During or shortly after the meeting Dean called Gray and told him to expect a call from Walters. (Book II, 400) Immediately after the meeting with Haldeman and Ehrlichman, Walters met with Gray and expressed these concerns. (Book II, 402–04) Gray agreed to hold the interview of Ogarrio in abeyance although he indicated the FBI would continue to try to locate and interview Dahlberg. (Book II, 400–01) At this time Dahlberg was meeting with Stans at CRP. (Book II, 406–07.)

Walters checked whether any CIA sources would be jeopardized by an FBI investigation in Mexico, and determined that none would. (Book II, 410–11) On June 26, 1972 he so advised Dean whom Ehrlichman had designated as the White House liaison (Book II, 411–12) On June 27, 1972 Helms notified Gray that the CIA had no interest in Ogarrio. (Book II, 447) Helms and Gray set up a meeting the following day, and Gray reported this to Dean. (Book II, 447) On the morning of June 28, 1972 Ehrlichman telephoned Gray and instructed him to cancel his meeting with Helms. (Book II, 454)

On June 28, 1972 Dean asked Walters if the CIA could stop the FBI investigations of the Dahlberg and Ogarrio checks. Walters refused to do anything. (Book II, 434) Unable to use the CIA to block the investigation, Dean acted directly. On the evening of June 28, 1972 Dean called Gray and insisted that his instructions to interview Ogarrio and Dahlberg be withdrawn. Gray complied. (Book II, 475) Earlier that day Dean and Ehrlichman had given the contents of Hunt's safe, withheld from FBI agents the previous day, to Gray. (Book II, 503) In addition, at Helms' request, Gray cancelled interviews of two CIA employees who had furnished Hunt with information and with disguises and alias identification cards in 1971 in connection with his earlier covert activities. (Book II, 454, 560–66) Helms also instructed Walters that the CIA still adhered to its request that the FBI not expand its investigation beyond those already arrested or directly under suspicion. (Book II, 459)

These activities of Ehrlichman, Dean, Helms, Walters and Gray limited the investigatory efforts of the FBI. But there were other problems. The defendants were in jail and needed money for bail and attorneys fees and other support funds. Mitchell testified he decided CRP could not provide bail. (Book III, 99) Dean first asked Walters if the CIA could pay bail and support money, but was rebuffed. (Book II, 433) On June 28, 1972 Ehrlichman and Haldeman agreed to use Kalmbach, personal attorney for the President and a long time high-level fundraiser for the President, to handle the raising of funds for the Watergate defendants. (Book III, 149–53, 277–79, WHT 494–96)

Kalmbach flew to Washington that night. (Book III, 152–54) He met with Dean the following morning, and agreed to undertake the assignment. (Book III, 154–55) On June 29, 1972 Kalmbach obtained $75,000 cash from Stans for this purpose. The following day he delivered it to Anthony Ulasewicz, who had previously engaged in surveillance and other activities for John Ehrlichman, (Book III, 168, 172–73; Book VII, 336–41) for clandestine payments for the benefit of those involved in Watergate. (Book III, 167–69; Book VII, 336–37)

As of June 30, 1972 the risks of further disclosure connecting the White House or CRP with the break-in were contained, at least temporarily. Cash was in hand to be distributed to the persons arrested; the cash found on the persons arrested had not yet been traced to CRP; and by June 28, 1972 Gray had stopped the FBI's efforts to trace the money found on the persons arrested.

On June 30, 1972 the President met with Haldeman and Mitchell to discuss Mitchell's resignation as Director of the CRP. (Book II, 515–16) Mitchell had approved Liddy's intelligence activities and following Liddy's call to Magruder on the morning of June 17, 1972, had been kept fully informed of all the developments. As of this June 30, 1972 meeting, Haldeman knew of the CRP and White House involvement in the formulation of a political intelligence gathering capability and in the Watergate break-in itself: (1) Haldeman knew since October 7, 1971 that "Operation Sandwedge", which contemplated a "black bag" capability and electronic surveillance, had been under study by Attorney General Mitchell and John Dean (Political Matters Memorandum, 10/7/71, 6–7); (2) Haldeman knew that on December 2, 1971 Operation Sandwedge had been scrapped and that instead Liddy had been hired by the CRP to handle political intelligence (Political Matters Memorandum, 12/2/71, 3, Book I, 34); (3) Haldeman knew that in February 1972 Liddy had made two presentations to Mitchell, Magruder, and Dean and that Liddy's proposed plans had contemplated the use of electronic surveillance and illegal entries into such targeted facilities as the DNC headquarters (Book I, 66–67); (4) Haldeman knew at the end of March 1972 that a sophisticated political intelligence gathering system with a budget of $300,000 had been approved by the CRP (Book I, 148); (5) Haldeman knew that he had directed Liddy to change his capabilities from Muskie to McGovern (Book II, 265); (6) Haldeman knew shortly after the break-in that James McCord, security consultant to the CRP, and Howard Hunt, a White House consultant, had been linked to CRP's intelligence gathering operation (Book II, 130); (7) Haldeman knew on June 18, 1972 of the possibility that the money found on the five persons arrested in the DNC offices was CRP money (Book II, 126–27); (8) Haldeman knew on June 20, 1972 that he had instructed his assistant Strachan to destroy all politically sensitive documents (Book II, 265); (9) Haldeman knew on June 22, 1972 that the FBI had uncovered five checks bearing the names of Dahlberg and Ogarrio totaling $114,000 that had passed through the bank account of Watergate conspirator Bernard Barker (Book II, 339–41); (10) Haldeman knew on June 23, 1972 that he had instructed Walters to inform Gray that the FBI investigation should not go beyond the five persons already in custody and should not extend into Mexico (Book II, 386–87); and (11) Haldeman knew on or about June 28 that he and Ehrlich-

man had approved Dean's use of Kalmbach to raise and distribute cash for those involved in Watergate (Book III, 149–53, 277–79; WHT 494–96)

One of the subjects of the June 30, 1972 discussion was Mitchell's resignation and why this was the appropriate time for Mitchell to resign as head of CRP. The portion of the tape recording of the conversation made available to the Committee [2] reads:

HALDEMAN. Well, there maybe is another facet. The longer you wait the more risk each hour brings. You run the risk of more stuff, valid or invalid, surfacing on the Watergate caper—type of thing

MITCHELL. You couldn't possibly do it if you got into a——

HALDEMAN. —the potential problem and then you are stuck——

PRESIDENT. Yes, that's the other thing, if something does come out, but we won't—we hope nothing will. It may not. But there is always the risk.

HALDEMAN. As of now there is no problem there. As, as of any moment in the future there is at least a potential problem.

PRESIDENT. Well. I'd cut the loss fast. I'd cut it fast. If we're going to do it I'd cut it fast. That's my view, generally speaking. And I wouldn't—and I don't think, though, as a matter of fact, I don't think the story, if we, if you put it in human terms—I think the story is, you're positive rather than negative, because as I said as I was preparing to answer for this press conference, I just wrote it out, as I usually do, one way—terribly sensitive [unintelligible]. A hell of a lot of people will like that answer. They would. And it'd make anybody else who asked any other question on it look like a selffish son-of-a-bitch, which I thoroughly intended them to look like.

* * * * * * *

MITCHELL. [Unintelligible] Westchester Country Club with all the sympathy in the world.

HALDEMAN. That's great. That's great. [Unintelligible] you taking this route—people won't expect you to—be a surprise.

PRESIDENT. No, if it is a surprise—Otherwise, you're right—it will be tied right to Watergate. [Unintelligible]—if you wait too long, if it simmers down.

HALDEMAN. You can't if other stuff develops on Watergate. The problem is, it's always potentially the same thing.

PRESIDENT. [Unintelligible]

HALDEMAN. [Unintelligible] That's right. In other words, it'd be hard to hardline Mitchell's departure under—

PRESIDENT. You can't do it. I guess Bob can handle it in a way that—Martha's not hurt.

MITCHELL. Yeah, okay. (Book II, 514–16.)

On July 1, 1972 Mitchell resigned as director of the President's reelection campaign organization; as the President suggested the previous day, the story was put in "human terms." (Book II, 514) However the story was put, all the prior circumstances strongly suggest that President Nixon decided, shortly after learning of the Watergate break-in, on a plan to cover-up the identities of high officials of the White House and CRP directly involved in the illegal operation and to prevent the disclosure of the prior covert activities undertaken on behalf of President Nixon by Hunt, Liddy and other participants in the Watergate break-in. The foregoing is only the first portion of the evidence that the Committee had before it for consideration. Evidence of the President's later conduct as set forth in the next section, shows that President Nixon acknowledged his decision and labeled it one of containment.

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[2] The relevant portion of the June 30, 1972 tape as determined by Judge Sirica was provided to the Special Prosecutor and the House Judiciary Committee by the White House.

Containment—July 1 to Election

From the beginning of July 1972 until after the Presidential election in November, President Nixon's policy of containment—of "cutting the loss"—worked. The policy prevented disclosure that might have resulted in the indictment of high White House and CRP officials and might have jeopardized the outcome of the November election. The policy worked because two of the President's assistants, John Dean, Counsel to the President, and Herbert Kalmbach, personal attorney to the President, assigned to carry out the President's policy, did their jobs well—with the full support of the power and authority of the Office of President of the United States.

The risks to the re-election of the President were the disclosures of the use of illegal means to implement the President's plan of obtaining political intelligence and the underlying risk of disclosures of the use of similar means in connection with various activities during his first term in office such as the burglary of Dr. Fielding's office. Beyond that, his closest political associates, Haldeman, Mitchell and Ehrlichman, were directly and deeply involved in one or more of the illegal aspects of the President's activities.

Tape recordings of Presidential conversations in the possession of the Committee establish that the plan of containment prior to the election had full approval of the President. On June 30, 1972 the President told Haldeman and Mitchell that his desire was to "cut the loss." (Book II, 514) On September 15, 1972 the President told Dean and Haldeman, "So you just try to button it up as well as you can and hope for the best. And, . . . remember that basically the damn thing is just one of those unfortunate things and we're trying to cut our losses." (HJCT 13–14) On the morning of March 21, 1973 the President told Dean, "[Y]ou had the right plan, let me say, I have no doubts about the right plan before the election.[1] And you handled it just right. You contained it. Now after the election we've got to have another plan,[2] because we can't have, for four years, we can't have this thing—you're going to be eaten away. We can't do it." (HJCT 129–30) And on March 22, 1973 the President told Mitchell, "the whole theory has been containment, as you know, John." (HJCT 183) [3]

As of the beginning of July 1972 the situation was in fact contained. Haldeman told the President and Mitchell on June 30, 1972, "As of now there is no problem there." But, "As, as of any moment in the future there is, there is at least a potential problem." (Book II, 514) The objective was to maintain, to the extent possible, the stability of the situation. That is what Dean and Kalmbach were assigned to do.

[1] In the White House Transcript, the words ". . . And then, once you decide on the right plan, you say, 'John,' you say, 'No doubts about the right plan before the election . . .'" appear instead of the above quoted material. (WHT 248)

[2] The subject of the conversation was the President's directive that Mitchell be urgently called to Washington so that he would be included with Haldeman, Ehrlichman and Dean in the development of a new strategy.

[3] This material does not appear in the White House transcript. (WHT 310)

Dean was assigned by Ehrlichman to monitor the FBI investigation for the White House (Book II, 314–15), by obtaining on an ongoing basis its fruit (Book II, 315) and by enlisting the CIA to help narrow the scope of the investigation. (Book II, 378–80, 383) Dean regularly obtained information from Gray about the progress of the investigation. (Book II, 556–57) In fact he was on the phone with Gray continually. (Gray logs, 6/21/72–7/6/72) He obtained information from FBI reports, which he showed to CRP officials. (Book II, 558) He sat in on all FBI interviews of White House personnel—a system arranged by Ehrlichman with Gray. (Book II, 314) Thus Dean was able to anticipate the leads the FBI would follow and prepare those persons who had knowledge of the facts within CRP and the White House. (Book II, 333, 484) Instead of having White House staff members Colson, Kehrli and Krogh appear before the Watergate Grand Jury, Dean arranged with Assistant Attorney General Petersen to have their depositions taken outside the presence of the Grand Jury. (Book II, 565)

Kalmbach secured additional sources of funds for the clandestine payments to the Watergate defendants. By the middle of September (when he unconditionally withdrew from any further assignment in carrying out the President's decision) Kalmbach had delivered more than $187,000 in cash to the defendants or their attorneys. (Book III, 378–81) Dean and/or LaRue met and consulted with Kalmbach on each of the deliveries. (Book III, 229) Dean reported the payments to Haldeman and Ehrlichman. (Book III, 202) Only once, during the latter part of July, was there a need for Ehrlichman to step in directly. Kalmbach had been requested to seek sources of funds outside CRP, and he was concerned about the secrecy and the clandestine or covert nature of the activity. He sought and obtained assurances from Ehrlichman that Dean had the authority to pursue the project and that the project was one Kalmbach had to take on. (Book III, 268–69, 277)

Investigations by federal agencies were successfully rebuffed. On July 5, 1972, when Mitchell was interviewed by the FBI, he denied knowledge of any information related to the break-in. Mitchell testified that, at the time of the interview, he had been told by Mardian and LaRue of Liddy's involvement in the break-in, but that the information had not been checked out; and that he was not volunteering information under any circumstances. (Book III, 204)

On July 19 and 20, 1972 respectively, Porter and Magruder falsely told FBI agents that the funds obtained by Liddy from CRP were for legal intelligence gathering activities. (Book III, 242–43, 247–48) On August 10, Porter testified falsely before the Watergate Grand Jury as to the purpose of the $199,000 in cash paid to Liddy. (Book III, 292–96) On August 18, Magruder, after discussing his false story about the Liddy money with Dean and Mitchell, testified falsely before the Watergate Grand Jury. (Book III, 300) On or about August 28, Bud Krogh, on Ehrlichman's staff, who had been in charge of the Plumbers unit, testified falsely before the Watergate Grand Jury as to prior activities of Liddy and Hunt. (Book III, 312–15, 322–23, 324–25) On September 12 or 13, 1972 Magruder met with Mitchell and Dean to plan a false story regarding certain meetings among Mitchell, Magruder, Dean and Liddy in early 1972 in which

political intelligence and electronic surveillance were discussed; Magruder thereafter testified falsely about the meetings before the Watergate Grand Jury. (Book III, 344, 351–52.)

The President's decision not to have former Commerce Secretary Maurice Stans appear personally before the Grand Jury was implemented; the President assigned Ehrlichman to see that Stans need not appear. (Book II, 567) In July, 1972 Ehrlichman instructed Dean to make arrangements with Henry Petersen to take Stans' deposition outside of the Grand Jury. Dean and then Ehrlichman contacted Petersen, but both were unsuccessful. (Book II, 565) Finally, Ehrlichman telephoned Kleindienst. According to Kleindienst, he warned Ehrlichman that he was lucky Petersen had not made an obstruction of justice complaint. (Book II, 570–71) Petersen subsequently agreed to take the deposition by Stans in his office, in lieu of his scheduled Grand Jury appearance. (Book II, 567, 569, 571)

One break the investigators had was the cooperation of Alfred Baldwin, a FCRP employee recruited by McCord who had been monitoring the intercepted conversations at the DNC. Since, at the time of the break-in, he was across the street from Watergate at the Howard Johnson Motel, he was not arrested on June 17. (Baldwin testimony 1 SSC 403–05) On July 5th, Baldwin stepped forward and identified Hunt as one of the Watergate burglars. (Baldwin testimony 1 SSC 389–90)

Baldwin's disclosure came on the day before Gray's conversation with the President on July 6, 1972. On the morning of July 6 Gray met with Walters. (Book II, 526) The two men discussed what they felt were efforts by White House staff to wound the President by confusing the issue of whether the CIA had any interest in the FBI's Watergate investigation. They discussed the need to raise the matter with the President. (Book II, 526–29, 551) Gray has testified that after Walters left, he decided to call Clark MacGregor, the new chairman of the President's re-election campaign. (Book II, 551; Gray testimony 9 SSC 3462).

Gray testified he told MacGregor that both he and Walters were concerned about the use of the CIA and FBI by White House staff members. Gray asked MacGregor to inform the President that the FBI and CIA had been injured by the conduct of White House staff and that the same persons were hurting the President.[5] (Book II, 551); Gray testimony 9 SSC 3462.)

According to Gray's records, thirty-four minutes after Gray's conversation with MacGregor, Gray received a telephone call from the President. (Book II, 524) The President began the conversation with Gray not about Watergate and the serious allegations Gray had just made to MacGregor. Rather, the President told Gray how pleased he was with the way the FBI had handled an attempted skyjacking in San Francisco. (Book II, 550, 552) Gray thanked the President. According to Gray, Gray then blurted out that both he and General Walters thought people on the President's staff were trying to "mor-

[5] MacGregor has testified that Gray called him on the night of July 5, 1972 and that Gray did not give him any message to pass to the President or discuss interference with the FBI's Watergate investigation. (Book II, 533–34) Ehrlichman testified that the President mentioned to him that MacGregor had received a telephone call from Gray, had told him about it and that he immediately called Gray. (Book II, 548)

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tally wound" the President by manipulation of the FBI and CIA; Gray told the President that he had just spoken to MacGregor and "asked him to speak to you about this." According to Gray, after a perceptible pause, the President said only: "Pat, you just continue to conduct your aggressive and thorough investigation." [6] That was the whole of the phone call. The President asked no questions about what facts Gray had to support his serious charges; the President asked for no names. (Book II, 552–53) There is no evidence before the Committee that the President pursued the matter.

Two days after the telephone conversation with Gray, Ehrlichman and the President discussed clemency for the Watergate defendants, while walking on a beach at San Clemente, California. According to Ehrlichman's testimony, he told the President that "presidential pardons or something of that kind would inevitably be a question that he would have to confront by reason of the political aspect of this." (Book III, 182–83) The President's response, according to Ehrlichman, was no one in the White House should "get into this whole area of clemency with anybody involved in this case and surely not make any assurances to anyone." (Book III, 189)

In August 1972, when the President discussed with Ehrlichman the issuance of public statements on Watergate (Book II, 588), Ehrlichman knew the details of CRP and White House involvement in the break-in (Book II, 152–53) and had secreted certain of the contents of Hunt's safe outside the normal channels of the law by delivering them personally to acting FBI Director Gray (Book II, 503); he had recruited Kalmbach to make the secret payments to the defendants; he knew of the actual payments to the defendants (Book III, 150–51, 269); and he knew of the use of the CIA to narrow and thwart the FBI investigation. (Book II, 382–84)

On August 29, 1972 the President held a news conference. He discussed various pending investigative proceedings in connection with Watergate, including the FBI and the Department of Justice, the House Banking and Currency Committee and the GAO, in suggesting that the appointment of a special prosecutor would serve no useful purpose. He then said:

> In addition to that, within our own staff, under my direction, Counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House Staff or anybody in the Government. 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.

With respect to the involvement of CRP, the President said:

> At the same time, the committee itself is conducting its own investigation, independent of the rest, because the committee desires to clear the air and to be sure that as far as any people who have responsibility for this campaign are concerned, that there is nothing that hangs over them. Before Mr. Mitchell left as campaign chairman he had employed a very good law firm with investigatory experience to look into the matter. Mr. MacGregor has continued that investigation and is continuing it now. I will say in that respect that anyone on the campaign committee. Mr. MacGregor has assured me, who does not cooperate with the investigation . . . will be discharged immediately. (Book II, 589)

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[6] The President has stated that Gray warned that the matter of Watergate might lead higher. (Book II, 550)

These statements were misleading; Dean acted to narrow and frustrate the FBI investigation. He conducted no independent investigation. He reached no conclusion that there was no White House involvement in Watergate. He made no report on an investigation. (Book II, 590–91)

MacGregor had received, on matters related to Watergate, only one or two briefings, of which the primary concern, MacGregor said, was not to report on CRP involvement in the break-in, but rather to determine the CRP's status in the pending civil suits initiated by the DNC. The President's statement that he had received an assurance from MacGregor that anyone not cooperating with the investigation would be discharged is misleading. MacGregor has testified that he had not given such an assurance to the President. (MacGregor testimony 12 SSC 4924)

On September 15, 1972, Liddy, Hunt and the five persons arrested in the DNC Watergate offices on June 17 were indicted for burglary, unlawful entry for the purpose of intercepting oral and wire communications, and conspiracy, all serious felonies. No other CRP or White House officials were charged with having been involved in the break-in. (Book III, 360–61)

On that same day John Dean, Counsel to the President, counsel to the President's staff in fact, was summoned to see the President. (Dean testimony, 2 HJC 228) This was the first time since before June 17, 1972 that Dean had met with the President. (Book III, 598–99)

At the time of this conversation, it is undisputed that the President knew, and had known since a few days after the break-in, that Howard Hunt had "surfaced" in connection with Watergate and that Hunt had previously been a member of the White House Special Investigations Unit. ("Presidential Statements," 5/22/73, 24) The President had met and discussed Watergate with Haldeman and Mitchell, who were fully apprised of the CRP and White House connections to the Watergate break-in. He had arranged, authorized and publicly advanced the misleading explanation for Mitchell's resignation from CRP on June 30. (Book II, 514–15) He had received Gray's warning of White House interference with the FBI's Watergate investigation on July 6. (Book II, 550–53) He had prevented Stans' personal appearance before the Grand Jury. (Book II, 567) On August 29, he had made an untrue public statement about Dean's "complete investigation" of the Watergate matter. (Book II, 589) These facts about the extent of the President's knowledge at the time of the September 15, 1972 meeting are undisputed. Beyond that, the President has refused to comply with subpoenas from this Committee requiring tapes of six conversations the President had with Haldeman and three conversations the President had with Colson on June 20 and June 23, 1972.

Prior to Dean's arrival at the September 15, 1972 meeting, Haldeman advised the President that Dean was "the type that enables other people to gain ground while he's making sure that you don't fall through the holes." The President told Haldeman that he could

not meet with the finance group in the morning because it was too soon after Watergate. (HJCT 1) Then Dean entered the room, and the President asked him about the events of the day:

PRESIDENT. Well, you had quite a day today, didn't you? You got, uh, Watergate, uh, on the way, huh?
DEAN. Quite a three months.[10]
HALDEMAN. How did it all end up?
DEAN. Uh, I think we can say "Well" at this point. The, uh, the press is playing it just as we expect.
HALDEMAN. Whitewash?
DEAN No, not yet: the, the story right now—
PRESIDENT. It's a big story.
DEAN. Yeah.
PRESIDENT. [Unintelligible]
HALDEMAN. Five indicted—
DEAN. Plus,
HALDEMAN. They're building up the fact that one of—
DEAN. plus two White House aides.
HALDEMAN. Plus. plus the White House former guy and all that. That's good. That, that takes the edge off whitewash really—which—that was the thing Mitchell kept saying that,
PRESIDENT. Yeah.
HALDEMAN. that to those in the country, Liddy and, and, uh, Hunt are big men.
DEAN. That's right.
PRESIDENT. Yeah. They're White House aides.[11] (HJCT 2.)

The President asked how MacGregor handled himself. Dean responded that MacGregor had made a good statement about the Grand Jury indictment, and it is now time to realize that some apologies may be due. (HJCT 2) The President replied, ". . . [J]ust remember all the trouble they gave us on this. We'll have a chance to get back at them one day." (HJCT 3)

Then the three men talked about the pending civil litigation regarding the Watergate break-in, including Maurice Stans' libel action. Dean explained that the federal prosecutor of the Watergate defendants said that the civil cases made it difficult to draw criminal indictments because the prosecutors did not want to come out with indictments when civil cases tended to approach matters differently. (HJCT 6)

The President accepted a telephone call from Clark MacGregor. The President said he had heard MacGregor was going to be sued. "[J]ust don't let this keep you or your colleagues from concentrating on the big game," the President directed MacGregor. ". . . [T]his thing is just, uh, you know, one of those side issues and a month later everybody looks back and wonders what the shouting was about."

DEAN. Three months ago I would have had trouble predicting where we'd be today. I think that I can say that fifty-four days from now that, uh, not a thing will come crashing down to our, our surprise.

* * * * * * *

PRESIDENT. Well, the whole thing is a can of worms. As you know, a lot of this stuff went on. And, uh, and, uh, and the people who worked [unintelligible] awfully embarrassing. And, uh, and, the, uh, but the, but the way you, you've handled it, it seems to me, has been very skillful, because you—putting your fingers in the dikes every time that leaks have sprung here and sprung there. [Unintelligible] having people straighten the [unintelligible]. The Grand Jury is dismissed now? (HJCT 7)

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[10] In the White House Transcript the words "We tried" appear instead of "Quite a three months." (WHT 55)
[11] The words "Yeah. They're White House aides." do not appear in the White House Transcript. (WHT 55)

Dean began to speak of some problems that might lie ahead, remarking that some bitterness and internal dissension existed in CRP because of this case. The President stated:

PRESIDENT. They should just, uh, just behave and, and, recognize this, this is, again, this is war. We're getting a few shots and it'll be over. And, we'll give them a few shots. It'll be over. Don't worry. [Unintelligible]. I wouldn't want to be on the other side right now. Would you? (HJCT 9)

The President said, "I want the most comprehensive notes on all of those that have tried to do us in. Because they didn't have to do it. . . . I mean if the thing had been a clo-uh, they had a very close election everybody on the other side would understand this game. But now, they are doing this quite deliberately and they are asking for it and they are going to get it." (HJCT 10)

After a discussion on ways to get even with those who had made an issue of Watergate, Dean turned to the Patman (Banking and Currency Committee) hearings. He identified the hearings as another potential problem "now that the indictments are down." He was uncertain of success in "turning that off." He continued:

DEAN. . . . We've got a plan whereby Rothblatt and Bittman, who are counsel for the five men who were, or actually a total of seven, that were indicted today, are going to go up and visit every member and say, "If you commence hearings you are going to jeopardize the civil rights of these individuals in the worst way, and they'll never get a fair trial," and the like, and try to talk to members on, on that level. Uh—

PRESIDENT. Why not ask that they request to be heard by, by the Committee and explain it publicly?

DEAN. How could they—They've planned that what they're going to say is, "If you do commence with these hearings, we plan to publicly come up and say what you're doing to the rights of individuals." Something to that effect.

PRESIDENT. As a matter of fact they could even make a motion in court to get the thing dismissed.

DEAN. That's another thing we're doing is to, is

PRESIDENT. Because these hearings—

DEAN. bring an injunctive action against, uh, the appearance, say—

HALDEMAN. Well, going the other way, the dismissal of the, of the, of the indictment—[12]

PRESIDENT. How about trying to get the criminal cases, criminal charges dismissed on the grounds that there, well, you know—

HALDEMAN. The civil rights type stuff. (HJCT 11–12)

Dean said that he was working with civil rights groups to put pressure on Patman and suggested that Stans go to see Congressman Ford and brief him on Stans' difficulties with the law suits. They could also look at the campaign spending reports of every member of the Patman Committee. (HJCT 12–13)

The three men spoke of how to influence the minority members of the Committee. Both Secretary Connally and Congressman Ford were mentioned as liaison people. (HJCT 12–13) The President took charge. He said to Haldeman: "Put it down, uh, Gerry should talk to Widnall and, uh, just brace him, tell him I thought it was [unintelligible] start behaving. Not let him be the chairman of the Committee in the House. That's what you want?" Dean replied, "That would be very helpful, to get our minority side at least together on the thing." (HJCT 13)

The President continued to stress the importance of cutting off the Patman hearings, which Dean said was a forum over which they would have the least control.

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[12] The passage beginning "That's another thing we're doing . . ." and ending ". . . of the indictment" does not appear in the White House Transcript. (WHT 68)

PRESIDENT. Gerry has really got to lead on this. He's got to be really be [unintelligible]

HALDEMAN. Gerry should, damn it. This is exactly the thing he was talking about, that the reason they are staying in is so that they can

PRESIDENT. That's right.

HALDEMAN. run investigations.

PRESIDENT. Well, the point is that they ought to raise hell about this, uh, this—these hearings are jeopardizing the—I don't know that they're that the, the, the counsel calling on the members of the Committee will do much good. I was, I—it may be all right but—I was thinking that they really ought to blunderbuss in the public arena. It ought to be publicized.

DEAN. Right.

HALDEMAN. Good.

DEAN. Right.

PRESIDENT. That's what this is, public relations.

DEAN. That's, that's all it is, particularly if Patman pulls the strings off, uh—That's the last forum that, uh, uh, it looks like it could be a problem where you just have the least control the way it stands right now. Kennedy has also suggested he may call hearings of his Administrative Practices and Procedure Subcommittee. Uh, as, as this case has been all along, you can spin out horribles that, uh, you, you can conceive of, and so we just don't do that. I stopped doing that about, uh, two months ago.

PRESIDENT. Yeah.

DEAN. We just take one at a time and you deal with it based on—

PRESIDENT. And you really can't just sit and worry yourself

DEAN. No.

PRESIDENT. about it all the time, thinking, "The worst may happen," but it may not. So you just try to button it up as well as you can and hope for the best. And,

DEAN. Well if Bob—

PRESIDENT. and remember that basically the damn thing is just one of those unfortunate things and, we're trying to cut our losses.

DEAN. Well, certainly that's right and certainly it had no effect on you. That's the, the good thing.

HALDEMAN. It really hasn't.

PRESIDENT. [Unintelligible.]

HALDEMAN. No, it hasn't. It has been kept away from the White House almost completely and from the President totally. The only tie to the White House has been the Colson effort they keep trying to haul in. (HJCT 13-14)

The President returned to the problem of the Patman Committee and the use of Ford. He rejected Mitchell as the man to contact Ford. (HJCT, 15) The President said, ". . . maybe Ehrlichman should talk to him. Ehrlichman understands the law, and the rest, and should say, 'Now God damn it, get the hell over with this.'" [13] The President elaborated on how the plan must be carried out. He explained that the Congressman has to know that it comes from the top but that he cannot talk to him himself.

PRESIDENT. I think maybe that's the thing to do [unintelligible]. This is, this is big, big play. I'm getting into this thing. So that he—he's got to know that it comes from the top.[14]

HALDEMAN. Yeah.

PRESIDENT. That's what he's got to know,

DEAN. Right.

PRESIDENT. and if he [unintelligible] and we're not going to—I can't talk to him myself—and that he's got to get at this and screw this thing up while he can, right?

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[13] The words "Now God damn it, get the hell over with this" do not appear in the White House Transcript. (WHT 72)

[14] The words "I'm getting into this thing." do not appear in the White House Transcript. (WHT 72)

DEAN. Well, if we let that slide up there with the Patman Committee it'd be just, you know, just a tragedy to[15] let Patman have a field day up there.[16]
PRESIDENT. What's the first move? When does he call his wit—, witnesses? (HJCT 15–16)

Dean reported that Patman had not even gotten the vote of his Committee, "[H]e hasn't convened his Committee yet on whether he can call hearings." Dean also reported that Congressman Brown had written a letter to Kleindienst, saying that the Committee hearings were going to jeopardize the criminal cases against the Watergate defendants. The President approved of this. Dean told the President "we can keep them well briefed on the moves if they'll, if they'll move when we provide them with the, the strategy." (HJCT 16) Dean reported that there was a likelihood that Stans' libel suit would be dismissed but that they would still have the abuse of process suit pending. (HJCT 17)

HALDEMAN. We can take depositions on both of those?
DEAN. Absolutely.
PRESIDENT. Hell yes.
HALDEMAN. [Laughs]
PRESIDENT. [Unintelligible] depositions.
DEAN. It's a, it's a glimmer down the road anyway, but, uh— (HJCT 18)

The final step was to carry out the President's decision to stop the Patman hearings. After the September 15, 1972 meeting, and a consultation with Haldeman, Dean began to take the necessary steps. (Dean testimony, 3 SSC 960–62) He contacted Assistant Attorney General Henry Petersen and successfully urged that he write a letter to the House Committee pointing out that the hearings could prejudice the rights of the seven Watergate defendants. (Dean testimony, 3 SSC 961, 1194–99) On October 2, 1972 the same day the Petersen letter was sent to the Committee, the Committee released the names of the persons it expected to call to testify during its hearings. The list included the names of Magruder, Sloan, Caulfield, Mitchell, Stans, Dean, Mardian, LaRue, Porter and MacGregor. (Dean testimony, 3 SSC 961, 1190–93) The next day, the House Committee on Banking and Currency voted 20 to 15 to withhold from its Chairman, Wright Patman, the power to issue subpoenas for the purpose of investigating the financing of the Watergate break-in.[17] (Dean testimony, 3 SSC 962)

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[15] The words "with the Patman Committee" do not appear in the White House Transcript. (WHT 72)
[16] In the White House Transcript "Them" appears instead of "Patman". (WHT 72)
[17] The statement of Chairman Patman on October 3, 1972, and his letter to Chairman Rodino dated May 11, 1974, are appended hereto, as they have not been previously placed in the record. (See Appendix B.)

Payments

I

Prior to the Watergate operation Gordon Liddy gave Howard Hunt $10,000 to use in case there was a mishap. Hunt placed the money in the safe in his EOB office. Immediately after the arrests at the Watergate, Hunt went to his EOB office and withdrew the money. In the early morning hours following the break-in, Hunt delivered the money on behalf of those arrested to an attorney. (Book II, 76–77)

On June 20 or 21, 1972 Liddy told LaRue and Mardian that commitments for bail money, maintenance and legal assistance had been made and that Hunt felt it was CRP's obligation to provide bail money to get the men out of jail. Liddy also told LaRue and Mardian of his and Hunt's prior involvement in the Fielding break-in. (Book III, 91, 93–95) Thereafter Mardian and LaRue reported to Mitchell on Liddy request for money. (Book III, 98–99, 104–05)

Between June 26 and 28, 1972, after discussions with Mitchell, Ehrlichman and Haldeman, Dean met on three occasions with CIA Deputy Director Walters and suggested, among other things, that the CIA provide the bail and salaries of the persons arrested. Walters rejected the requests. (Book III, 132–42)

On June 28, 1972 Haldeman and Ehrlichman approved Dean's contacting Herbert Kalmbach, President Nixon's personal attorney, to ask Kalmbach to raise funds for the Watergate defendants. (Book III, 144–52, 155, 277–79; WHT 494–96) Kalmbach flew to Washington that night, and the following morning met with Dean (Book III, 152, 154–55) and LaRue (Book III, 176–77, 179–80) to discuss procedures for making payments. Thereafter Kalmbach received cash from CRP officials Stans (Book III, 167, 170–71) and LaRue (Book III, 257–61) and from a private contributor whom Kalmbach told he could not reveal the purpose of the contribution. (Book III, 282–83, 286–87)

Between July 7, 1972 and September 19, 1972 (Book III, 208–17, 259–60, 284–85, 377) Kalmbach directed Anthony Ulasewicz to make payments totaling $187,500 for the Watergate defendants. (Book III, 378–79) Ulasewicz made the deliveries by sealing cash in unmarked envelopes and leaving the envelopes at various drops such as airport lockers. (Book III, 222–28) He communicated with Kalmbach, LaRue and the recipients of the payments using aliases. (Book III, 173, 176–77, 225–26, 229)

In September 1972 Kalmbach told Dean and LaRue that he would not continue his role in making the payments. Kalmbach transferred the remainder of the funds to LaRue and burned his records of the transactions. (Book III, 378–82)

II

Gordon Liddy and Howard Hunt were involved in both the Fielding and the Watergate break-ins and knew the identity of the superiors who had authorized their activities. Liddy agreed to remain silent and did not make many demands. From the outset Hunt was a problem because he made demands for himself and the others. (Book III, 88–95) During the summer and fall, Hunt received payments for himself and other defendants amounting to over $200,000. (Book III, 218–19, 223, 233, 383, 386–89)

Shortly after the November 1972 election, Hunt contacted his friend Colson. (Book III, 411, 414) Hunt told Colson that "commitments that were made to us at the outset have not been kept." (Book III, 408) Hunt stated:

> . . . we're protecting the guys who are really responsible, but now that's . . . and of course that's a continuing requirement, but at the same time, this is a two way street and as I said before, we think that now is the time when a move should be made and surely the cheapest commodity available is money. (Book III, 409)

Colson tape recorded this conversation and gave it to Dean. (Book III, 417) Dean has testified that he played the recording for Haldeman and Ehrlichman,[1] who instructed Dean to play it for Mitchell. Dean flew to New York and played the recording for Mitchell. (Book III, 418–19) Mitchell verifies this, describing the tape as a lot of self-serving statements by Colson. (Mitchell testimony, 2 HJC 134–35)

In late November 1972, Dean reported to Haldeman of the need for additional funds to make payments to the defendants. (Book III, 430–32) Haldeman then ordered the delivery to LaRue of a portion of the $350,000 in cash from a special fund Haldeman personally controlled[2]. (Book III, 432–35, 440–44, 449) Strachan delivered between $40,000 and $70,000 to LaRue, who handled the cash using rubber gloves and refused to furnish Strachan with a receipt. In January 1973, at Haldeman's direction, LaRue received the remainder of the fund. (Book III, 437–41) Prior to March 21, 1973 LaRue disbursed $132,000 from the fund for the defendants, including $100,000 to Hunt's attorney, William Bittman. (Book III, 436–38, 500, 518–19; LaRue testimony, 1 HJC 203–04)

On March 16, 1973 Hunt met with Colson's law partner, David Shapiro. (Book III, 925; Colson Exhibit No. 18, 3 HJC 324) Hunt told Shapiro that if certain financial commitments which had been made to him were broken the Republicans would lose the 1974 elections and probably the 1976 one, but if commitments were kept none of his men would "blow." Shapiro's memorandum of the meeting reads:

> Hunt stated that several persons should be terribly concerned were he to testify before the Ervin Committee (where he said he presently proposed to invoke the 5th Amendment). These persons he identified as John Dean, Bud Krogh, Pat Gray, John Mitchell and one or two others whom I can't remember (I did not take notes). Hunt said he knew he was risking the possibility of an

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[1] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials.

[2] Mitchell has testified before the Committee that it was his supposition that the White House approved the use of the $350,000 fund in order to keep the defendants happy. (Mitchell testimony, 2 HJC 133–34)

obstruction of justice charge when he convinced those who pleaded guilty to do so, but is also convinced that if the comitments made to him are kept, no one in his "operation" will "blow." In apparent contradiction to his prior statement, however, Hunt said he was concerned that McCord was the one weak link in his "operation" and that McCord could well "open up" to the detriment of those concerned. (Colson Exhibit No. 19, 3 HJC 327)

On March 19, 1973 Shapiro met with Colson and related the substance of his conversation with Hunt on March 16. Shapiro advised Colson not to tell anyone at the White House about Hunt's message because he might "unwittingly become a party to an obstruction of justice." Colson concluded that the only way he could help the President was to recommend that the President appoint a Special Counsel of impeccable credentials who was not involved in Watergate. Shapiro suggested J. Lee Rankin, a former Solicitor General, and Shapiro arranged to discuss this with Rankin on March 21, 1973. On the evening of March 19, 1973 Colson had a telephone conversation with the President during which they discussed the political impact of Watergate, but according to Colson he did not raise his suggestion for the appointment of a Special Counsel until he spoke with the President at 7:53 p.m. on March 21, 1973 and suggested Rankin's appointment as Special Counsel.[3] (Colson testimony, 3 HJC 331–33)

On or about March 16, 1973 Hunt told Paul O'Brien, a CRP attorney, that he had to have $130,000 before his sentencing. Hunt said he had done "seamy things" for the White House and that if he were not paid he might have to reconsider his options. (Book III, 902–04, 906–07, 910–13) O'Brien conveyed Hunt's message to Dean. (Book III, 946–48) O'Brien testified that Dean told him that he and Dean were being used as conduits in an obstruction of justice. (O'Brien testimony, 1 HJC 128) At 3:30 p.m. on March 20, 1973, Dean and Ehrlichman discussed Hunt's demand for money and the possibility that Hunt would reveal the activities of the Plumbers' operations if the money were not forthcoming. (Book III, 952–59, 963) Ehrlichman left Dean to see the President. Haldeman joined him on the way. (Book II, 247) From 4:26 to 5:39 p.m. the President and Ehrlichman met.[4] Ehrlichman told Krogh, who formerly co-directed the Plumbers, that Hunt was asking for a great deal of money and if it were not paid Hunt might blow the lid off and tell all he knew. (Book III, 960–62) On March 20, 1973 Dean also discussed Hunt's demand with at least Krogh and Richard Moore. (Book III, 957–61 966, 968).[5]

On the evening of March 20, 1973, the President called Dean.[6] (WHT 161) Dean told the President he had spoken with Ehrlichman that afternoon, before Ehrlichman met with the President. Dean said, "I think that one thing that we have to continue to do, and particularly right now, is to examine the broadest, broadest implica-

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[3] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recordings and other material related to these two conversations. The President has refused to produce these materials.

[4] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials.

[5] Dean has testified that he also spoke with LaRue on March 20 or March 21 prior to his morning meeting with the President or on both days. (Dean testimony, 2 HJC 260–62) LaRue has testified that he had a telephone conservation with Dean regarding Hunt's demand on the morning of March 21, 1973. (LaRue testimony 1 HJC 230.)

[6] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

tion of this whole thing, and, you know, maybe about 30 minutes of just my recitation to you of facts so that you operate from the same facts that everybody else has." (WHT 163) The President agreed to meet with Dean the following morning. (WHT 164)

III

Dean met with the President for almost two hours on the morning of March 21, 1973. (HJCT 79) Dean opened the meeting by briefing the President on the payment activity that had occurred. He told the President that there had been payments to Watergate defendants; that the payments were made to keep things from "blowing"; that this activity constituted an obstruction of justice; and that in addition to Dean, the President's chief of staff Haldeman, domestic advisor Ehrlichman, and his campaign director Mitchell were all involved. (HJCT 90)

In response to this report the President did not condemn the payments or the involvement of his closest aides. He did not direct that the activity be stopped. The President did not express any surprise or shock. He did not report to the proper investigatory agencies. He indicated familiarity with the payment scheme, and an awareness of some details—such as the use of a Cuban Committee:[7]

DEAN. Uh, Liddy said, said that, you know, if they all got counsel instantly and said that, you know, "We'll we'll ride this thing out." All right, then they started making demands. "We've got to have attorneys' fees. Uh, we don't have any money ourselves, and if—you are asking us to take this through the election." All right, so arrangements were made through Mitchell, uh, initiating it, in discussions that—I was present—that these guys had to be taken care of. Their attorney's fees had to be done. Kalmbach was brought in. Uh, Kalmbach raised some cash. Uh, they were obv—, uh, you know,

PRESIDENT. They put that under the cover of a Cuban Committee or [unintelligible]

DEAN. Yeah, they, they had a Cuban Committee and they had—some of it was given to Hunt's lawyer, who in turn passed it out. This, you know, when Hunt's wife was flying to Chicago with ten thousand, she was actually, I understand after the fact now, was going to pass that money to, uh, one of the Cubans—to meet him in Chicago and pass it to somebody there.

PRESIDENT. [Unintelligible]. Maybe—Well, whether it's maybe too late to do anything about it, but I would certainly keep that, [laughs] that cover for whatever it's worth.

DEAN. I'll—

PRESIDENT. Keep the Committee.[8]

DEAN. Af—, after, well, that, that, that's

PRESIDENT. [Unintelligible]

DEAN. The most troublesome post-thing, uh, because (1) Bob is involved in that; John is involved in that; I am involved in that; Mitchell is involved in that. And that's an obstruction of justice.

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[7] There is another detail that the President seemed familiar with and that was the use of Pappas. There is evidence that Ehrlichman suggested to LaRue that Pappas, a long-time supporter of the President, be contacted to see if he would be of any assistance in connection with raising the money. (Book III, 958) This was brought up in the March 21 conversation and the President indicated that he already knew about this:

DEAN. Uh, people are going to ask what the money is for. He's working—He's apparently talked to Tom Pappas.

PRESIDENT. I know.

DEAN. And Pappas has, uh, agreed to come up with a sizeable amount, I gather, from, from

PRESIDENT. Yeah.

DEAN. Mitchell.* (HJCT 94)

* The words "from from—", "Yeah", and "Mitchell" do not appear in the White House Transcript. (WHT 194)

[8] This line does not appear in the White House transcript (WHT 194)

PRESIDENT. In other words the fact that, uh, that you're, you're, you're taking care of witnesses.

DEAN. That's right. Uh,

PRESIDENT. How was Bob involved?

DEAN. Well, th—, they ran out of money over there. Bob had three hundred and fifty thousand dollars in a safe over here that was really set aside for polling purposes. Uh, and there was no other source of money, so they came over here and said, "You all have got to give us some money."

PRESIDENT. Right.

DEAN. I had to go to Bob and say, "Bob, you know, you've got to have some—they need some money over there." He said "What for?" And so I had to tell him what it was for 'cause he wasn't about to just send money over there willy-nilly. And, uh, John was involved in those discussions, and we decided, you know, that, you know, that there was no price too high to pay to let this thing blow up in front of the election.

PRESIDENT. I think you should handle that one pretty fast.

DEAN. Oh, I think—

PRESIDENT. That issue, I mean.

DEAN. I think we can.

PRESIDENT. So that the three-fifty went back to him. All it did was—[9]

DEAN. That's right. I think we can too.

PRESIDENT. Who else [unintelligible]?

DEAN. But, now, here, here's what's happening right now.

PRESIDENT. Yeah. (HJCT 89–91)

After this initial briefing, Dean turned to the crisis precipitated by Hunt's demands. Dean explained that these demands by Hunt, and possibly others, could, over the next two years, amount to a million dollars. The President said that one million dollars was available. The troublesome issue was exactly how it could be raised and used to avoid disclosure of the cover-up. The President considered various alternatives.

DEAN. . . . Now, where, where are the soft spots on this? Well, first of all, there's the, there's the problem of the continued blackmail.

PRESIDENT. Right.

DEAN. which will not only go on now, it'll go on when these people are in prison, and it will compound the obstruction of justice situation. It'll cost money. It's dangerous. Nobody, nothing—people around here are not pros at this sort of thing. This is the sort of thing Mafia people can do: washing money, getting clean money, and things like that, uh—we're—We just don't know about those things, because we're not used to, you know—we are not criminals and not used to dealing in that business. It's, uh, it's, uh—

PRESIDENT. That's right.

DEAN. It's a tough thing to know how to do.

PRESIDENT. Maybe we can't even do that.

DEAN. That's right. It's a real problem as to whether we could even do it. Plus there's a real problem in raising money. Uh, Mitchell has been working on raising some money. Uh, feeling he's got, you know, he's got one, he's one of the ones with the most to lose. Uh, but there's no denying the fact that the White House, and, uh, Ehrlichman, Haldeman, Dean are involved in some of the early money decisions.

PRESIDENT. How much money do you need?

DEAN. I would say these people are going to cost, uh, a million dollars over the next, uh, two years.

PRESIDENT. We could get that.

DEAN. Uh huh.

PRESIDENT. You, on the money, if you need the money, I mean, uh, you could get the money. Let's say—

DEAN. Well, I think that we're going—

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[9] This line does not appear in the White House Transcript. (WHT, 188.)

PRESIDENT. What I meant is, you could, you could get a million dollars. And you could get it in cash. I, I know where it could be gotten.

DEAN. Uh huh.

PRESIDENT. I mean it's not easy, but it could be done. But, uh, the question is who the hell would handle it?

DEAN. That's right, Uh—

PRESIDENT. Any ideas on that?

DEAN. Well, I would think that would be something that Mitchell ought to be charged with.

PRESIDENT. I would think so too.

DEAN. And get some, get some pros to help him.

PRESIDENT. Let me say, there shouldn't be a lot of people running around getting money. We should set up a little—[10]

DEAN. Well, he's got one person doing it who I am not sure is—

PRESIDENT. Who is that?

DEAN. He's got Fred LaRue, uh, doing it. Now Fred started out going out trying to

PRESIDENT. No.

DEAN. solicit money from all kinds of people. Now, I learned about that, and I said,

PRESIDENT. No.

DEAN. "My God."

PRESIDENT. No.

DEAN. "It's just awful, Don't do it."

PRESIDENT. Yeah.

DEAN. Uh, people are going to ask what the money is for. He's working—He's apparently talked to Tom Pappas.

PRESIDENT. I know.

DEAN. And Pappas has, uh, agreed to come up with a sizeable amount, I gather, from, from

PRESIDENT. Yeah.

DEAN. Mitchell.[11]

PRESIDENT. Yeah. Well, what do you need, then? You need, uh, you don't need a million right away, but you need a million. Is that right?

DEAN. That's right.

PRESIDENT. You need a million in cash, don't you? If you want to put that through, would you put that through, uh—this is thinking out loud here for a moment—would you put that through the Cuban Committee?

DEAN. Um, no.

PRESIDENT. Or would you just do this through a [unintelligible] [12] that it's going to be, uh, well, it's cash money, and so forth. How, if that ever comes out, are you going to handle it? Is the Cuban Committee an obstruction of justice, if they want to help?

DEAN. Well, they've got a pr—, they've got priests, and they—

PRESIDENT. Would you like to put, I mean, would that, would that give a little bit of a cover, for example?

DEAN. That would give some for the Cubans and possibly Hunt.

PRESIDENT. Yeah.

DEAN. Uh, then you've got Liddy, and McCord is not, not accepting any money. So, he's, he is not a bought man right now.

PRESIDENT. Okay. (HJCT 93–95)

The discussion had been addressed primarily to a general consideration of the necessity for payments over the long term. There still remained the immediate demand by Hunt for approximately $120,000. The President said that Hunt's demands should be met. At the very least, he reasoned, the payment would buy time.

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[10] "We should set up a little—" does not appear in the White House Transcript. (WHT 194)

[11] This line does not appear in the White House Transcript. (WHT 194)

[12] This line does not appear in the White House transcript. (WHT, 195.)

PRESIDENT. Well, your, your major, your major guy to keep under control is Hunt.

DEAN. That's right.

PRESIDENT. I think. Because he knows.

DEAN. He knows so much.

PRESIDENT. about a lot of other things.[13]

DEAN. He knows so much. Right. Uh, he could sink Chuck Colson. Apparently, apparently he is quite distressed with Colson. He thinks Colson has abandoned him. Uh, Colson was to meet with him when he was out there, after, now he had left the White House. He met with him through his lawyer. Hunt raised the question; he wanted money. Colson's lawyer told him that Colson wasn't doing anything with money, and Hunt took offense with that immediately, that, uh, uh, that Colson had abandoned him. Uh—

PRESIDENT. Don't you, just looking at the immediate problem, don't you have to have—handle Hunt's financial situation

DEAN. I, I think that's,

PRESIDENT. damn soon?

DEAN. that is, uh, I talked to Mitchell about that last night,

PRESIDENT. Mitchell.

DEAN. and, and, uh, I told—

PRESIDENT. Might as well. May have the rule you've got to keep the cap on the bottle that much,

DEAN. That's right; that's right.

PRESIDENT. in order to have any options.

DEAN. That's right.

PRESIDENT. Either that or let it all blow right now.

DEAN. Well that, you know, that's the, that's the question. Uh—

PRESIDENT. Now, go ahead. The others. You've got Hunt; (HJCT 96)

* * * * * * *

DEAN. But what I am coming to you today with is: I don't have a plan of how to solve it right now, but I think it's at the juncture that we should begin to think in terms of, of how to cut the losses; how to minimize the further growth of this thing, rather than further compound it by, you know, ultimately paying these guys forever.

PRESIDENT. Yeah.

DEAN. I think we've got to look—

PRESIDENT. But at the moment, don't you agree that you'd better get the Hunt thing? I mean, that's worth it, at the moment.[14]

DEAN. That, that's worth buying time on, right.

PRESIDENT. And that's buying time on, I agree. (HJCT 105)

The President and Dean continued to discuss the payments. They discussed Haldeman's transfer of the $350,000 to the CRP in December and January for the purpose of meeting the demands made by Hunt and the other defendants. They considered the pros and cons of adopting a new strategy and calling a halt to the payments. At the conclusion of that discussion on March 21, the President stated that they could not let things blow.

PRESIDENT. Suppose the worst—that Bob is indicted and Ehrlichman is indicted. And I must say, maybe we just better then try to tough it through. You get my point.

DEAN. That's right. That—

PRESIDENT. If, if, if, for example, our, uh, our—say, well, let's cut our losses and you say we're going to go down the road, see if we can cut our losses, and

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[13] In place of "Because he knows about a lot of other things," the White House Transcript reads "Does he know a lot?" (WHT 196)

[14] In place of "I mean, that's worth it, at the moment," the White House Transcript reads ". . . that's where that — —" (WHT, 209.)

no more blackmail and all the rest, and the thing blows and they indict Bob and the rest. Jesus, you'd never recover[15] from that, John.

DEAN. That's right.

PRESIDENT. It's better to fight it out instead. You see, that's the other thing, the other thing. It's better just to fight it out, and not let people testify, so forth and so on. Now, on the other hand, we realize that we have these weaknesses—that, uh, we, we've got this weakness in terms of—blackmail. (HJCT, 106.)

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PRESIDENT. Let me say, though that Hunt [unintelligible] hard line, and that a convicted felon is going to go out and squeal [unintelligible] as we about this [unintelligible] decision [unintelligible] turns on that.

DEAN. Well, we can always, you know, on the other side, we can always charge them with blackmailing us, and it's, you know, this is absurd stuff they're saying, and—

PRESIDENT. That's right. You see, even the way you put it out here, of course if it all came out, it may never, it may not—never, never get there. (HJCT 108)

After about an hour of discussion between the President and Dean, Haldeman entered the meeting. In Haldeman's presence, the issue of the immediate payment to Hunt was again discussed. The President stated that they had better well get it done fast:

PRESIDENT. Yeah. What do they gain out of it?

DEAN. Nothing.

PRESIDENT. To hell with them.

DEAN. They, they're going to stonewall it, uh, as it now stands. Except for Hunt. That's why, that's the leverage in his threat.

HALDEMAN. This is Hunt's opportunity.

DEAN. This is Hunt's opportunity.

PRESIDENT. That's why, that's why,

HALDEMAN. God, if he can lay this—

PRESIDENT. that's why your, for your immediate thing you've got no choice with Hunt but the hundred and twenty or whatever it is. Right?

DEAN. That's right.

PRESIDENT. Would you agree that that's a buy time[16] thing, you better damn well get that done, but fast?

DEAN. I think he ought to be given some signal, anyway, to, to—

PRESIDENT. Yes

DEAN. Yeah—You know.

PRESIDENT. Well for Christ's sakes get it in a, in a way that, uh—Who's, who's going to talk to him? Colson? He's the one who's supposed to know him.

HJCT 121)

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PRESIDENT. That's right. Try to look around the track. We have no choice on Hunt but to try to keep him—

DEAN. Right now, we have no choice.

PRESIDENT. But, but my point is, do you ever have any choice on Hunt? That's the point.

DEAN. [Sighs]

PRESIDENT. No matter what we do here now, John,

DEAN. Well, if we—

PRESIDENT. Hunt eventually, if he isn't going to get commuted and so forth, he going to blow the whistle.[17]

(HJCT, 125)

The President also instructed Dean and Haldeman to lie about the arrangements for payments to the defendants.

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[15] In place of "and they indict Bob," the White House Transcript reads "cutting Bob." (WHT 210)

[16] Instead of "buy time" the White House Transcript reads "prime." (WHT 236)

[17] Instead of "Hunt eventually, if he isn't going to get commuted" the White House transcript reads "whatever he wants, if he doesn't get it—immunity." (WHT 242)

PRESIDENT. As far as what happened up to this time, our cover there is just going to be the Cuban Committee did this for them up through the election.[18]

DEAN. Well, yeah. We can put that together. That isn't, of course, quite the way it happened, but, uh—

PRESIDENT. I know, but it's the way it's going to have to happen.

(HJCT. 119)

On the afternoon of March 21, 1973 the President met with Dean, Haldeman and Ehrlichman. (HJCT 131) During this meeting, the President asked what was being done about Hunt's demand. Dean said Mitchell and LaRue knew of Hunt's feeling and would be able to do something. (HJCT 133) Late that evening, March 21, 1973, LaRue, after talking to Mitchell, delivered $75,000 to Bittman. (Book III, 1188, 1193, 1206) On the next day, March 22, Mitchell told Haldeman, Ehrlichman and Dean that Hunt was not a "problem any longer." (Book III, 1255–57, 1269, 1271) Later that day Ehrlichman told Krogh that Hunt was stable and would not disclose all. (Book III, 1278–79) A few days later, on March 27, 1973, Haldeman talked to the President about payments to Hunt—though it is unclear to which specific payment he referred. "Hunt is at the Grand Jury today," Haldeman said. "We don't know how far he's going to go. The danger area for him is on the money, that he was given money. He is reported by O'Brien, who has been talking to his lawyer, Bittman, not to be as desperate today as he was yesterday but to still be on the brink, or at least shaky. What's made him shaky is that he's seen McCord bouncing out there and probably walking out scot free." (WHT 326–27) On April 16, 1973 Dean had a conversation with the President during which they discussed settlement of the Hunt demand. Dean said to the President that Mitchell had told him, Haldeman and Ehrlichman on March 22, that the problem with Hunt had been solved. The President expressed his satisfaction that the Hunt problem had been solved "at the Mitchell level." The President also said he was "planning to assume some culpability on that. [Unintelligible]" [19] (HJCT 194–95)

On April 8, 1973 Dean, and on April 13, 1973 Magruder, began talking to the prosecutors. (Book IV, 538, 610.) The problem was, as Haldeman later pointed out to the President on the afternoon of April 17, 1973,[20] people would say the President should have told Dean on March 21 that the blackmail was wrong, not that it was too costly. (WHT 1034)

In the middle of April, the President tried to diminish the significance of his March 21 conversation with Dean. He tried to ascribe to the payments a purpose that he believed would make them appear innocent and within the law. On April 14,[21] the President instructed

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[18] Instead of "our cover there is just going to be" the White House Transcript reads "[these fellows] are covered on their situation, because . . ." (WHT 242)

[19] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[20] The White House Transcript reads "That assumes culpability on that, doesn't it?" (WHT 798)

[21] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

Haldeman and Ehrlichman to agree on the story that payments were made, not "to obstruct justice," but to pay the legal fees and family support of the defendants.

P The bad part of it is that the Attorney General, and the obstruction of justice thing which it appears to be. And yet, they ought to go on fighting, in my view, a fighting position on that. I think they all ought to fight. That this was not an obstruction of justice, we were simply trying to help these defendants. Don't you agree with that or do you think that's my—is that——

E I agree. I think it's all the defendants, obviously.

P I know if they could get together on the strategy. It would be pretty good for them. (WHT 628)

That night, the President told Haldeman:

P I just don't know how it is going to come out. That is the whole point, and I just don't know. And I was serious when I said to John at the end there, damn it all, these guys that participated in raising money, etc. have got to stick to their line that they did not raise this money to obstruct justice (WHT 639–40)

On the morning of April 15, 1973, the President and Ehrlichman discussed possible explanations that could be given regarding the motives in making payments to the defendants. (WHT 676–79) [23] Later that morning the President and Kleindienst discussed the effect of motivation for payments on criminal ailbility. (WHT 704–08) [24] On the night of April 15, according to Dean's testimony, the President told Dean he had only been joking when he told Dean on March 21, 1973 that it would be easy to raise a million dollars to silence the defendants. (Book IV, 1041–43) (The President many months later stated that this conversation with Dean had not been recorded.) (Book IV, 1057) On April 16, 1973 the President initiated a conversation with Dean in which he tried to suggest that, on March 21 Dean told him not about Hunt's threat, but only about Hunt's need for money. (HJCT 194) Both of these suggestions regarding the March 21 meetings are refuted by the transcripts, which, under compulsory process, were obtained much later.

At a time when the tapes and the transcripts were not available to investigatory agencies, the President counted on Haldeman to handle his account of the March 21 conversation. On April 25 and 26, 1973 the President permitted Haldeman to listen to tapes of several conversations, including the March 21 conversation with Dean. On the afternoon of April 25, 1973, they talked for about an hour; on April 26, 1973 Haldeman and the President met for five hours.[25] (Book IV, 1557–1609) On June 4, 1973 the President told Ziegler that he did not have to listen to the March 21 tape and that that was the tough one

[22] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[23] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[24] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but produced a portion of the edited transcript recorded before the tape ran out in the EOB office.

[25] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recordings and other material related to these conversations of April 25 and 26, 1973. The President has refused to produce these materials.

but Haldeman could handle it.[26] (Book IX, 216) In August 1973 Haldeman testified before the Senate Select Committee that on March 21 the President said that the payment of money would be wrong. (Book IX, 440) Immediately thereafter, the President affirmed in public statements that he had a similar recollection. ("Presidential Statements", 8/15/73, 49) Later, in the spring of 1974 upon making public the White House edited transcripts, the President told the American people that what had really been important about the March 21 conversation was not what he actually said, but what he meant. ("Presidential Statements", 4/29/74, 87–88.)

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[26] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recordings and other material related to two conversations between the President and Haldeman on June 4, 1973. The President has refused to produce these materials.

Clemency

I

On October 11, 1972 Hunt filed a motion for the return of the documents recovered from his EOB safe which included two notebooks. (*U.S.* v. *Liddy*, motion, 10/11/72; Book II, 425) On December 22, 1972 Petersen questioned Dean about the notebooks which Hunt claimed had been taken from his safe but had not been inventoried by the FBI. (Petersen testimony, 3 HJC 75–76; Book II, 422–23) The notebooks were among the documents contained in Hunt's safe which were not given to FBI agents investigating the Watergate break-in but remained in Dean's office. (Book II, 425) Petersen told Dean that he would be called as a witness in the hearing on Hunt's motion. (Petersen testimony, 3 HJC 76) Colson was also a potential witness. (Book III, 473–74)

On December 31, 1972 Hunt wrote to Colson complaining about his "abandonment by friends on whom I had in good faith relied" and suggesting that he was close to breaking down. (Book III, 458) Hunt's trial was scheduled to begin on January 8, 1973. (*U.S.* v. *Liddy*, docket)

On January 3, 1973 Colson, Dean and Ehrlichman discussed the need to reassure Hunt about the amount of time he would have to spend in jail. (Book III, 460) Later, on April 14, 1973, Ehrlichman reported to the President about his conversation with Colson: "[Colson] said, 'What can I tell [Hunt] about clemency.' And I said 'Under no circumstances should this ever be raised with the President.'" [1] (WHT 421)

Later that day, and again on the following day, Colson met with Bittman, Hunt's attorney. Bittman discussed Hunt's family problems since December 8, 1972 when his wife had died. Bittman told Colson that Hunt was "terrified with the prospect of receiving a substantial jail sentence" because of his children, but that he thought Hunt might be able to survive the prospect of a reasonable term, perhaps a year. (Bittman testimony, 2 HJC 23; Colson Exhibit No. 17, 3 HJC 308) According to Colson, Bittman also mentioned that he understood that Dean and Mitchell developed plans for electronic surveillance prior to Watergate. (Colson Exhibit No. 17, 3 HJC 308–09) Colson assured Bittman of his friendship for Hunt, of the need for Hunt to be out of jail, and of Colson's willingness to do whatever he could to assist Hunt. Colson has stated:

> In addition, I may well have told Bittman that I had made "people" aware that, if it were necessary, I was going to come back to the White House to speak for Hunt. Indeed, since I wanted to do all I could to comfort Hunt, it is most

[1] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

probable that I did say this. I do not know how Bittman evaluated my position and influence at the White House, but despite my insistence that I could do no more than try to help Hunt as a friend, Bittman might have inferred that if Hunt received an unreasonably long sentence, my willingness to go to bat for Hunt would result in Hunt's sentence being reduced by executive action of some sort. (Colson Exhibit No. 17, 3 HJC 311)

Colson reported on January 5, 1973 to Ehrlichman and Dean (Book III, 459) about his conversation with Bittman and stated his desire to speak to the President regarding Hunt. Thereafter Colson spoke to the President regarding Hunt's plight.[2] (Book III, 461; Colson Exhibit No. 17, 3 HJC 310)

On January 9, 1973 Hunt's motion for return of documents was withdrawn. (*U.S.* v. *Liddy*, motion, 1/9/73) On January 11, Hunt pleaded guilty to charges against him arising out of Watergate, (Book III, 484)

In the transcripts of the conversations of February 28, March 21 and April 14, 1973 the President spoke of his understanding of the question of clemency for Hunt. On February 28, 1973 the discussion was general. The President spoke to Dean about the Watergate defendants' expectations of clemency. The President asked, "What the hell do they expect, though? Do they expect that they will get clemency within a reasonable time?" Dean told him that he thought they did. The President asked whether clemency could be granted "within six months." Dean replied that it could not because, "This thing may become so political." (HJCT 40) There was no specific mention of Colson's assurances to Hunt, but the President did express familiarity with Hunt's personal situation, the death of his wife. (HJCT 40)

On March 21, 1973 following Hunt's increased demands for money, (Book III, 968) it was not Dean but the President who first mentioned Colson's assurance of clemency to Hunt: "You know Colson has gone around on this clemency thing with Hunt and the rest." Dean added the apparent expectation concerning time. "Hunt is now talking in terms of being out by Christmas." The President seemed surprised by the time commitment. The transcript reads:

HALDEMAN. By Christmas of this year?
DEAN. Yeah.
HALDEMAN. See that, that really, that's very believable 'cause Colson,
PRESIDENT. Do you think Colson could have told him.[3]
HALDEMAN. Colson is an, is an—that's, that's your fatal flaw, really, in Chuck, is he is an operator in expediency, and he will pay at the time and where he is
PRESIDENT. Yeah.
HALDEMAN. whatever he has to, to accomplish what he's there to do.
DEAN. Right. (HJCT 115-16)

On March 21, 1973 the President acknowledged his role in the assurance to Hunt:

Great sadness. The basis, as a matter of fact [clears throat] there was some discussion over there with somebody about, uh, Hunt's problems after his wife died and I said, of course, commutation could be considered on the basis of his wife, and that is the only discussion I ever had in that light. (HJCT 93)

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[2] The House Judiciary Committee on May 30, 1974 subpoenaed the two conversations Charles Colson had with the President on January 5, 1973, and related material. The President has refused to produce these materials.

[3] This line does not appear in the White House transcript. (WHT 226)

In the April 14, 1973 transcript, the President further explained his role. The President acknowledged that, contrary to Ehrlichman's direction, Colson had in fact raised with him the question of clemency in a tangential way. The President said: "As I remember a conversation this day was about five thirty or six o'clock that Colson only dropped it in sort of parenthetically, said I had a little problem today, talking about Hunt, and said I sought to reassure him, you know, and so forth. And I said, Well. Told me about Hunt's wife. I said it was a terrible thing and I said obviously we will do just, we will take that into consideration. That was the total of the conversation." [4] (WHT, 418–19) While in these conversations the President suggests that his discussion of clemency for Hunt was limited, he acknowledges an assurance that Hunt would be considered for clemency based on his wife's death.[5]

In the conversations of March 21 and April 14, 1973 the President acknowledged his predicament on the issue of clemency for Hunt: the President feared that any action that seemed to Hunt a repudiation of the assurance of clemency would lead Hunt to "blow the whistle." On the other hand, the President was aware that the public attention to Watergate had grown so much since January, when the assurance was made, that clemency to Hunt by Christmas 1973 would be politically impossible because it would require direct and public action by the President.

In their conversation on the morning of March 21st, the President told Dean, "You have the problem of Hunt and . . . his clemency." (HJCT 103)

DEAN. That's right. And you're going to have the clemency problem for the others. They all would expect to be out and that may put you in a position that's just

PRESIDENT. Right.

DEAN. untenable at some point. You know, the Watergate Hearings just over, Hunt now demanding clemency or he is going to blow. And politically, it'd be impossible for, you know, you to do it. You know, after everybody—

PRESIDENT. That's right.

DEAN. I am not sure that you will ever be able to deliver on the clemency. It may be just too hot.

PRESIDENT. You can't do it till after the '74 elections, that's for sure. But even then

DEAN. [Clears throat]

PRESIDENT. your point is that even then you couldn't do it.

DEAN. That's right. It may further involve you in a way you shouldn't be involved in this.

PRESIDENT. No it's wrong; that's for sure.

DEAN. Well, whatever—you know I—there've been some bad judgments made. There've been some necessary judgments made. Uh—

PRESIDENT. Before the election.

DEAN. Before the election and, in a way, the necessary ones, you know, before the election. There—you know, we've, this was

PRESIDENT. Yeah.

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[4] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[5] Colson has testified that he recalls his conversation with the President as follows: "I was going to say someday I may want to come talk to you about Hunt. Half way through that sentence the President interrupted and he said, he said oh, I just can't believe, Chuck, in the circumstances you have just described, with his wife in that shape and his kids, he said, I just can't believe that he will go to jail. He said I just can't believe any judge would do that. I just am sure he won't, and don't you worry about it, and relax and don't let it get you down." (3 HJC 318)

DEAN. —to me there was no way
PRESIDENT. Yeah.
DEAN. that, uh—
PRESIDENT. Yeah.
DEAN. But to burden this second Administration
PRESIDENT. We're all in on it.[6] (HJCT, 104)

On the afternoon of March 21, 1973 when the President met with Haldeman, Ehrlichman and Dean, he continued to assess the dangers Hunt posed to the cover-up. The President asked what should be done about Hunt. He agreed with Ehrlichman's answer that "Hunt's interests lie in getting a pardon if he can." The President said that "he's got to get that by Christmas time," [7] and Ehrlichman suggested that Hunt's "direct contacts with John" about it "contemplate that, that, that's already understood." (HJCT 132–38)

In the President's March 27, 1973 meeting with Haldeman, Ehrlichman and Ziegler, the issue of clemency for all the Watergate defendants after the 1974 elections was once again raised. The President wanted to implement the strategy he had adopted in a meeting on March 22, 1973. He considered the possibility of appointing a "super panel" of distinguished citizens to study the Watergate case. Haldeman suggested that the idea had merit since it would drag out the investigation until after the 1974 elections, when the President could pardon everyone, and the "potential ultimate penalty anybody would get hit in this process could be two years." [8] (WHT 340–41)

The President concerned himself with clemency not only for the Watergate defendants who were in jail for the break-in itself, but also for three of his associates involved in the cover-up, Mitchell, Magruder, and Dean. The President's purpose was to induce them to hold the line and not implicate others.

By the middle of April, 1973 the cover-up had already begun to fall apart. The President knew that Magruder and Dean were talking to the prosecutors. In an early morning meeting on April 14, 1973 the President directed Haldeman and Ehrlichman to convey to Magruder, and also to Mitchell, who had been implicated by Magruder, assurances of leniency. The President carefully explained how he wanted Haldeman and Ehrlichman to handle these assurances.[9] (WHT 408–514)

The President instructed Ehrlichman to tell Mitchell and Magruder, first, that the President did not view it in his interests for them to remain silent; and second, that the President held great affection for them and their families. The President set the language for Ehrlichman to use to get the clemency message across to Magruder.

Lovely wife and all the rest, it just breaks your heart. And say this, this is a very painful message for me to bring—I've been aked to give you, but I must do it and it is that: Put it right out that way. Also, I would first put that in so that he knows I have personal affection. That's the way the so-called clemency's got to be handled. Do you see, John? (WHT 503)

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[6] "We're all in on it" does not appear in the White House Transcript. (WHT 207)
[7] The White House transcript attributes this quotation to John Dean. (WHT, 252)
[8] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.
[9] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

Ehrlichman said he understood the formula. Haldeman told Ehrlichman to "[d]o the same thing with Mitchell", although at that time the President said that Mitchell would put on "the damnest defense" and never go to prison. (WHT, 503.) At this same meeting the President also asked Ehrlichman how to handle the "problem of clemency" for people like Hunt. Haldeman replied, "Well, you don't handle it at all. That's Colson's cause there's where it came from." (WHT 485)

For the rest of the day, Ehrlichman carried out the President's instructions in this matter.

Ehrlichman first met with Mitchell at a 1:40 p.m. meeting. (Book IV, 718.) He reported to the President that he had spoken to Mitchell and that Mitchell "appreciated the message of a good feeling between you and him." The President responded "He got that, huh?" [10] (WHT 524) The President later added that there could be clemency in the case at the proper time but that they all knew that, for the moment, it was ridiculous to talk about it. (WHT 544)

As Ehrlichman left the Oval Office for his meeting with Magruder, the President reminded him about Magruder:

P Just trying to get the facts and that's all there is to it.
E I'll get back to you when—
P Be sure to convey my warm sentiments.
E Right. (WHT 578)

On the evening of April 14, 1973 the President telephoned Ehrlichman. They discussed how Ehrlichman might divert Dean from implicating Haldeman and Ehrlichman. Ehrlichman said he would see Dean the next day and the President asked what he was going to say to him:

E I am going to try to get him around a bit. It is going to be delicate.
P Get him around in what way?
E Well to get off the passing the buck business.
P John that's—
E It is a little touchy and I don't know how far I can go.
P John, that is not going to help you. Look he has to look down the road to one point that there is only one man who would restore him to the ability to practice law in case things go wrong. He's got to have that in the back of his mind . . . He's got to know that will happen. You don't tell him, but you know and I know that with him and Mitchell there isn't going to be any damn question, because they got a bad rap.[11] (WHT 663–64)

Later in the conversation the President directed Ehrlichman to tell Dean that the President thought Dean "has carried a tremendous load" and that the President's affection and loyalty remained undiminished. (WHT 667)

On April 16, 1973 Dean and the President discussed potential charges of obstruction of justice against members of the President's White House staff. The President tried to diminish his own responsibility as implied by Colson's assurance. The President tried to make the Hunt clemency assurance the responsibility solely of Mitchell. Dean, however, corrected him.

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[10] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[11] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

DEAN. It's uh, it's uh, all the obstruction is technical stuff that mounts up.
PRESIDENT. Yeah. Well, you take, for example, the clemency stuff. That's solely Mitchell, apparently, and Colson's talk with, uh, Bittman where he says, "I'll do everything I can because as a, as a friend—"
DEAN. No, that was with Ehrlichman.
PRESIDENT. Huh?
DEAN. That was Ehrlichman.
PRESIDENT. Ehrlichman with who?
DEAN. Ehrlichman and Colson and I sat up there, and Colson presented his story to Ehrlichman.
PRESIDENT. I know.[12]
DEAN. regarding it and. and then John gave Chuck very clear instructions on going back and telling him that it, you know, "Give him the inference he's got clemency but don't give him any commitment."
PRESIDENT. No commitment?
DEAN. Right.
PRESIDENT. Now that's all right. But first, if an individual, if it's no commitment—I've got a right to sit here—Take a fellow like Hunt or, uh, or, or a Cuban whose wife is sick and something—that's what clemency's about.
DEAN. That's right.
PRESIDENT. Correct?
DEAN. That's right.
PRESIDENT. But, uh, but John specifically said, "No commitment," did he? He—
DEAN. Yeah.
PRESIDENT. No commitment. Then, then Colson then went on to, apparently—
DEAN. I don't know how Colson delivered it, uh—
PRESIDENT. Apparently to Bittman—
DEAN. for—
PRESIDENT. Bittman. Is that your understanding?
DEAN. Yes, but I don't know what his, you know, specific—
PRESIDENT. Where did this business of the Christmas thing get out, John? What the hell was that?
DEAN. Well, that's a, that's a—
PRESIDENT. That must have been Mitchell, huh?
DEAN. No, that was Chuck, again, I think that, uh—
PRESIDENT. That they all, that they'd all be out by Christmas?
DEAN. No, I think he said something to the effect that Christmas is the time that clemency generally occurs.
PRESIDENT. Oh, yeah.
DEAN. Uh—
PRESIDENT. Well, that doesn't—I, I, I don't think that is going to hurt him,
DEAN. No.
PRESIDENT. Do you?
DEAN. No.
PRESIDENT. "Clemency," he says—One [unintelligible] he's a friend of Hunt's. I'm just trying to put the best face on it. If it's the wrong—if it is—I've got to know.
DEAN. Well, one, one of the things I think you have to be very careful, and this is why Petersen will be very good, is, if you take a set of facts and let the prosecutors who have no—they'll be making, making no PR judgments.
PRESIDENT. Yeah.
DEAN. But they'll give you the raw facts as they relate to the law, uh, and it's later you've got to decide, you know, what public face will be put on it. In other words, they'll—If they're—

Dean suggested that Petersen might be able to advise whether the attempt to silence Hunt by offering clemency was lawful. (HJCT 204–06)

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[12] "I know" does not appear in the White House Transcript. (WHT 811)

In a meeting with Petersen, just three hours after this meeting with Dean, the President asked whether the prosecutors had anything on Colson. Petersen said there were allegations, but nothing specific.[12] (WHT 872–75) The President neither posed a hypothetical question, as Dean had suggested, nor informed Petersen of Colson's conversation with Bittman.

Thereafter, the President made repeated untrue statements on the clemency issue to the public.

May 22, 1973: At no time did I authorize any offer of executive clemency for the Watergate defendants, nor did I know of any such offer. ("Presidential Statements," 5/22/73, 21)

August 15, 1973: . . . under no circumstances could executive clemency be considered for those who participated in the Watergate break-in. I maintained that position throughout. ("Presidential Statements," 8/15/73, 42)

November 17, 1973: Two, that I never authorized the offer of clemency be considered and; as a matter of fact, turned it down whenever it was suggested. It was not recommended by any member of my staff but it was, on occasion, suggested as a result of news reports that clemency might become a factor. ("Presidential Statements," 11/17/73, 64)

These statements are contradicted by the President's own words.

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[13] The House Judiciary Committee on April 11, 1974, subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

Deception and Concealment

I

In order for the cover-up to be successful, those who were responsible for the Watergate burglary and other activities of a similar nature had to remain silent. This was the purpose of the payments and assurances of clemency. At the same time, those seeking to ascertain the facts, and to determine whether there was any truth to charges alleging White House responsibility for Watergate, had to be either discouraged or deceived.

II

In order to achieve the second objective, President Nixon himself chose, upon occasion, to assure the public that his aides were not involved with payments or assurances of clemency. The President made public statements on these matters which were false and misleading. The President also assured the public, upon occasion, that he had ordered, and even personally undertaken, thorough investigations into Watergate, that those investigations found no White House involvement, and that further investigation would therefore be unnecessary. The President asserted in public statements that thorough investigations were reflected in three separate reports by his immediate staff—the August 1972 Dean report; the post-March 1973 Dean report; and the Ehrlichman report of April 1973—and that such reports concluded that the White House staff had been in no way involved in Watergate.

A. The August 1972 Dean Investigation

On August 29, 1972, at a news conference, President Nixon noted that investigations into Watergate were being conducted by the Department of Justice and FBI, GAO and the Banking and Currency Committee. He went on to say:

> In addition to that, within our own staff, under my direction, Counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House Staff or anybody in the Government. 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. ("Presidential Statements," 8/29/72, 3)

This assurance was repeated on other occasions.[1]

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[1] In a March 2, 1973 news conference, the President said:

"I will simply say with regard to the Watergate case what I have said previously that the investigation conducted by Mr. Dean, the White House Counsel, in which, incidentally, he had access to the FBI records on this particular matter because I directed him to conduct this investigation, indicates that no one on the White House Staff, at the time he conducted the investigation—that was last July and August—was involved or had knowledge of the Watergate matter." ("Presidential Statements," 3/2/73, 5)

Additionally, on May 22, 1973 the President publicly stated:

"In the weeks and months that followed Watergate, I asked for, and received, repeated assurances that Mr. Dean's own investigation (which included reviewing files and sitting in on FBI interviews with White House personnel) had cleared everyone then employed by the White House of involvement." ("Presidential Statements," 5/22/73, 24)

At the time of President Nixon's August 29, 1972 press conference, Dean had not made a report directly to the President. (Dean testimony, 2 HJC 252) According to the President's own logs, throughout the entire summer Dean and the President never met prior to September 15, 1972. Dean has testified that he first heard of his investigation in the President's press conference, and no independent evidence exists that such an investigation was ever undertaken, or completed. (Book II, 590–92)

The first meeting between the President and Dean occurred about two and a half weeks afer the August 29, 1972 press conference, on September 15, 1972. (Book III, 731) The conversation at that meeting discloses that the President knew of Dean's role in implementing the President's policy of containment. Before Dean entered the room, Haldeman told the President it had been "a good move . . . bringing Dean in," that Dean, while he does not gain for you himself, he enables other people to gain ground "while he's making sure that you don't fall through the holes." (HJCT 1) After Dean joined the meeting, the President referred to the Watergate matter as a "can of worms," said that "a lot of this stuff went on," and congratulated Dean for "putting your fingers in the dikes every time that leaks have sprung here and sprung there." (HJCT 7) Later in the conversation, the President said, "So you just try to button it up as well as you can and hope for the best. And, . . . remember that basically the damn thing is just one of those unfortunate things, and we're trying to cut our losses." (HJCT 13–14)

The transcript of the March 21, 1973 morning meeting between the President and Dean also indicates that, in the summer of 1972, Dean was helping with the cover-up, not conducting a "complete investigation."

> DEAN. . . . Now, [sighs] what, what has happened post-June 17? Well, it was, I was under pretty clear instructions [laughs] not to really to investigate this, that this was something that just could have been disastrous on the election if it had—all hell had broken loose, and I worked on a theory of containment
> PRESIDENT. Sure.
> DEAN. to try to hold it right where it was
> PRESIDENT. Right. (HJCT 88)

At the end of the March 21, 1973 morning meeting the President told Dean that there was no doubt about "the right plan before the election," that Dean "handled it just right," and that Dean had "contained it." (HJCT 129)

On April 17, 1973, in the course of a discussion with Haldeman and Ehrlichman,[2] the President acknowledged that Dean did not report to him directly during the summer of 1972. When Ehrlichman said Dean would say that he reported primarily to the President and to Ehrlichman only incidentally, the President said:

> You see the problem you've got there is that Dean does have a point there which you've got to realize. He didn't see me when he came out to California. He didn't see me until the day you said, "I think you ought to talk to John Dean." I think that was in March. (WHT 1009)

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[2] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

The President continued, "One of the reasons this staff is so damn good. Of course he didn't report to me. I was a little busy, and all of you said, 'let's let Dean handle that and keep him out of the President's office.'" (WHT 1010) Later in the same conversation, the subject came up again.

H Didn't you at some point get a report from Dean that nobody in the White House was involved.

E Didn't we put that out way back in August?

P I mean, I just said "Well, that's all I know now." It was never in writing. He never came in orally and told me Dean—John Dean I never saw about this matter. You better check, but I don't think John Dean was ever seen about this matter until I saw him, when John Ehrlichman suggested that I'd better see John Dean.

E You better check Bob, back in that period of time July—when we were in San Clemente—my recollection is that he did come and see you at that time—but we can check that.

P Oh—by himself? No.

E Well, by himself or with one of us, I don't know.

P He may have come in, but it was a pretty—I hope he did, hope he did. But he might have come in sort of the end, and someone said, "Look here's John Dean from Washington," and I may have said, "thanks for all your hard work." (WHT 1014)

B. The March 1973 Dean Report

On August 15, 1973 the President said: "On March 23, I sent Mr. Dean to Camp David, where he was instructed to write a complete report on all he knew of the entire Watergate matter." ("Presidential Statements," 8/15/73, 41–42)

The "report" that the President had in fact requested Dean to make in March 1973 was one that was designed to mislead investigators and insulate the President from charges of concealment in the event the cover-up began to come apart. When the President and Dean discussed a report in a March 20, 1973 telephone conversation,[3] the President told Dean to "make it very incomplete."

P Right. Fine. The other thing I was going to say just is this—just for your own thinking—I still want to see, though I guess you and Dick are still working on your letter and all that sort of thing?

D We are and we are coming to—the more we work on it the more questions we see——

P That you don't want to answer, huh?

D that bring problems by answering.

P And so you are coming up, then, with the idea of just a stonewall then? Is that——

D That's right.

P Is that what you come down with?

D Stonewall, with lots of noises that we are always willing to cooperate, but no one is asking us for anything.

P And they never will, huh? There is no way that you could make even a general statement that I could put out? You understand what I—

D I think we could.

P See, for example, I was even thinking if you could even talk to Cabinet, the leaders, you know, just orally and say, "I have looked into this, and this is that," so that people get sort of a feeling that—your own people have got to be reassured.

* * *

P But you could say, "I have this and this is that." Fine. See what I am getting at is that, if apart from a statement to the Committee or anything else,

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[3] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

if you could just make a statement to me that we can use. You know, for internal purposes and to answer questions, etc.

D As we did when you, back in August, made the statement that—

P That's right.

D And all the things—

P You've got to have something where it doesn't appear that I am doing this in, you know, just in a—saying to hell with the Congress and to hell with the people, we are not going to tell you anything because of Executive Privilege. That, they don't understand. But if you say, "No, we are willing to cooperate," and you've made a complete statement, but make it very incomplete. See, that is what I mean. I don't want a, too much in chapter and verse as you did in your letter, I just want just a general—

D An all around statement.

P That's right. Try just something general. Like "I have checked into this matter; I can categorically, based on my investigation, the following: Haldeman is not involved in this, that and the other thing. Mr. Colson did not do this; Mr. so and so did not do this. Mr. Blank did not do this." Right down the line, taking the most glaring things. If there are any further questions, please let me know. See?

D Uh, huh. I think we can do that. (WHT 165–68)

On the afternoon of March 21, 1973, after Dean had discussed with the President White House involvement in the cover-up, the President repeated his instructions to Dean:

PRESIDENT. . . . Uh, if you as the White House Counsel, John, uh, on direction—uh, I ask for a, a written report, which I think, uh, that—which is very general, understand. Understand, [laughs] I don't want to get all that God damned specific.[4] I'm thinking now in far more general terms, having in mind the fact that the problem with a specific report is that, uh, this proves this one and that one that one, and you just prove something that you didn't do at all. But if you make it rather general in terms of my—your investigation indicates that this man did not do it, this man did not do it, this man did do that. . . . (HJCT 136)

During this conversation, Ehrlichman pointed out to the President the advantage of having a conclusory report.

Well, but doesn't it give, doesn't it permit the President to clean it out at such time as it does come up? By saying, "Indeed, I relied on it. And now this, this later thing turns up, and I don't condone that. And if I'd known about that before, obviously, I wouldn't have done it. And I'm going to move on it now." (HJCT 140)

On March 22, 1973, Ehrlichman repeated the point at a meeting attended by the President, Haldeman, Dean and Mitchell:

Assuming that some corner of this thing comes unstuck at some time, you're then in a position to say, "Look, that document I published [Dean Report] is the document I relied on. . . . (HJCT 159)

On March 22, 1973, there was also a discussion about using the report if White House aides were called to testify:

PRESIDENT. Suppose the Judge tomorrow, uh, orders the Committee to show, show its evidence to the Grand Jury [unintelligible] then the Grand Jury reopens the case and questions everybody. Does that change the game plan?

DEAN. [Unintelligible] send them all down.

PRESIDENT. What? Before the Committee?

MITCHELL. The President's asked [unintelligible] this.

DEAN. Now are you saying—

PRESIDENT. Suppose the Judge opens—tells the Grand Jury and says, "I, I don't," says, "I want them to call Haldeman, Ehrlichman and everybody else they didn't call before." What do you say to that? Then do you still go on this

[4] This sentence does not appear in the White House transcript. (WHT 257)

pattern with the Ervin Committee? The point, is, if, if a grand jury, uh, decides to go into this thing, uh, what do you think on that point?

EHRLICHMAN. I think you'd say, "Based on what I know about this case, uh, I can see no reason why I should be concerned about what the grand jury process—"

PRESIDENT. All right.

EHRLICHMAN. That's all.

HALDEMAN. And that would change—

PRESIDENT. Well, they go in—do both: Appear before the Grand Jury and the Committee?

DEAN. Sure.

EHRLICHMAN. You have to bottom your defense, your position on the report.

PRESIDENT. That's right.

EHRLICHMAN. And the report says, "Nobody was involved," (HJCT 172)

C. The Ehrlichman Report

At a press conference on September 5, 1973, the President said that when he realized that John Dean would not be able to complete his report at Camp David, he assigned John Ehrlichman to conduct a "thorough investigation" to get all the facts out:

> The investigation, up to that time, had been conducted by Mr. Dean. . . . When he was unable to write a report, I turned to Mr. Ehrlichman. Mr. Ehrlichman did talk to the Attorney General . . . on . . . I think it was the 27th of March. The Attorney General was quite aware of that and Mr. Ehrlichman, in addition, questioned all of the major figures involved and reported to me on the 14th of April, and then, at my suggestion—direction, turned over his report to the Attorney General on the 15th of April. An investigation was conducted in the most thorough way. ("Presidential Statements," 9/5/73, 52)

The President's statement about a White House report on Watergate was, in this case, too, misleading. The "report" Ehrlichman had been asked to prepare in April 1973 was one designed to mislead the investigators, insulate the President from the appearance of complicity and explain the President's failure to take action on Dean's disclosure of March 21, 1973. The President also intended to use the "report" to get public personal credit for the disclosures that were on the verge of being made through other agencies, in spite of White House attempts to cover them up.

In mid-April, 1973 the President had reason to fear these disclosures. Magruder and Dean were meeting with the prosecutors. (Book IV, 538, 610) The President met with Haldeman and Ehrlichman at 8:55 a.m. on April 14, 1973.[5] Ehrlichman told the President that Colson had reported that Hunt would testify because there was no longer any point in remaining silent and that Hunt's testimony would lead to the indictment of Mitchell and Magruder. (WHT 409–10) The President decided that, as Colson had advised, their best course would be to pressure John Mitchell into accepting the blame for Watergate. If Mitchell could not be persuaded voluntarily to accept the blame, then the White House could "make a record" of its efforts for the purpose of showing that the White House had been actively engaged in trying to get out the truth about Watergate. Ehrlichman suggested that the President could put pressure on

[5] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

Mitchell by telling him that the Ehrlichman report showed Mitchell's guilt.

E Let's take it just as far as you call Mitchell to the oval office as, a
P No.
E I'm essentially convinced that Mitchell will understand this thing.
P Right.
E And that if he goes in it redounds to the Administration's advantage. If he doesn't then we're—
P How does it redound to our advantage?
E That you have a report from me based on three weeks' work; that when you got it, you immediately acted to call Mitchell in as the provable wrongdoer, and you say, "My God, I've got a report here. And it's clear from this report that you are guilty as hell. Now, John, for (expletive deleted) sake go on in there and do what you should. And let's get this thing cleared up and get it off the country's back and move on." And—
H Plus the other side of this is that that's the only way to beat it now. (WHT 439–40)

At 2:24 p.m.[6] that same day the President met with Haldeman and Ehrlichman where they again discussed what the Ehrlichman report should be.

E You say (unintelligible) I have investigated. (Unintelligible) up the whole.
P What—what I, basically, is having an Ehrlichman report. We've got some of the Dean report. That would be simply we have an Ehrlichman report that he makes and here is the situation with regard to the White House involvement. I haven't gone into the Committee thing.
E Now the current (unintelligible) the current (unintelligible) on White House involvement primarily are Haldeman's (unintelligible).
P That's right.
E Well, I didn't go into White House involvement. I assumed that——
P No. I (unintelligible).
E That what you needed to know from me, and this would be what I would say, "What the President needed to know was the truth or falsity of charges that were leaking out with regard to—Committee for the Reelection personnel and any connections to the White House that might exist. That was the area of inquiry rather than whether anybody in the White House was involved."
P (Unintelligible) trying to get you out there in a way that you didn't have to go into all that stuff, you see. (WHT 564–65)

Two days later, on the morning of April 16, 1973,[7] and after the President had learned the substance of Dean's disclosure to the prosecutors, (Petersen testimony, 3 HJC 81–82) the President directed Ehrlichman to create "a scenario with regard to the President's role. . . ." "Otherwise," Ehrlichman said, "the Justice Department will, of course, crack this whole thing." (WHT 782–83)

Ehrlichman returned for another meeting with the President and Haldeman at 10:50 a.m.[8] During the meeting the President asked, "How has the scenario worked out? May I ask you?" This conversation followed:

E Well, it works out very good. You became aware sometime ago that this thing did not parse out the way it was supposed to and that there were some

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discrepancies between what you had been told by Dean in the report that there was nobody in the White House involved, which may still be true.

P Incidentally, I don't think it will gain us anything by dumping on the Dean Report as such.

E No.

P What I mean is I would say I was not satisfied that the Dean Report was complete and also I thought it was my obligation to go beyond that to people other than the White House.

E Ron has an interesting point. Remember you had John Dean go to Camp David to write it up. He came down and said, "I can't."

P Right.

E That is the tip off and right then you started to move.

P That's right. He said he could not write it.

H Then you realized that there was more to this than you had been led to believe. (unintelligible)

P How do I get credit for getting Magruder to the stand?

E Well it is very simple. You took Dean off of the case right then.

H Two weeks ago, the end of March.

P That's right.

E The end of March. Remember that letter you signed to me?

P Uh, huh.

E 30th of March.

P I signed it. Yes.

E Yes sir, and it says Dean is off of it. I want you to get into it. Find out what the facts are. Be prepared to—

P Why did I take Dean off? Because he was involved? I did it, really, because he was involved with Gray.

E Well there was a lot of stuff breaking in the papers, but at the same time—

H The scenario is that he told you he couldn't write a report so obviously you had to take him off.

P Right, right.

E And so then we started digging into it and we went to San Clemente. While I was out there I talked to a lot of people on the telephone, talked to several witneses in person, kept feeding information to you and as soon as you saw the dimensions in this thing from the reports you were getting from the staff—who were getting into it—Moore, me, Garment and others.

P You brought Len Garment in.

E You began to move.

P I want the dates of all those—

E I've got those.

P Go ahead. And then—

E And then it culminated last week.

P Right.

E In your decision that Mitchell should be brought down here; Magruder should be brought in; Strachan should be brought in.

P Shall I say that we brought them all in?

E I don't think you can. I don't think you can.

H I wouldn't name them by name. Just say I brought a group of people in.

E Personally come to the White House.

P I will not tell you who because I don't want to prejudice their rights before (unintelligible)

E But you should say, "I heard enough that I was satisfied that it was time to precipitously move. I called the Attorney General over, in turn Petersen,"

P The Attorney General. Actually you made the call to him on Saturday.

E Yes.

P But this was after you heard about the Magruder strategy.

E No, before.

P Oh.

E We didn't hear about that until about three o'clock that afternoon.

P Why didn't you do it before? This is very good now, how does that happen?

E Well—

P Why wasn't he called in to tell him you had made a report, John?

H That's right. John's report came out of the same place Magruder's report did—

P No. My point is
E I called him to tell him that I had this information.
P Yeah but, why was that? That was because we had heard Magruder was going to talk?
E No. Oh, I will have to check my notes again.
H We didn't know whether Magruder was going to talk.
E That's right.
H Magruder was still agonizing on what he was going to do.
P Dean—but you remember you came in and said you have to tell him about it politely. Well, anyway—
H I will tell you the reason for the hurry up in the timing was that we learned that Hunt was going to testify on Monday afternoon.
E The President is right. I didn't talk to Kleindienst. Remember, I couldn't get him.
P Yeah.
E I didn't talk to him until he got home from Burning Tree, which was the end of the day, and I had already talked to Magruder.
P Right. But my point is when did we decide to talk to Kleindienst? Before Magruder?
E Oh, yes. Remember, early in the morning I said I will see these two fellows but I've got to turn this over to the Attorney General.
P Which two fellows were you going to see?
E Mitchell and Magruder.
P With what your conclusions were?
E I had this report and I tried all day long to get the Attorney General who was at the golf course and got him as soon as he got home for—
P Do we want to put this report out sometime?
E I am not sure you do, as such.
P I would say it was just a written report.
E The thing that I have—
P The thing they will ask is what have you got here?
H It was not a formal report. It was a set of notes.
P Handwritten notes?
E Yeah. There are seven pages, or eight pages. Plus all my notes of my interviews. (WHT 820–25)

Ehrlichman later denied that he had conducted an investigation. He said he had made an inquiry consisting of an interview with Paul O'Brien on April 5, 1973 (Book IV, 509, 518); with Kalmbach on April 6, 1973 (Book IV, 534, 536); with Dean on April 8, 1973 (Book IV, 540); with Strachan on April 12, 1973 (Book IV, 550–51); with Colson on April 13, 1973 (Book IV, 595–96); with Mitchell and Magruder on April 14, 1973 (Book IV, 718–19, 801); and with Strachan on April 15, 1973 (Book IV, 897). The meeting with O'Brien was requested by O'Brien (Book IV, 512); the meeting with Kalmbach took place in a parking lot (Book IV, 532); the edited transcript of the Ehrlichman April 8, 1973 report to the President about his meeting with Dean shows that the meeting involved a discussion of strategy (WHT 401–07); the meeting with Strachan concerned his grand jury testimony of the day before and Strachan's concern that he had committed perjury (Book IV, 551); the edited transcript of Ehrlichman's April 14, 1973 [9] report to the President about his meeting with Colson shows that the meeting involved a discussion of strategy (WHT 409–14); the transcript of Ehrlichman's conversation with Mitchell on April 14, 1973 shows that Ehrlichman did not seek to elicit facts (Book IV, 725–68); the President instructed Ehrlichman on April 14,

[9] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

1973 [10] to meet with Magruder just "for making a record" after he was informed that Magruder was about to meet with the prosecutors (WHT 537); and Ehrlichman met with Strachan April 15, 1973 in response to the President's directions to tell Strachan what Magruder had told the prosecutors (Book IV, 896–97).

III

To sustain the cover-up, certain White House and CRP officials made false and misleading statements under oath. These statements took various forms. In some instances witnesses told untrue stories. In others, witnesses untruthfully said they could not recall facts. The President told Dean on March 21, 1973, "Just be damned sure you say I don't . . . remember; I can't recall, I can't give any honest, an answer to that that I can recall. But that's it." [11] (HJCT 120).

There is no evidence that when the President learned of such conduct he condemned it, instructed that it be stopped, dismissed the person who made the false statement, or reported his discoveries to the appropriate authority (the Attorney General or the Director of the FBI). On the contrary, the evidence before the Committee is that the President condoned this conduct, approved it, directed it, rewarded it, and in some instances advised witnesses on how to impede the investigators.

White House and CRP officials made false and misleading statements in two distinct time periods. The first period was June 1972 to March 1973. During this period the cover-up was relatively successful—in part because of perjured testimony by Magruder and Porter and false statements of Strachan. The purpose of Magruder's untruthful testimony was to provide innocent explanations for the commitment of $250,000 of CRP money to the Liddy Plan (Book III, 246–51, 298–99). The purpose of Porter's untruthful testimony was to corroborate Magruder's story (Book III, 236–41, 292–93). The purpose of Strachan's false statements was to hide the involvement of the White House in the Liddy Plan. The second time period began at the time of the reconvening of the Watergate Grand Jury near the end of March 1973.

A. First Time Period: Statements to Further the Cover-up

1. Strachan

Strachan was Haldeman's liaison with the President's reelection campaign organization. (Butterfield testimony, 1 HJC 15) He could link Haldeman, even before public disclosures about the break-in, with the approval and implementation of the Liddy Plan. (Book I, 164–66) As early as March 13, 1973, Dean informed the President that Strachan's denial was false and that Strachan planned to stonewall again in the future.

> DEAN. Well, Chapin didn't know anything about the Watergate, and—
> PRESIDENT. You don't think so?

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[10] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[11] In the White House Transcript, the President says, "But you can say I don't remember. You can say I can't recall. I can't give any answer to that that I can recall." (WHT 235).

DEAN. No. Absolutely not.
PRESIDENT. Did Strachan?
DEAN. Yes.
PRESIDENT. He knew?
DEAN. Yes.
PRESIDENT. About the Watergate?
DEAN. Yes.
PRESIDENT. Well, then, Bob knew. He probably told Bob, then.[12] He may not have. He may not have.
DEAN. He was, he was judicious in what he, in what he relayed, and, uh, but Strachan is as tough as nails. I—
PRESIDENT. What'll he say? Just go in and say he didn't know?
DEAN. He'll go in and stonewall it and say, "I don't know anything about what you are talking about." He has already done it twice, as you know, in interviews.[13]
PRESIDENT. Yeah. I guess he should, shouldn't he, in the interests of—Why? I suppose we can't call that justice, can we? We can't call it [unintelligible]
DEAN. Well, it, it—
PRESIDENT. The point is, how do you justify that?
DEAN. It's a, it's a personal loyalty with him. He doesn't want it any other way. He didn't have to be told. He didn't have to be asked. It just is something that he found is the way he wanted to handle the situation.
PRESIDENT. But he knew? He knew about Watergate? Strachan did?
DEAN. Uh huh.
PRESIDENT. I'll be damned. Well, that's the problem in Bob's case, isn't it. It's not Chapin then, but Strachan. 'Cause Strachan worked for him.
DEAN. Uh huh. They would have one hell of a time proving that Strachan had knowledge of it, though.
PRESIDENT. Who knew better? Magruder?
DEAN. Well, Magruder and Liddy.
PRESIDENT. Ahh—I see. The other weak link for Bob is Magruder, too. He having hired him and so forth. (HJCT 70–71)

2. Magruder and Porter

An explanation was required for CRP's payment of money to Liddy as part of Haldeman's and Mitchell's commitment of $250,000 for a CRP intelligence plan. Magruder fabricated a story that the Liddy Plan contemplated only legitimate intelligence activities. (Book III 298–99) Magruder's untruthful testimony was supported by that of his assistant, Porter, both before the Grand Jury in August and at the trial of the Watergate defendants in January. (Book III, 293–94, 506) Whether the President knew of Magruder's perjury before March 21, 1973, there is no doubt that the President was informed on that date, during his morning meeting with Dean, of perjury by both Magruder and Porter.

PRESIDENT. Liddy told you he was planning—where'd he learn there was such a plan—from whom?
DEAN. Beg your pardon?
PRESIDENT. Where did he learn of the plans to bug Larry O'Brien's suite?
DEAN. From Magruder, after the, long after the fact.
PRESIDENT. Oh, Magruder, he knows.
DEAN. Yeah, Magruder is totally knowledgeable on the whole thing.
PRESIDENT. Yeah.
DEAN. All right, now, we've gone through the trial. We've—I don't know if Mitchell has perjured himself in the Grand Jury or not. I've never—
PRESIDENT. Who?
DEAN. Mitchell. I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the Grand Jury. I know that Porter has perjured himself, uh, in the Grand Jury.
PRESIDENT. Porter [unintelligible]

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[12] The words "Bob knew" do not appear in the White House Transcript.
[13] The word "as" does not appear in the White House Transcript.

DEAN. He is one of Magruder's deputies.
PRESIDENT. Yeah.
DEAN. Uh, that they set up this scenario which they ran by me. They said, "How about this?" I said, "I don't know. I, you know, if, if this is what you are going to hang on, fine." Uh, that they—
PRESIDENT. What did they say before the Grand Jury?
DEAN. They said, they said, as they said before the trial and the Grand Jury, that, that, uh, Liddy had come over as, a counsel
PRESIDENT. Yeah.
DEAN. and we knew he had these capacities to,
PRESIDENT. Yeah.
DEAN. you know,
PRESIDENT. Yeah.
DEAN. to do legitimate intelligence. We had no idea what he was doing.
PRESIDENT. Yeah.
DEAN. He was given an authorization of $250,000
PRESIDENT. Right.
DEAN. to collect information, because our surrogates were out on the road. They had no protection. We had information that there were going to be demonstrations against them, that, uh, uh, we had to have a plan to get information as to what liabilities they were going to be confronted with
PRESIDENT. Right.
DEAN. and Liddy was charged with doing this. We had no knowledge that he was going to bug the DNC. Uh—
PRESIDENT. Well, the point is, that's not true.[14]
DEAN. That's right.
PRESIDENT. Magruder did know that—
DEAN. Magruder specifically instructed him to go back in the DNC.
PRESIDENT. He did?
DEAN. Yes.
PRESIDENT. You know that? Yeah. I see. Okay. (HJCT 86–87).

According to Magruder, before testifying at the trial in January, 1973, he informed Haldeman that he would commit perjury (Book III, 515). After the trial, Magruder met with Haldeman to discuss his future employment in the Administration (Book III, 566–67). On February 19, 1973 Dean prepared a talking paper for a meeting at which Haldeman would discuss with the President Magruder's possible appointment to a new Administration job (Book III, 570–71). In this talking paper, Dean noted that Hugh Sloan, whom Magruder had importuned to commit perjury (Book III, 561), would testify against Magruder before the Senate if Magruder were appointed to any position for which Senate confirmation is required. The talking paper reads:

(3) What to do with Magruder
—Jeb wants to return to White House (Bicentennial project)
—May be vulnerable (Sloan) until Senate hearings are complete
—Jeb personally is prepared to withstand confirmation hearings (Book III, 574–75)

In spite of a White House policy against employing any person implicated in the Watergate matter (Book III, 566) Haldeman, after checking with the President,[15] offered Magruder the highest paying available position which did not require Senate confirmation: a $36,000 per year job in the Department of Commerce. (Book III, 569, 572–73, 577) Magruder retained that position for a month after Dean discussed

[14] In the White House transcript, there is a question mark after this sentence. (WHT 183)
[15] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has stated that no such recorded conversation could be located.

with the President, on March 21, 1973 the fact that Magruder had committed perjury.[16] (HJCT 87; Book IV, 1625–26)

B. Second Time Period: Statements To Cover Up the Cover-up

Starting in late March, 1973 the President received reports from his assistants that the cover-up was threatened from four different sources. First and foremost was Hunt, whose threats were discussed with the President on March 21, 1973. Hunt's immediate demand for money could be taken care of and money for the long term could be obtained. But there was also Hunt's expectation of clemency which the President realized was politically impossible. Second, there was McCord's letter to Judge Sirica and the decision to reconvene the Grand Jury. Third, there were the dangers posed by threatened disclosures by key subordinates in the Watergate cover-up. The President showed concern when Dean and Magruder started to talk to the prosecutors in mid-April. Fourth, on April 14, 1973 there was a fear discussed by the President, Haldeman and Ehrlichman that Hunt had changed his mind, and that he would talk to the prosecutors about the payments and the clemency offers. (WHT 541–44, 619)

There is clear and convincing evidence that the President took over in late March the active management of the cover-up. He not only knew of the untruthful testimony of his aides—knowledge that he did not disclose to the investigators—but he issued direct instructions for his agents to give false and misleading testimony. The President understood that his agents had been and continued to coach witnesses on how to testify so as to protect the cover-up;[17] and the President himself began to coach witnesses.

1. Magruder

McCord's accusations suggested that higher CRP officials were involved in the break-in. (Book IV, 220–24) The President, Haldeman, and Ehrlichman developed a strategy to have Magruder admit that his previous testimony was perjured and that he, in fact, knew that the Liddy plan included illegal surveillance. This testimony would implicate Mitchell as well as Magruder but would insulate the other aides of the President. It would in effect force Mitchell to come forward and admit responsibility for Watergate. The President and his advisors reasoned that Magruder might be willing to make these disclosures in exchange for a promise of immunity from the prosecutors. At the March 27, 1973 meeting between the President, Haldeman and Ehrlichman the following discussion took place:

H Let's go another one. So you persuade Magruder that his present approach is (a) not true; I think you can probably persuade him of that; and (b) not

[16] The transcript of the meeting of April 14 shows that on that date the President could not remember Magruder's precise position. (WHT 593)

[17] On April 15, 1973 the President learned from Ehrlichman that Mardian had coached witnesses for their appearances before the Grand Jury.

"P Well, is there anything wrong with that?
"E Yeah, well, there's something wrong with—
"P He was not their attorney, is the problem?
"E Well, no, the problem—the problem is he asked them to say things that weren't true."

[1] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording of this conversation. The President has refused to produce this recording, but has produced an edited transcript.) (WHT 687–88)

desirable to take. So he then says, in despair, "Heck, what do I do? Here's McCord out here accusing me." McCord has flatly accused me of perjury—He's flatly accused Dean of complicity." Dean is going to go, and Magruder knows of the fact that Dean wasn't involved, so he knows that when Dean goes down, Dean can testify as an honest man.

P Is Dean going to finger Magruder?

H No, sir.

P There's the other point.

H Dean will not finger Magruder but Dean can't either—likewise he can't defend Magruder.

P Well—

H Dean won't consider (unintelligible) Magruder. But Magruder then says, "Look, if Dean goes down to the Grand Jury and clears himself, with no evidence against him except McCord's statement, which won't hold up, and it isn't true. Now, I go down to the Grand Jury, because obviously they are going to call me back, and I go to defend myself against McCord's statement which I know is true. Now I have a little tougher problem than Dean has. You're saying to me, 'Don't make up a new lie to cover the old lie.' What would you recommend that I do? Stay with the old lie and hope I would come out, or clean myself up and go to jail?"

P What would you advise him to do?

H I would advise him to go down and clean it up.

P And say I lied?

H I would advise him to seek immunity and do it.

P Do you think he can get immunity?

H Absolutely.

P Then what would he say?

E He would say, "I thought I was helping. It is obvious that there is no profit in this route. I did it on my own motive. Nobody asked me to do it. I just did it because I thought it was the best thing to do. Everybody stands on it. I was wrong to do it." That's basically it.

H Magruder's viewpoint that to be ruined that way which isn't really being ruined is infinitely preferable to going to jail. Going to jail for Jeb will a very, very, very difficult job.

E (unintelligible) he says he is a very unusual person. The question now is whether the U.S. Attorney will grant immunity under the circumstances.

H Well he would if he thought he was going to get Mitchell.

E Yeah, that's right.

H The interesting thing would be to watch Mitchell's face at the time I recommend to Magruder that he go in and ask for immunity and confess.[18] (WHT 350–52)

In mid-April, 1973 Magruder began speaking to the prosecutors. (Book IV, 610–11) On March 21, 1973 the President had expressed uncertainty about whether he could count on Magruder. (Book III, 1245–46) He voiced a similar uncertainty on April 14 when Ehrlichman described Magruder as an "emotional fellow" who was ready to break.[19] (WHT 417) On April 13, 1973 Haldeman's principal assistant, Larry Higby called Magruder and confronted him with reports that Magruder had implicated Haldeman and the President in the Watergate break-in. (Book IV, 613–14) Higby recorded the conversation. He told Magruder that it was not in his long or short range interest to blame the White House and said that he could not believe Magruder would do this to Bob, who "has brought you here." (Book IV, 619) During the conversation, Magruder agreed that Strachan had not specifically told him that Haldeman wanted the Liddy Plan approved. (Book IV, 625–27) On the morning of April 14, 1973 Haldeman re-

[18] The House Judiciary Committee on April 11, 1973, subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[19] The House Judiciary Committee on April 11, 1973 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these recordings, but has produced an edited transcript.

ported this conversation to the President. Haldeman said that Higby had handled it skillfully and that the recording made by Higby "beats the socks off" Magruder if he ever "gets off the reservation." (WHT 415–16) The President instructed Ehrlichman to meet with Magruder. (WHT 478, 500) Later that day, Haldeman said Magruder should be asked to repeat what he told Higby and that Ehrlichman should say, "Good." [20] (WHT 537)

2. Strachan

If Magruder confessed, Strachan's previous untruthful testimony, which insulated Haldeman, would be in jeopardy. At an afternoon meeting between the President and Haldeman on April 14, 1973 they discussed what Strachan's strategy before the Grand Jury should be.

H I don't think Magruder knows about the aftermath.
P Where does he [Magruder] get to Gordon Strachan?
H He says he gets Gordon on—
P Sending material to him—
H He still implies at least that Gordon know about it before you know—he knew everything they did. Larry tells me he did not.
P He will testify that he sent materials to the White House?
H If he is asked, he will, yes.
P He'll be asked—is that something he will say he sent to the White House. What would Strachan say?
H Strachan has no problem with that. He will say that after the fact there are materials that I can now surmise were what he is referring to but they were not at the time identified in any way as being the result of wiretaps and I did not know they were. They were amongst tons of stuff. Jeb makes the point. He said, I am sure Gordon never sent them to Bob because they were all trash. There was nothnig in them. He said the tragedy of this whole thing is that it produced nothing.
P Who else did he send reports to—Mitchell?
H I don't know. The thing I got before was that he sent them either to—that one went to him and one went to Strachan.
P What our problem there is if they claim that the reports came to the White House—basically to your office—what will you say then?
H They can. This doesn't ever have to come out.[21] (WHT 520–21; see also WHT 537, WHT 592)

On the night of April 14, 1973 the President had a telephone conversation with Haldeman during which he told Haldeman that Ehrlichman should speak to Strachan and "put him through a little wringer." [22] (WHT 646–47) On the afternoon of April 16, 1973 the President was told by Ehrlichman that Strachan had acted as Dean suggested he would. Ehrlichman told the President that the prosecutors "really worked him over" but "despite considerable fencing, he refused to discuss the matter and was excused by the prosecutors." [23] (WHT 933)

3. Haldeman

On April 25 and 26, 1973, the President and Haldeman jointly reviewed, analyzed and discussed the contents of various taped Pres-

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[20] The House Judiciary Committee on April 11, 1973 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.
[21] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.
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[23] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

idential conversations in February, March, and April of that year, with specific attention focused on the tape of the March 21 morning meeting between the President and Dean. (Book IV, 1558, 1567, 1570–71, 1573–74) On April 25 and 26, 1973, Haldeman, at the President's request, listened to the tape conversation of that meeting and made notes from the tape. (Book IV, 1567, 1572) From 4:40 to 5:35 p.m. on April 25, 1973, Haldeman met with the President and reported to him on the contents of the tape. (Book IV, 1558) The President decided Haldeman should listen to the tape again to determine answers to certain questions raised by the conversation. (Book IV, 1562) On April 26, 1973 Haldeman listened to the tapes again and then met with the President for approximately five hours, commencing at 3:59 p.m. and concluding at 9:03 p.m.[24] (Book IV, 1558, 1563)

Haldeman subsequently testified extensively before the Senate Select Committee of the substance of the President's morning meeting with Dean. (Book IX, 436–37, 439–42) The President later said that Haldeman's testimony was correct. ("Presidential Statements," 8/22/73, 49) The Watergate Grand Jury has indicted Haldeman on two counts of perjury for his testimony about the substance of the meeting of March 21, 1973 specifically citing the following statement:

(a) That the President said, "[T]here is no problem in raising a million dollars. We can do that, but it would be wrong."

(*U.S.* v. *Mitchell*, indictment, March 1, 1974, 30)

(b) That "There was a reference to his [Dean's] feeling that Magruder had known about the Watergate planning and break-in ahead of it, in other words, that he was aware of what had gone on at Watergate. I don't believe that there was any reference to Magruder committing perjury."

(*U.S.* v. *Mitchell*, indictment, March 1, 1974, 33)

4. Ehrlichman

On April 17, 1973 the President met with Haldeman and Ehrlichman and former Secretary of State Rogers. (Book IV, 1423) After a brief discussion of Haldeman's and Ehrlichman's future, the President evinced concern for his former personal attorney, Herbert Kalmbach, stating that it was "terribly important that poor Kalmbach get through this thing." (WHT 1201) The discussion then focused on Kalmbach's major area of vulnerability—his possible knowledge of how the money he raised was to be used. The President asked if Dean had called Kalmbach about fundraising. Haldeman replied that Dean had. Ehrlichman said that Dean had told him that Dean told Kalmbach what the money was to be used for. The President suggested that Ehrlichman testify otherwise:

P . . . Incidentally, it is terribly important that poor Kalmbach get through this thing.

H I think he is alright.

P How could he learn? Did you talk to him there? Did Dean call him about the money?

H Yes, Sir.

P Does he say what said?

E Dean told me that he told him what it was for. I don't believe him. Herb said that he just followed instructions, that he just went ahead and did it and sent the money back and—

P They said they need it for?

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[24] The House Judiciary Committee subpoenaed on May 30, 1974 the tape recordings and other material related to these conversations on April 25 and April 26, 1973 between the President and Haldeman. The President has refused to produce these materials.

E I don't even know if they told him what for. It was an emergency and they needed this money and I don't know whether he can get away with that or if it's more specific than that.

P You can corroborate then Herb on that one.

E I can if Dean is the accuser. I can.

P If Dean is the accuser, you can say that he told you on such and such a date that he did not tell Herb Kalmbach what the money was for.

E That he has told me—that he has told me—

P That's right—that's right (WHT 1201–02) [25]

5. Colson

On April 14, 1973 Ehrlichman reported to the President on a conversation with Magruder during which Magruder had described what he was telling the prosecutors. (WHT 582–87) [26] At this time, the President was concerned that Colson would be called before the Grand Jury. (WHT 602) In a conversation with Haldeman later that day, the President also expressed interest in Colson's avoiding the commission of perjury. (WHT 641) [27] One way that this could have been done was to instruct Colson to tell all he knew and to testify truthfully. But rather than instruct Colson to testify truthfully, the President instructed Ehrlichman to warn Colson about what Magruder had told the prosecutors.

P We'll see. We'll see. Do your other business, etc. John, too, I wonder if we shouldn't reconsider, if you shouldn't I mean you have to consider this—rather than having Colson go in there completely blind, give him at least a touch up—or do you think that is too dangerous.

E Say that again—I didn't quite hear it.

P Colson—rather than just saying nothing to him, if it isn't just as well to say—look you should know that Magruder is going to testify, etc., or is that dangerous according to Kleindienst?

E I'm not so sure. I have to call him anyway tomorrow. He has an urgent call in for me. Ah, I don't think I want to say anything at all to him about John. John, incidentally, I understand, was on CBS News and just hardlined them.

P Oh, I agree on John.

E Yeah

P On Magruder that is what I meant.

E Well, I can say something very brief. I don't need to indicate that he said anything to me.

P Yeah, that you understand that he has talked. I mean, not to the Grand Jury but to—

E Yeah, I think I could safely go that far.

P And say that he should know that before he goes, and be prepared.

E Friday—I will call him in the morning.

P Let me put it this way: I do think we owe it to Chuck to at least—

E Sure

P So that he doesn't, I mean, go in there and well frankly on a perjury rap——

E I understand. I don't think he is in any danger on that but—

P Why wouldn't he be in any danger, because he's got his story and knows pretty well what he is going to say?

E Yeah, I think he is pretty pat, but I will talk to him in the morning and give him a cautionary note anyway. (WHT 650–51) [28]

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[25] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

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The President's Contacts With the Department of Justice: March 21–April 30, 1973

I

During the meeting with Haldeman and Dean on the morning of March 21, 1973, the President decided that a new plan had to be developed, and asked Haldeman to get Mitchell down and meet with Ehrlichman and Dean to discuss a plan. (HJCT 129–30) The President said to Dean:

President. All right. Fine. And, uh, my point is that, uh, we can, uh, you may well come—I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan—John—and you had the right plan, let me say, I have no doubts[1] about the right plan before the election. And you handled it just right. You contained it. Now after the election we've got to have another plan, because we can't have, for four years, we can't have this thing—you're going to be eaten away. We can't do it. (HJCT 129–30)

On the night of March 21, 1973 the President dictated his recollection of the events of the day. The President said that Dean felt he was criminally liable for his action in "taking care of the defendants;" that Magruder would bring Haldeman down if he felt he himself was to go down; that if Hunt wasn't paid he would say things "that would be very detrimental to Colson and Ehrlichman;" that Mitchell had been present when Liddy presented his political intelligence proposal; that Colson, with Hunt and Liddy in his office, had called up Magruder and told him to "get off his ass and start doing something about, uh, setting up some kind of operation;" that Colson "pushed so hard that, uh, Liddy et al, following their natural inclinations, uh, went, uh, the extra step which got them into serious trouble;" that Ehrlichman sent "Hunt and his crew" out to check into Ellsberg's psychiatric problem; that Krogh was in "a straight position of perjury;" that Strachan "has been a real, uh, courageous fellow through all this" and that Strachan "certainly had knowledge of the informa— of the matter." (Book III, 1245–48)

The President noted that there would be a meeting with Mitchell in the morning, and that he hoped out of it all would come "some sort of course of action we can follow." The President said it was too dangerous to "hunker down" without making any kind of a statement. (Book III, 1248–49)

The following day[2] Mitchell came to Washington. The President, Mitchell, Haldeman, Ehrlichman and Dean met and discussed the various problems with regard to the complicity of White House and CRP officials in the Watergate and cover-up, including Mitchell. The President told Mitchell:

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[1] In the White House Transcript, the words ". . . And then, once you decide on the right plan, you say, 'John,' you say, 'No doubts about the right plan before the election . . .'" appear instead of the above quoted material. (WHT 248)

[2] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recording and other materials related to a conversation between the President and Haldeman from 9:11 to 10:35 a.m. on March 22, 1973. The President has refused to produce these materials, but has produced a two-and-a-half page edited transcript.

PRESIDENT. Then he can go over there as soon [unintelligible] this. But, uh, the, uh, the one thing I don't want to do is to—Now let me make this clear. I, I, I thought it was, uh, very, uh, very cruel thing as it turned out—although at the time I had to tell [unintelligible]—what happened to Adams. I don't want it to happen with Watergate—the Watergate matter. I think he made a, made a mistake, but he shouldn't have been sacked, he shouldn't have been—And, uh, for that reason, I am perfectly willing to—I don't give a shit what happens. I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan. That's the whole point. On the other hand, uh, uh, I would prefer, as I said to you, that you do it the other way. And I would particularly prefer to do it that other way if it's going to come out that way anyway. And that my view, that, uh, with the number of jackass people that they've got that they can call, they're going to—The story they get out through leaks, charges, and so forth, and innuendos, will be a hell of a lot worse than the story they're going to get out by just letting it out there.

MITCHELL. Well—

PRESIDENT. I don't know. But that's, uh, you know, up to this point, the whole theory has been containment, as you know, John.

MITCHELL. Yeah.

PRESIDENT. And now, now we're shifting. As far as I'm concerned, actually from a personal standpoint, if you weren't making a personal sacrifice—it's unfair—Haldeman and Dean. That's what Eisenhower—that's all he cared about. He only cared about—Christ, "Be sure he was clean." Both in the fund thing and the Adams thing. But I don't look at it that way. And I just—That's the thing I am really concerned with. We're going to protect our people, if we can.[3] (HJCT 183)

During the course of that meeting the President telephoned Attorney General Kleindienst. (HJCT 152–54) He called, not to disclose the information he had received as to the complicity of his associates in the Watergate and its cover-up, but to implement a decision to get Kleindienst working for the President's position with the SSC through Senator Baker.[4] He asked Kleindienst to be "our Baker handholder," to "babysit him, starting in like, like in about ten minutes." (HJCT 154)

On March 23, 1973 the President telephoned Acting FBI Director Gray (Book IV, 242) and told him that he knew the beating Gray was taking during his confirmation hearings and he believed it to be unfair. He reminded Gray that he had told him to conduct a "thorough and aggressive investigation." (Book IV, 245) He did not tell Gray of the information he had received from Dean on March 21, 1973.

On March 26, 1973 the Watergate Grand Jury was reconvened: the seven original Watergate defendants were scheduled to be recalled to testify under grants of immunity. (Book IV, 336.)

On March 27, 1973[5] the day after the Grand Jury was reconvened, the President met with Haldeman, Ehrlichman, and Ziegler for two hours. The President directed Ehrlichman to tell Kleindienst that no White House personnel had prior knowledge of the break-in and that Mitchell wanted Kleindienst to report information from the Grand Jury to the White House.

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[3] This exchange between the President and Mitchell does not appear in the White House Transcript.

[4] The President also spoke to Kleindienst on March 23 and March 25, 1973. There is no evidence that the President made disclosure to the Attorney General during the course of those conversations.

[5] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

E I will see Kleindienst. That's settled—
P You'll see Kleindienst? When?
E This afternoon at three o'clock.
P Three o'clock, and then I think, when—huh?
H Should I also see Kleindienst? Should I, or should John be the only one?
P John, you do it.
H That's what Mitchell was asking. Mitchell is very distressed that Kleindienst isn't stepping up to his job as the contact with the Committee, getting Baker programmed and all that (A), and (B) that he isn't getting—see Dean got turned off by the Grand Jury. Dean is not getting the information from Silbert on those things said at the Grand Jury. And Mitchell finds that absolutely incompetent and says it is Kleindienst's responsibility. He is supposed to be sending us—
P As Kleindienst, John, put it on the basis that you're not asking nor in effect is the White House asking; that John Mitchell says you've got to have this information from the Grand Jury at this time and you owe it to him. Put it right on that basis, now, so that everybody can't then say the White House raised hell about this, because we are not raising hell. Kleindienst shouldn't—where are you going to see him
P there or here?
E In my office
P Have a session with him about how much you want to tell him about everything.
E Ah—
P I think you've got to say, "Look, Dick, let me tell you, Dean was not involved—had no prior knowledge—Haldeman had no prior knowledge; you Ehrlichman, had none; and Colson had none. Now unless—all the papers writing about the President's men and if you have any information to the contrary you want to know. You've got to know it but you've got to say too that there is serious question here being raised about Mitchell. Right? That's about it isn't it? (WHT 366–67)

Later in the meeting, the President said that Kleindienst was worried about furnishing "Grand Jury things" to the White House. (WHT 370–71) The President suggested as an additional justification for such a request that Ehrlichman tell Kleindienst that Ehrlichman must receive Grand Jury information because the President wanted to know, in order to determine whether any White House people were involved: "Not to protect anybody, but to find out what the hell they are saying." (WHT 371) The President then suggested that Ehrlichman request a daily flow of information: "What have you today? Get every day so that we can move one step ahead here. We want to move." (WHT 371)

On the next day, Ehrlichman telephoned Kleindienst and executed the President's instructions. He relayed the President's assurance that there was no White House involvement in the break-in, but said that serious questions were being raised with regard to Mitchell. (Book IV, 413–15) Ehrlichman then told Kleindienst that the President wanted any evidence or inference from evidence about Mitchell's involvement passed on. (Book IV, 414) When Ehrlichman relayed to Kleindienst what he termed the "best information that the President had, and has . . ." (Book IV, 413), he did not disclose any of the information the President had received on March 21 from Dean, nor was he instructed by the President to do so. (Book IV, 409–21; WHT 366–67)

II

In the late afternoon on April 14, 1973 [6] Ehrlichman reported to the President on the substance of Magruder's interview that day with the prosecutors. (WHT 582) That evening, the President told Haldeman by telephone [7] that prior to Strachan's appearance before the Grand Jury, Strachan should be informed of Magruder's revelations; the President also asked if Strachan were smart enough so as to testify in a way that did not indicate that he knew what Magruder had said. (WHT 646–47) After his conversation with Haldeman, the President called Ehrlichman [8] (Book IV, 854) and suggested that before Colson spoke with the prosecutors, Colson should at least be aware that the prosecutors had already interviewed Magruder so that he could avoid making statements that might result in perjury charges. (WHT 650–51)

At the time of this telephone conversation on April 14, 1973, the President, aware of the fact that Dean, like Magruder, was talking with the prosecutors (WHT 401) told Ehrlichman to attempt to persuade Dean to continue to play an active role in the formulation of White House strategy regarding Watergate. The President directed Ehrlichman to approach Dean in the following manner:

> Well, you start with the proposition, Dean, the President thinks you have carried a tremendous load, and his affection and loyalty to you is just undiminished. . . . And now, let's see where the hell we go. . . .We can't get the President involved in this. His people, that is one thing. We don't want to cover-up, but there are ways. And then he's got to say, for example? You start with him certainly on the business of obstruction of justice. . . . Look, John—we need a plan here. And so that LaRue, Mardian, and the others—I mean, (WHT 667)

Ehrlichman said that he was not sure that he could go that far with Dean, but the President responded, "No. He can make the plan up." Ehrlichman indicated that he would "sound it out." (WHT 667) On the following afternoon, when Kleindienst reported to the President [9] on the disclosures made by Dean and Magruder to the prosecutors, the President told Kleindienst that he had previously taken Dean off the matter.[9] (WHT 698)

III

On April 15, 1973, the President met with Attorney General Kleindienst in the President's EOB office from 1:12 to 2:22 p.m. (Book IV, 931) Kleindienst reported to the President on the evidence then in the possession of the prosecutors against Mitchell, Dean, Haldeman, Ehrlichman, Magruder, Colson and others. (WHT 696–746) Kleindienst has testified that the President appeared dumbfounded and upset when he was told about the Watergate involvement of Administration officials. (Book IV, 926) The President did not tell Kleindienst

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[6] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[7] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[8] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[9] The President has stated that the tape on the recorder in his EOB office ran out during this meeting. He has produced an edited transcript of a portion of that conversation. ("Presidential Statements," 11/12/73, 69)

that he had previously been given this information by John Dean. (Book IV, 928)

The President asked about the evidence against Haldeman and Ehrlichman and made notes on Kleindienst's reply. (WHT 720–23; Book IV, 929) The President's notes on Kleindienst's reply include the following:

E—(Conditional Statements) Dean—Deep Six documents,—Get Hunt out of country

Haldeman—Strachan—will give testimony—H had papers indicating Liddy was in eavesdropping. $350,000—to LaRue

* * * * * * *

What will LaRue say he got the 350 for?

Gray—documents (Book IV, 929)

There was also a discussion of payments to the defendants and what motive had to be proved to establish criminal liability. (WHT 704–08)

On April 15, 1973 Petersen and Kleindienst met with the President in the President's EOB office from 4:00 to 5:15 p.m. (Book IV, 976)[10] Petersen has testified that he reported on the information the prosecutors had received from Dean and Magruder and that his report included the following items (Book IV, 979–80): that Mitchell had approved the $300,000 budget for the Liddy "Gemstone" operation; that budget information for "Gemstone" and summaries of intercepted conversations were given to Strachan and that information given to Strachan was for delivery to Haldeman (Book IV, 993); that if the prosecutors could develop Strachan as a witness, "school was going to be out as far as Haldeman was concerned" (Book IV, 982); that Ehrlichman, through Dean, had told Liddy that Hunt should leave the country; and that Ehrlichman had told Dean to "deep six" certain information recovered by Dean from Hunt's office. (Book IV, 992)

Peterson has testified that at this meeting the President did not disclose to him any of the factual information that Dean had discussed with the President on March 21, 1973. (Petersen testimony, 3 HJC 103, 153)

After receiving this information on April 15, 1973 the President met twice with Haldeman and Ehrlichman in his EOB office that evening.[11] (Book IV, 1062) At the later meeting, the President discussed with his closest associates at least one piece of information he had received from the Attorney General and Assistant Attorney General Petersen that afternoon. Ehrlichman testified that during their meeting the President requested that he telephone Patrick Gray and discuss with him the issue of documents taken from Hunt's White House safe and given by Dean to Gray in Ehrlichman's presence in June 1972. During the course of this meeting, Ehrlichman did so. (Book IV, 1063–64, 1078)

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[10] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has stated that the conversation was not recorded.

[11] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to these conversations. The President has stated that these conversations were not recorded.

IV

On April 16, 1973 from 1:39 to 3:25 p.m. the President met with Henry Petersen. (Book IV, 1230)[12] At this meeting, the President promised to treat as confidential any information disclosed by Petersen to the President. The President emphasized to Petersen that ". . . you're talking only to me . . . and there's not going to be anybody else on the White House staff. In other words, I am acting counsel and everything else." The President suggested that the only exception might be Dick Moore. (WHT 847) When Petersen expressed some reservation about information being disclosed to Moore, (WHT 847–48) the President said, ". . . let's just . . . better keep it with me then." (WHT 849)

At the meeting Petersen supplied the President with a memorandum which he had requested on April 15, 1973, summarizing the existing evidence that implicated Haldeman, Ehrlichman and Strachan. The memorandum included the following:

Ehrlichman

(1) Ehrlichman in the period following the break-in told Dean to "deep-six" certain information recovered by Dean from Hunt's office.

(2) Ehrlichman through Dean informed Liddy that Hunt should leave the country, and this was corroborated by Hunt.

(3) Dean had indicated that he had given certain non-Watergate information from Hunt's office to Gray personally.

Haldeman

(4) Magruder had said that "Gemstone" budget information had been given to Strachan for delivery to Haldeman.

(5) Dean informed Haldeman of the Liddy Plan, but no instructions were issued that this surveillance program was to be discontinued.

(6) Magruder said he caused to be delivered to Strachan, for delivery to Haldeman, a summary of the intercepted conversations.

Strachan

(7) Strachan had been questioned about the allegations concerning Haldeman and had refused to discuss the matter. (Book IV, 1225–26)

The White House edited transcript shows that, in the same conversation, Peterson informed the President about the Grand Jury not believing Magruder's testimony in the summer of 1972 (WHT 869–70); Gray's denial of receiving documents from Hunt' safe: the implication of Ehrlichman by his "deep six" statement (WHT 862); Strachan's preappearance interview (WHT 866) and the nature of his prior Grand July testimony (WHT 867); and Ehrlichman's request to the CIA for assistance to Hunt. (WHT 883–84)

At this meeting, the President provided Petersen with information respecting Watergate. Early in the meeting, the President described to Petersen what actions he had taken almost a month earlier on the Watergate matter. In so reporting the President gave Petersen the following characterization of the report he had assigned Dean to write in the days after March 21, 1973:

—a month ago I got Dean in and said (inaudible) a report (inaudible) Camp David and write a report. The report was not frankly accurate. Well it

[12] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but produced an edited transcript.

was accurate but it was not full. And he tells me the reason it wasn't full, was that he didn't know. Whether that is true or not I don't know. Although it wasn't I am told. But I am satisfied with it and I think I've read enough in the (inaudible) (inaudible) papers up here. So then I put Ehrlichman to work on it. (WHT 860)

The House Judiciary Committee transcripts of the White House meetings on March 20, 21, and 22, 1973 show that Dean was assigned to draft a partial report as a part of the White House strategy to limit the investigations. (WHT 168; HJCT 132, 136, 157–59) The President did not tell Petersen that one reason Dean did not complete a full report was that his assignment was to write a partial report—one that would minimize the involvement of White House personnel in the Watergate matter. (HJCT 172)

Second, later in the April 16, 1973 meeting the President and Petersen discussed the possibility that if Strachan's and Dean's testimony established that Haldeman was informed of the Liddy Plan after the second planning meeting, Haldeman might be considered responsible for the break-in for his alleged failure to issue an order to stop the surveillance operation. (WHT 920–21) When Petersen told the President that the question of Haldeman's liability depended on who had authority to act with respect to budget proposals for the Liddy Plan, (WHT 921) the President said:

P Haldeman (inaudible)
HP He did not have any authority?
P No sir . . . none, none—all Mitchell—campaign funds. He had no authority whatever. I wouldn't let him (inaudible). (WHT 922)

The White House Political Matters Memoranda establishes that Haldeman did possess and exercise authority over the use of campaign funds. (Political Matters Memoranda, 10/7/71, 2–4; 2/1/72, 1–2; 2/16/72, 1–2; 5/16/72, 1–2; 9/18/72, 1, and attachment.)

The President ended the meeting by asking that Petersen keep him fully informed. (WHT 927)

At the opening of a meeting with Ehrlichman and Ziegler which began two minutes after Petersen's departure,[13] (Book IV, 1254) the President informed Ehrlichman that Petersen had told him that Gray had denied ever personally receiving documents from Hunt's safe. The President and Ehrlichman then discussed Ehrlichman's recollections of the facts related to this incident. (WHT 929–30) He also told Ehrlichman that he had discussed with Petersen the June 19, 1972 incidents in which Ehrlichman was alleged to have issued instructions to Hunt to leave the country and to Dean to "deep-six" certain materials. (WHT 935)

The President next reported to Ehrlichman that Petersen had told him that Magruder had not yet gotten a deal; and that Dean and his lawyers were threatening to try the Administration and the President if Dean did not get immunity. (WHT 938) Finally, the President relayed to Ehrlichman Petersen's views about Haldeman's vulnerability with respect to criminal liability. (WHT 938–41)

On the following day, Ehrlichman took steps to gather information about the events the President had informed him Dean had been

[13] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials but has produced an edited transcript.

discussing with the prosecutors. He telephoned Ken Clawson and questioned him about the events of the meeting on June 19, 1972 (Book IV, 1321–22); Clawson responded that "If you want me to be forthwith and straightforward with you, I'll recollect anything that you want". Ehrlichman then recited Dean's allegations. (Book IV, 1322) Clawson told Ehrlichman that he did not recall the deep-six instruction or the instruction for Hunt to leave the country. (Book IV, 1322–23)

Also on April 17, 1973, Ehrlichman telephoned Colson. He relayed to him the information that Dean had not been given immunity; that the "grapevine" had it that Colson would be summoned to the Grand Jury that day and he would be asked about the meeting of June 19, 1972. (Book IV, 1326–27) Ehrlichman then gave Colson Dean's version of the events of that day. Colson said that he would deny Dean's allegation. (Book IV, 1327–29) As the call ended, Colson told Ehrlichman that, "There are a couple of things that you and I need to do to protect each other's flank here. . . . But—Listen, we'll talk about that." Ehrlichman responded, "fair enough." (Book IV, 1329–30)

V

On April 16, 1973 from 8:58 to 9:14 p.m. the President spoke by telephone with Petersen.[14] (Book IV, 1306) He asked Petersen if there were any developments he "should know about," and he reassured Petersen that ". . . of course, as you know, anything you tell me, as I think I told you earlier, will not be passed on . . . [b]ecause I know the rules of the Grand Jury." (WHT 966) Petersen then recounted to the President the developments of that day in the Watergate investigation.

Petersen disclosed to the President that Fred LaRue had confessed to participating in the crime of obstruction of justice; that he had attended a third planning meeting regarding the Liddy Plan with Mitchell (WHT 967); and that LaRue had told Mitchell it was all over. (WHT 968) Petersen also described LaRue as "rather pitiful." (WHT 966)

Petersen then reported additional details regarding Ehrlichman's involvement: that Liddy had confessed to Dean on June 19, 1972 and that Dean had then reported to Ehrlichman (WHT 968); and that Colson and Dean were together with Ehrlichman when Ehrlichman advised Hunt to get out of town. (WMT 969)

With respect to payments to the Watergate defendants, Petersen reported that he had been informed that Mitchell had requested that Dean approach Kalmbach to raise funds, and Dean had contacted Haldeman and Haldeman had authorized the use of Kalmbach. (WHT 969, 975–76) Petersen told the President that Kalmbach would be called before the Grand Jury regarding the details of the fundraising operation. (WHT 969) They also discussed the prosecutors' interest in the details of the transfer from Haldeman to LaRue of the $350,000 White House fund that was to be used for payments to the defendants. (WHT 976)

[14] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

On the following morning, April 17, 1973, the President met with Haldeman.[15] (Book IV, 1312) Early in the meeting, the President relayed Dean's disclosures to the prosecutor regarding his meeting with Liddy on June 19, 1972. (WHT 982) The President also told Haldeman that the money issue was critical: "Another thing, if you could get John and yourself to sit down and do some hard thinking about what kind of strategy you are going to have with the money. You know what I mean." This comment is followed by a deletion of "material unrelated to President's action." (WHT 983) Following the deletion, the transcript shows that the President instructed Haldeman to call Kalmbach to attempt to learn what Dean and Kalmbach were going to say Dean had told Kalmbach regarding the purposes of the fundraising. In addition, the President instructed Haldeman:

> Well, be sure that Kalmbach is at least aware of this, that LaRue has talked very freely. He is a broken man. (WHT 983)

At 12:35 p.m. on April 17, 1973,[16] the President met with Haldeman, Ehrlichman and Ziegler. (Book IV, 1347) At this meeting, he again relayed information relating to the Watergate investigation which he had received previously in confidence from Petersen. The President and Haldeman discussed Petersen's opinion, expressed to the President, that while the prosecutors had a case on Ehrlichman, the Grand Jury testimony of Strachan and Kalmbach would be crucial to the determination of Haldeman's criminal liability. The President then returned to the issue of the purposes for which the funds were paid to the defendants—the issue which Petersen had informed him was then being explored by the Grand Jury. The President encouraged Haldeman and Ehrlichman to deal with the problem: "Have you given any thought to what the line ought to be—I don't mean a lie—but a line, on raising the money for these defendants?" (WHT 994)

Later in the meeting, the President discussed with Haldeman and Ehrlichman the man Petersen had identified as critical to the issue of Haldeman's liability, Gordon Strachan. The President said, "Strachan has got to be worked out," (WHT 1011–12) and then proceeded to a discussion with Haldeman of the facts to which Strachan could testify. At this point, the President told Haldeman that Petersen believed that Strachan had received material clearly identifiable as telephone tap information. (WHT 1012) After a brief discussion of the issue, the President closed this discussion by saying, ". . . I want you to know what he's [Petersen] told me." (WHT 1013)

VI

On April 17, 1973, the President met with Petersen from 2:46 to 3:49 p.m.[17] (Book IV, 1397) The President opened the meeting by asking if there were anything new that he needed to know; he also cautioned Petersen that he did not want to be told anything out of

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[15] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[16] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[17] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

the Grand Jury, unless Petersen thought the President needed to know it. (WHT 1060)

Later in the meeting, they discussed the status of Haldeman and Ehrlichman when Magruder was indicted.

HP Let me ask you this, Mr. President, what would you do if we filed indictment against Magruder, hypothetically, and

P Yeah—Magruder or Dean?

HP Magruder

P Magruder—oh you have indicted him.

HP To which he is going to plead, and we named as unindicted co-conspirators everybody but Haldeman and Ehrlichman—never mind that the variation improves between them for the moment—

P That you would name Colson for example?

HP Well I don't know about Colson—Colson is again peripheral, but Mitchell, LaRue, Mardian—what-have-you . . .

P Colson was a big fish in my opinion.

HP Yeah, and a

P Would you name Dean for example?

HP Oh yes.

P Oh yes he was—

HP And we name all of those people. We leave out Haldeman and Ehrlichman. Now one of the things we had thought about—

P I get your point

HP leaving them out was to give you time and room to maneuver with respect to the two of them.

P Let me ask you—can I ask you—talking in the President's office

HP Yes sir.

[Sets up appointment—had to take time out to sign some papers]

P You see we've got to run the government too (inaudible).

P You mean if Haldeman and Ehrlichman leave you will not indict them?

HP No sir, I didn't say that.

P That would be a strange (inaudible).

HP No—it was not a question of that—it was a question of whether or not they were publicly identified in that pleading at that time.

P Yeah.

HP And, well, for example, as a scenario—that comes out and you say—

P (inaudible)

HP this is a shocking revelation—

P Yeah.

HP as a consequence of that I have consulted and I have just decided to clear out everybody here who might have had—and as a consequence Mr. Ehrlichman and Mr. Haldeman are going. Thereafter, we would proceed with the evidence wherever it took us. That is what we were thinking about to be perfectly honest with you.

P Well you really ought to include them (inaudible) if you include the others.

HP Well

P Oh, you don't want names in the indictment of Magruder.

HP That's right—unless we were able to go forward. Well, I don't want to belabor the point—I have made it clear that my view that I think they have made you very very vulnerable. I think they have made you wittingly or unwittingly very very vulnerable to rather severe criticism because of their actions. At least in public forums they eroded confidence in the office of the Presidency by their actions. Well you know it, I don't have to belabor it here—(WHT 1087–89)

Petersen also reported that LaRue had broken down and cried like a baby when it came to testifying about John Mitchell (WHT 1095); that in all probability there was not enough evidence to implicate Strachan as a principal, that at this point he was a fringe character (WHT 1091–92); that the case against Ehrlichman and Colson was more tangential than that against Haldeman (WHT 1081); that Hunt had testified in the Grand Jury that Liddy had told him that "his principals" (who remained unidentified) had said Hunt should leave

the country. (WHT 1083) Petersen said that Gray had admitted that Dean had turned over documents from Hunt's safe in Ehrlichman's presence (WHT 1097–98); and that Magruder was naming Haldeman and Ehrlichman not by first-hand knowledge, but by hearsay. (WHT 1105–06)

One minute after the end of his meeting with Petersen, the President met with Haldeman, Ehrlichman and Ziegler.[18] (Book IV, 1413) The President relayed the information that Petersen had talked to Gray and that Gray admitted receiving and destroying the Hunt files. (WHT 1116) The President then told Haldeman and Ehrlichman about his conversation with Petersen regarding the issue of their possibly being named as unindicted co-conspirators in an indictment of Jeb Magruder. The President detailed the nature of this discussion:

P Here's the situation, basically, (unintelligible). They're going to haul him [Magruder] in court, have him plead guilty, put a statement out because Sirica always questions the witnesses who plead guilty. They are going to make it as broad as they can and as narrow as they can at the same time. By being as broad as they can, they are going to say that he has named certain people and they are going to name a group of people that is non-indictable co-conspirators. They're going to include everybody on that list. I said, "Is Dean going to be on that list?" He said, "Yes," He said, "Frankly (unintelligible) not include Haldeman and Ehrlichman, which gives you an option." I said, Are you telling me that if Haldeman and Ehrlichman decide to take leave, that you will not then proceed with the prosecution. "No," he said, "I don't mean that." He said, "What I mean is that they are not going to appear on that list and that (unintelligible) Grand Jury and make case there (unintelligible). So there's the—

E Well, whether we take leave or not doesn't effect the list that they read off

P Yes. Yes.

E Oh, it does? Yes, it does. They will put us on the list if we don't take leave?

P Yes, because otherwise, he says, he says Sirica is going to question Magruder and he's going to question (unintelligible) and it appears (unintelligible). If he does that, then it will appear that the Justice Department again is covering up. (WHT 1116–17)

The President also relayed Petersen's report on Dean's current situation with the prosecutors. He indicated that Petersen had told him that Dean's lawyers had threatened to try the Administration in Dean's defense. (WHT 1118)

VII

During the course of the Grand Jury investigation the President tried to induce Petersen to refuse to grant immunity to Dean. The President was aware that Dean was attempting to provide the prosecutors with evidence to secure his immunity from prosecution, and that this testimony could implicate Haldeman, Ehrlichman, Colson, and possibly the President himself in wrongful conduct in the Watergate matter. Although the President did not order Petersen not to give immunity to Dean, the President did actively encourage him not to do so.

On April 8, 1973 Dean planned to begin meeting with the prosecutors, a fact that was immediately known to Haldeman, Ehrlichman and the President. (Book IV, 538) On April 11, 1973 Ehrlichman telephoned Kleindienst to advise him that no White House aide should be granted immunity; and Kleindienst relayed this message to Peter-

[18] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

sen. (Book IV, 548) Petersen has testified that this conversation did not make much of an impression on him until the end of the week when Petersen learned that Dean was cooperating with the prosecution. (Book IV, 548)

By mid-April 1973, the potential threat Dean posed was well recognized. On April 14, Dean discussed with Haldeman and Ehrlichman his information that they were targets of the Grand Jury, and said that in his opinion they could be indicted on obstruction of justice charges. (Book IV, 699–701) On the same day, the President said to Haldeman and Ehrlichman that they should find out about Dean: ". . . To find out—let me put it this way. You've got to find out what the hell he is going to say. (Unintelligible) which is frightening to me, (unintelligible)" (WHT 540)

On April 15, 1973, the President was told by Petersen of the nature of Dean's disclosures thus far, and of the fact that Dean was actively seeking immunity. (Petersen testimony, 3 HJC 82) During the next few days, the President closely followed the status of Dean's negotiations with the prosecutors. At a meeting with Petersen on April 16, 1973, the President asked about the deal with Dean; Petersen told the President that while there was no deal with Dean, Dean's counsel wanted one, and that Petersen was considering granting immunity to Dean. (WHT 885–90) The President was again reminded that Dean presented an important threat:

P You mean—you say that—I'm a little concerned about Dean's or his lawyers—that he's going to attack the President and so forth. Other than that, I mean Dean above all else—

HP Well I don't the President personally—the Presidency as an office as the Administration.

P Because of?

HP Because of Ehrlichman and Haldeman.

P It's Ehrlichman and Haldeman he's really talking about?

HP That may be his guts poker in the course of negotiations. That's what they say.

P Try the Administration and the President, (inaudible) affairs, (inaudible) huh? (WHT 925–26)

Petersen has testified that at this meeting on April 16, 1973 the President appeared to be concealing from him the fact that Ehrlichman, one of the principal people Dean's testimony could damage, had drafted for a Presidential announcement on the Watergate matter a provision declaring that the President disapproved the granting of immunity to high White House officials. (Petersen testimony, 3 HJC 105–06)

On April 17, 1973, the President discussed with Haldeman Dean's efforts to secure immunity, and they acknowledged the threat that that effort presented: "Dean is trying to tell enough to get immunity and that is frankly what it is Bob." Haldeman responded, "That is the real problem we've got. . . ."[19] (WHT 986) At a meeting later in the day, Ehrlichman relayed to the President Colson's recommendation that Dean be dealt with summarily:

E Very simply put, I think his argument will be that the City of Washington, generally knows that Dean had little or no access to you.

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[19] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

P True, that's quite right. Dean was just a messenger.

E That knowledge imputed to us is knowledge imputed to you and if Dean is (unintelligible) and testified that he imputed great quantities of knowledge to us, and is allowed to get away with that, that, that will seriously impair the Presidency ultimately. 'Cause it will be very easy to argue—that all you have to do is read Dean's testimony—

E Look at the previous relationships—and there she goes! So, he says the key to this is that Dean should not get immunity. That what he wants to tell you.

P Well, he told me that, and I couldn't agree more.

E Now he says you have total and complete control over whether Dean gets immunity through Petersen. Now that's what he says. He said he would be glad to come in and tell you how to do it, why, and all that stuff.

P I realize that Dean is the (unintelligible). Dean, of course, let's look at what he has, his (unintelligible) and so forth about (unintelligible) go popping off about everything else that is done in the government you know, and the bugging of the——

E Well, the question is, I suppose is which way he is liable to do it most.

P First of all, if he gets immunity he'll want to pay just as little price as he can.

E Well, the price that—the quid-pro quo for the immunity is to reach one through us to all of us. Colson argues that if he is not given immunity, then he has even more incentive to go light on his own malfactions and he will have to climb up and he will have to defend himself. (WHT 987–88)

Later in this conversation the President acknowledged that "Petersen's the guy that can give immunity" and "Dean is the guy that he's got to use for the purpose of making the case." (WHT 993–94)

Following the President's expression of agreement with Colson's recommendation that Dean should be denied immunity (WHT 987–88), the President, Haldeman and Ehrlichman considered the matters about which Dean might testify. They expressed concern that Dean could disclose facts relating to the Ellsberg break-in; "the ITT thing" (WHT 1029); and Dean's conversation with the President on March 21, 1973 regarding the payment to Hunt. (WHT 991, 1031–34) The meeting ended with the President agreeing to get Petersen in to talk about immunity, at which time Petersen would be told that the President did not want anybody on the White House staff to be given immunity. (WHT 1051–52, 1056)

Later in the afternoon of April 17, 1973, the President met with Petersen. (Book IV, 1397) At this meeting, the President attempted to influence Petersen's decision on the granting of immunity to Dean by suggesting to Petersen that any immunity grant to Dean would be interpreted as a deal on Petersen's part to conceal the fact that Petersen had provided Dean with Grand Jury information during the summer of 1972.[20] (WHT 1061–64) The President first expressed his concern over leaks from the Grand Jury in 1972. (WHT 1063) The President later stated that while he did not care what Petersen did on immunity to Strachan or other second people" (WHT 1077), Petersen could not give immunity to Dean because Petersen's "close relationship" with Dean would make it look like a "straight deal". (WHT 1077–79) Near the end of the meeting, Petersen objected to the inclusion of a reference in the President's public statement opposing grants of immunity. (WHT 1101–02)

Within an hour the President issued a public statement on Watergate, including a provision that the President felt that no individual

[20] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

holding a position of major importance in the Administration should be granted immunity. (Book IV, 1420) Two days later the President met with Wilson and Strickler, the attorneys for Haldeman and Ehrlichman. (Book IV, 1513–15) At this meeting the President described Dean as a "loose cannon", and indicated to them that he had put out his statement on immunity because the prosecutors were at that point hung up on the question of giving immunity to Dean. (WHT 1239–40)

On April 18, 1973, the President called Petersen.[21] (Book IV, 1471) Petersen has testified that the President "was rather angry," (Book IV, 1474) and that he chewed Petersen out for having granted immunity to Dean. (Petersen testimony, 3 HJC 98) According to Petersen, the President told him that he knew that Dean had been given immunity because Dean had told him; Petersen told the President that that simply wasn't so; the conversation got "nasty" and Petersen told the President that he would check on the matter and get back in touch. (Book IV, 1474) Petersen checked with the prosecutors and called the President back[22] and reassured him that Dean had not been given immunity. When Petersen reported this denial, the President said he had a tape to prove his contention. (Book IV, 1474–75)

By the end of April, the prosecutors' negotiations with Dean for immunity were broken off, and Dean did not receive immunity from prosecution. (Petersen testimony, 3 HJC 117)

VIII

From April 18, 1973 through April 30, 1973, the date of Haldeman's and Ehrlichman's resignations, the President continued his series of meetings with Petersen.[23] (Book IV, 1532–34) At many of these meetings the President sought information from Petersen on the progress of the Watergate investigation and on the evidence that was being accumulated on the involvement of Haldeman and Ehrlichman. (Book IV, 1535–41) During this period, the President met frequently with Haldeman and Ehrlichman.[24] (Book IV, 1469–70, 1558; Meetings and conversations between the President and John Ehrlichman. (4/18–4/29/73)

The use to which the President put the information he had been obtaining from Petersen during this period, however, is indicated by the events of April 25 and 26, 1973. At that time the President knew that Haldeman was a prime suspect of the Grand Jury investigation. On April 15, 1973 Petersen had recommended to the President that Haldeman be dismissed because of his alleged involvement in various Watergate-related matters (Petersen testimony, 3HJC 95, 101–02); from that date Petersen had kept the President informed about the

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[21] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript. Petersen has testified that the edited transcript is not fully accurate. (Petersen testimony, 3 HJC 160)

[22] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President responded that the conversation was not recorded.

[23] The House Judiciary Committee on May 30 and June 24, 1974 subpoenaed the tape recording and other material related to the April 19, 1973 conversation. The President has refused to produce these materials.

[24] The House Judiciary Committee on May 30, 1974 subpoenaed the tape recording and other material related to 19 such conversations. The President has refused to produce these materials. (Book IX, 1060–64)

evidence against Haldeman. (Book IV, 991) On April 17, 1973,[25] Petersen also told the President that the evidence being accumulated on Haldeman, Ehrlichman and Colson indicated that Haldeman was the most directly involved. (WHT 1081) By April 25, 1973, the President was aware that the issue of the payments to the Watergate defendents and Haldeman's involvement in this matter were being closely investigated by the Grand Jury. (WHT 994–95)

On April 25, 1973 the President directed Haldeman to listen to the tape of the March 21 conversation with Dean. (Book IX, 108, 114) Dean had been speaking to the prosecutors during April; Haldeman in listening to the tapes would be able to prepare a strategy for meeting whatever disclosures Dean might make.

On April 25, 1973, pursuant to the President's direction, Haldeman requested and received twenty-two tapes of Presidential conversations during February, March and April 1973. (Book IX, 108, 114–15, 123) On the afternoon of April 25, 1973, Haldeman listened to the March 21, 1973 morning conversation and made notes from the tape. (Book IX, 116) At 4:40 p.m. on April 25, 1973, Haldeman met with the President and reported to him on the contents of the tape. (Book IV, 1558, 1562) The President instructed Haldeman to listen to the March 21 tape again on the next day. (Book IX, 118, 126)

The meeting between the President and Haldeman on April 25, 1973 ended at 5:35 p.m. (Book IV, 1558) Two minutes later, at 5:37 p.m. Petersen entered and met with the President for more than an hour. (Book IV, 1618) The President did not inform Petersen of the taping system, the contents of the March 21, 1973 tape, or of the fact that Haldeman had been directed to listen to it and had done so that very day. (Petersen testimony, 3 HJC 102)

On April 26, 1973 Haldeman again received the group of tapes, including the March 21 tape. (Book IV, 1560, 1563) He listened again to the March 21 tape and reported to the President. (Book IX, 119–21) On April 26, 1973, Haldeman and the President met for more than five hours.[26] (Book IX, 126)

IX

On April 27, 1973 the President met twice with Petersen. (Book IV, 1633) They discussed the Grand Jury investigation and the President's concern about rumors that Dean was implicating the President in the Watergate matter. (WHT 1257–93) Petersen assured the President that he had told the prosecutors that they had no mandate to investigate the President. (WHT 1259) In this context, the President made the following statement to Petersen about this conversation of March 21, 1973 and the issue of the payment of Hunt:

> . . . let me tell you the only conversations we ever had with him, was that famous March 21st conversation I told you about, where he told me about Bittman coming to him. No, the Bittman request for $120,000 for Hunt.

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[25] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

[26] The House Judiciary Committee subpoenaed on May 30, 1974 the tape recordings and other material related to the conversations of April 25 and April 26, 1973. The President has refused to produce these materials.

And I then finally began to get at them. I explored with him thoroughly, "Now what the hell is this for?" He said, "It's because he's blackmailing Ehrlichman." Remember I said that's what its about. And Hunt is going to recall the seamy side of it. And I asked him, "Well how would you get it? How would you get it to them?" so forth. But my purpose was to find out what the hell had been going on before. And believe me, nothing was approved. I mean as far as I'm concerned—as far as I'm concerned turned it off totally. (WHT 1259)

The President's statement that he turned off totally the payment of blackmail money to Hunt on March 21, 1973 is not consistent with the facts as reflected in the House Judiciary transcripts of the tape recordings of the meetings of that date. (HJCT 89, 91, 94–96, 103–06, 109–10, 114–16, 118–19, 121–22, 125)

At his second meeting with Petersen on April 27, 1973 the President provided Petersen with another inaccurate version of the events occurring on March 21 and March 22, 1973:

P Dean. You will get Dean in there. Suppose he starts trying to impeach the President, the word of the President of the United States and says, "Well, I have information to the effect that I once discussed with the President the question of how the possibility, of the problem," of this damn Bittman stuff I spoke to you about last time. Henry, it won't stand up for five minutes because nothing was done, and fortunately I had Haldeman at that conversation and he was there and I said, "Look, I tried to give you this, this, this, this, this, and this." And I said, "When you finally get it out, it won't work. Because, I said, "First, you can't get clemency to Hunt." I mean, I was trying to get it out. To try to see what that Dean had been doing. I said, "First you can't give him clemency." Somebody has thrown out something to the effect that Dean reported that Hunt had an idea that he was going to get clemency around Christmas. I said, "Are you kidding? You can't get clemency for Hunt. You couldn't even think about it until, you know, '75 or something like that." Which you could, then because of the fact, that you could get to the—ah—But nevertheless, I said you couldn't give clemency. I said, "The second point to remember is 'How are you going to get the money for them?' If you could do it. I mean you are talking about a million dollars." I asked him—well, I gave him several ways. I said, "You couldn't put it through a Cuban Committee could you?" I asked him, because to me he was sounding so damned ridiculous. I said, "Well under the circumstances," I said, "There isn't a damn thing we can do." I said, "It looks to me like the problem is John Mitchell." Mitchell came down the next day and we talked about executive privilege. Nothing else. Now, that's the total story. And—so Dean—I just want you to be sure that if Dean ever raises the thing, you've got the whole thing. You've got that whole thing. Now kick him straight—." (WHT 1278–79)

April 30, 1973 to the Present

I

On April 30, 1973 the President accepted the resignations of Haldeman, Ehrlichman, and Kleindienst, and requested and received the resignation of Dean. (Book IX, 132) The President pledged to the American people that he would do everything in his power to insure that those guilty of misconduct within the White House or in his campaign organization were brought to justice. (Book IX, 135) He stated that he was giving Attorney General-designate Elliot Richardson absolute authority to make all decisions bearing on the prosecution of the Watergate case, including the authority to appoint a special prosecutor. (Book IX, 134–35) On May 9, 1973 the President reiterated this pledge and added that the Special Prosecutor, appointed by Richardson, would have the total cooperation of the executive branch. (Book IX, 141) On May 21, 1973 Richardson appeared before the Senate Judiciary Committee with Special Prosecutor designate Archibald Cox. Richardson submitted to the Committee a statement of duties and responsibilities of the Special Prosecutor. The statement provided that the Special Prosecutor would have jurisdiction over offenses arising out of the unauthorized entry into the DNC headquarters at the Watergate, offenses arising out of the 1972 Presidential election, allegations involving the President, members of the White House staff or Presidential appointees and other matters which he consented to have assigned by the Attorney General. The guidelines also provided that the Special Prosecutor would have full authority for determining whether or not to contest the assertion of executive privilege or any other testimonial privilege and that he would not be removed except for extraordinary improprieties. (Book IX, 147–48)

On May 22, 1973 the President stated publicly that Richardson had his full support in seeing the truth brought out. The President also stated that executive privilege would not be invoked as to any testimony concerning possible criminal conduct or discussions of such conduct. (Book IX, 153) On May 25, 1973 just before Richardson was sworn in as Attorney General, the President mentioned privately to Richardson that the waiver of executive privilege extended to testimony, but not documents. (Book IX, 157)

II

Documents necessary to the investigation of wrongdoing were segregated in secure rooms in the EOB and the White House. Beginning in May 1973 the files of Haldeman, Strachan, Ehrlichman, and Dean, among others, were locked in a safe room in the White House. (Book IX, 163, 258–59) On April 30, 1973, just before his resignation, Ehrlichman instructed David Young to make sure that all papers involv-

ing the Plumbers were put in the President's file. Ehrlichman told Young that Ehrlichman was going to be putting some papers in the President's file before he left. (Book IX, 128–29)

On June 11, 1973 and June 21, 1973 the Special Prosecutor wrote to J. Fred Buzhardt, the President's Counsel, requesting an inventory of the files of Haldeman, Ehrlichman, Mitchell, LaRue, Liddy, Colson, Chapin, Strachan, Dean, Hunt, Krogh, and Young, and other files related to the Pentagon Papers investigation. After many weeks Buzhardt told Cox there could be no agreement on an inventory. (Book IX, 258, 260–61)

On August 23, 1973 Cox requested from the White House certain records relating to the Pentagon Papers and the Fielding break-in. (Book IX, 504–07) Cox repeated the request on October 4, 1973. (Book IX, 508–10) As of October 29, 1973 none of the documents had been turned over to the Special Prosecutor. (Book IX, 511) On August 27, 1973 Cox requested White House records on Joseph Kraft and the electronic surveillance of Kraft. (Book IX, 518) As of November 5, 1973 this request had not been fulfilled. (Book IX, 521)

In September 1973, prior to his appearance before the Senate Select Committee and the Grand Jury, Special Assistant to the President Patrick Buchanan was instructed by White House counsel to transfer certain documents to the President's files and not to take them from the White House. (Book IX, 600–02)

III

Important evidence bearing on the truth or falsity of allegations of misconduct at the White House is contained in recordings of conversations between the President and his staff. The President attempted to conceal the existence of these recordings (Book IX, 179–80, 215, 246), refused to make them available to the Special Prosecutor once their existence became known (Book IX, 408, 426); and the evidence indicates that he discharged Cox for refusing to agree to cease trying to obtain them.

Before the existence of the White House taping system became known, Special Prosecutor Cox received information that the President had a tape of his April 15, 1973 meeting with John Dean. On June 11 and June 20, 1973 Cox wrote to Buzhardt requesting access to that tape. Cox pointed out that the President had offered the tape to Henry Petersen when Petersen was in charge of the Watergate investigation. (Book IX, 244–45, 248–49) Buzhardt spoke to the President about Cox's request, and informed Cox that the tape in question was a recording of the President's recollections of the day and that the tape would not be produced. (Book IX, 246–47, 253) Buzhardt did not tell Cox that all Presidential conversations in the Oval Office and the Executive Office Building were recorded, many of which clearly had a direct bearing on the investigation.

On July 16, 1973 Alexander Butterfield testified before the Senate Select Committee and publicly disclosed the existence of the White House taping system. (Book IX, 380–81) On July 18, 1973 Cox requested tapes of eight Presidential conversations. (Book IX, 390–92) On July 23, 1973 White House counsel Charles Alan Wright

refused the request, and Cox issued a subpoena for tape recordings of nine Presidental conversations. (Book IX, 408–10, 414–16) On August 29, 1973 Judge Sirica ordered the production of the recordings for *in camera* review. (Book IX, 586) After an appeal by the President, the United States Court of Appeals upheld Judge Sirica's order on October 12, 1973. (Book IX, 587, 748) No appeal was taken from this Court decision. (Book IX, 800)

On October 17, 1973 Richardson transmitted a proposal to Cox whereby, in lieu of *in camera* inspection, Senator Stennis would verify White House transcripts of the tapes. (Book IX, 762, 766–67) Richardson told Cox that the question of other tapes and documents would be left for later discussions. (Book IX, 763) On October 18, 1973 Cox replied that the President's proposal was not, in essence, unacceptable. (Book IX, 767) The President, through his lawyer, Charles Alan Wright, sought to require Cox to agree not to go to court in the future for other tapes and documents. (Book IX, 791–92, 795) After Richardson learned of this new condition, he wrote the President that while he had thought the initial proposal reasonable, he objected to the added condition. (Book IX, 812–13) On the evening of October 19, 1973 the President issued a statement ordering Cox to agree to the "Stennis proposal," and to agree also not to go to court for other tapes and documents. (Book IX, 800) On October 20, 1973 Cox replied that his responsibilities as Special Prosecutor compelled him to refuse to obey the order. (Archibald Cox Press Conference, October 20, 1973, 3–4, 6–7, 16–17) On October 20, 1973 when the President instructed Richardson to fire Cox for refusing to agree not to go to court for tapes and documents, Richardson resigned. When the President gave the same instruction to Deputy Attorney General Ruckelshaus, Ruckelshaus also resigned. (Book IX, 816–17, 819)

There is evidence that the President had decided to fire Cox well in advance of October 20. On July 3, 1973 General Haig told Richardson that it could not be a part of the Special Prosecutor's charter to investigate the President, and that the President might discharge Cox. (Book IX, 331) On July 23, 1973 Haig again called Richardson and complained about various activities of the Special Prosecutor. Haig said that the President wanted a "tight line drawn with no further mistakes," and that "if Cox does not agree, we will get rid of Cox." (Book IX, 331–32) Richardson has stated in an affidavit submitted to the House Judiciary Committee that he met with the President in late September or early October, 1973. "After we finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in substance, 'Now that we have disposed of that matter, we can go ahead and get rid of Cox.'" (Book IX, 332)

After the President fired Cox, resolutions were introduced in the House calling for the President's impeachment. Bills were introduced in the House and Senate calling for the creation of an independent investigative agency. (Cong. Record, October 23, 1973, H9356; Cong. Record, October 24, 1973, H9397; Cong. Record, October 23, 1973, S19439, S19443–44, S19454, H9354, H9355; and Cong. Record, October 24, 1973, H9396) The President under enormous public pressure turned over some subpoenaed tapes and offered explanation for the absence of others. ("Presidential Statements," 11/12/73, 60; *In re*

Grand Jury, 11/26/73 transcript of proceedings, 1241) The President also authorized the appointment of another Special Prosecutor. (Book IX, 833)

IV

On April 25, 1973 Haldeman, at the President's direction, listened to the tape of the March 21, 1973 morning meeting among the President, Dean and Haldeman. (Book IX, 108, 114) Haldeman made notes from the tape and reported to the President. (Book IX, 116) The President concluded that Haldeman should listen to the March 21 tape again to ascertain the answers to certain points of doubt raised by the tape. (Book IX, 118) On April 26, 1973 Haldeman again received the March 21 tape. (Book IV, 1560, 1563) He subsequently listened to the tape again and reported to the President. (Book IX, 119–21)

On June 4, 1973 the President listened to a tape recording of certain of his conversations in February and March, 1973. During the day the President spoke with Chief of Staff Alexander Haig and Press Secretary Ron Ziegler about the March 21 conversation. The President said:

PRESIDENT. [. . . .] Well, as I told you, we do know we have one problem: It's that damn conversation of March twenty-first due to the fact that, uh, for the reasons [unintelligible]. But I think we can handle that.

HAIG. I think we ca—, can. That's, that's the—

PRESIDENT. Bob can handle it. He'll get up there and say that—Bob will say, "I was there; the President said—".

* * * * * * *

PRESIDENT. Okay. The twenty-first and the twenty-second. Uh, uh, twenty—, twenty-first I've got to Bob already. The twenty-second [unintelligible].

ZIEGLER. [Unintelligible]

PRESIDENT. Well—No, if you can—I don't think you can. He's, he's got it all in our file and I don't—let's just forget it. I think after the twenty-first we forget what the hell—What do you think? (Book IX, 177–78, 193)

Shortly after the existence of the White House taping system became public knowledge, the President had the taping system disconnected. Custody of the tapes was taken from the Secret Service and given to a White House aide. (Book IX, 385–86) Special Prosecutor Cox wrote to Buzhardt to express concern that care be taken to insure the integrity of tapes that the Special Prosecutor had requested. Cox asked Buzhardt to take all necessary steps to see that the custody of the tapes was properly limited and that access to them was fully documented. (Book IX, 394) On July 25, 1973 Buzhardt stated that the tapes were being preserved intact. Buzhardt stated that the tapes were under the President's sole personal control. (Book IX, 396)

After the Court of Appeals decision in *Nixon* v. *Sirica* requiring the President to surrender the tapes that Cox had subpoenaed, the President informed Judge Sirica that some of this material was unavailable—specifically, that there was an 18½ minute gap on the June 20, 1972 conversation between Haldeman and the President, and that there was no April 15 tape of his conversation with John Dean and no June 20, 1972 tape of the telephone conversation between the President and Mitchell. (Book IX, 836, 869, 871)

The erased conversation of June 20, 1972 contained evidence showing what the President knew of the involvement of his closest advisors shortly after the Watergate break-in. The erased meeting between the President and Haldeman occurred approximately one hour after Haldeman had been briefed on Watergate by Ehrlichman, Mitchell, Dean and Kleindienst, all of whom had learned of White House and CRP involvement. Haldeman's notes show and Buzhardt has acknowledged that the only erased portion of the tape was the conversation dealing with Watergate. (Book II, 107–08, 111–12, 144–46, 153, 237–39, 240–43, 246, 249–50)

The court-appointed advisory panel of technical experts, selected jointly by the Special Prosecution Force and the White House Counsel, unanimously concluded that: (i) the erasing and rerecording which produced the buzz on the tape were done on the original tape; (ii) the Uher 5000 recorder machine used by Rose Mary Woods probably produced the buzz; (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and required hand operation of the control of the Uher 5000 recorder to produce each erasure and instance of rerecording; and (iv) the erased portion of the tape originally contained speech which because of the erasures and rerecording could not be recovered. (An analysis of the advisory panel's report is set forth in Appendix A.)

The President has stated that the April 15, 1973 tape never existed, because the tape on the recorder in the White House taping system at his Executive Office Building office ran out. He also stated that the dictabelt of his recollections of the day (referred to by Buzhardt in June, 1973 in refusing Cox's request for a tape) could not be located. (Book IX, 860) Among the conversations that would have been recorded on the afternoon and evening of April 15, 1973 was a meeting between the President and Dean. Dean has testified that during this meeting the President stated in a low voice that he had been foolish to discuss Hunt's clemency with Colson and that he had been joking when he said one million dollars for the Watergate defendants could be raised. (Book IV, 1044–46)

On April 18, 1973 the President offered to let Petersen hear the tape of his April 15, 1973 meeting with Dean. (Book IV, 1474–75) On June 4, 1973 the President listened to tape recordings of certain of his conversations in February and March, 1973. (Book IX, 170, 172) When his aide, Stephen Bull, asked which additional tapes he wanted, the President said:

> PRESIDENT. March twenty-first. I don't need April, I don't need April fifteen. I need the sixteenth. [Unintelligible] correct. There were two on April sixteenth. I just want the second [unintelligible]. You can skip the—April fifteen.
>
> BULL. And March twenty-first.
>
> PRESIDENT. March twenty-first, that's right, I have those.
>
> BULL. [Unintelligible]
>
> PRESIDENT. Yeah. Okay. I'll check. Haldeman's got them [unintelligible]. No, Ziegler's got them. Just ask Ziegler. All right . . . . (Book IX, 183)

During an interview with the Senate Select Committee staff in the summer of 1973, White House assistant Stephen Bull stated that in June 1973 Haig called him to request that the April 15 tape of the President's conversation with Dean be flown to the President at San Clemente. Bull stated that since there were no further courier flights

to San Clemente that night, Haig instructed Bull to arrange for the Secret Service to play the tape for Buzhardt, so that Buzhardt could brief the President by telephone on its contents. (Book IX, 308–09, 12, 298–99) Later Bull testified at hearings regarding the missing Presidential tapes that he had only guessed at the date of the conversation, and that the President must have been referring to the tape of a March 20 telephone call. (Book IX, 311–12) [1]

Finally, when John Dean appeared before the Senate Select Committee before the existence of the White House tape recording system was publicly revealed, he testified that he had the impression that his conversation with the President on April 15 was being recorded. Dean testified that his suspicion was aroused when the President stated that he had been joking when he remarked on March 21 that raising a million dollars for the Watergate defendants would be no problem, and when the President walked to a far corner of the room to say in a low voice that discussing Hunt's clemency with Colson had been a mistake. (Book IV, 1045–46)

In addition to the gap in the June 20, 1972 tape and the nonexistence of the April 15, 1973 tape and dictabelt, all of which were in the sole personal custody of the President, there are also discrepancies in other dictabelts. There is a 42-second gap in the dictabelt on which the President dictated his recollections of a June 20, 1972 conversation with Mitchell. (Book II, 310) There is a 57-second gap in a cassette on which the President dictated his recollections of his March 21, 1973 conversation with Dean. (Book III, 1249) On June 16, 1973 Buzhardt told Cox there was a dictabelt of the President's recollections of his April 15 conversation with Dean. (Book IX, 246) But in November 1973, the President, through his attorney, informed the Court that he could not find this dictabelt.[2] (Book IX, 850)

VI

Pursuant to the mandate of the House of Representatives, this Committee has issued subpoenas to the President requesting tapes and other material bearing on Watergate. In all instances the President refused to comply. The President has provided the Committee only with those materials he had already turned over to the Special Prosecutor and with edited transcripts of certain of the subpoenaed conversations.

Certain documents and the edited transcripts provided by the White House differ substantially from other evidence on the same subjects in the possession of the Judiciary Committee.

The House Judiciary Committee has been able to check eight of the White House edited transcripts against the transcripts prepared by its staff from the tapes which the President has turned over to the Committee. ("Comparison of White House and Judiciary Committee Transcripts of Eight Recorded Presidential Conversations.") The

[1] Buzhardt has testified that the taped conversation he listened to in June was a telephone conversation between the President and Dean which took place on March 20, 1973. (Book IX, 297)

[2] On November 12, 1973 the President announced that he would supply the tapes of two conversations with Dean on April 16, 1973 in lieu of the April 15 conversation. The President stated that the substance of the conversations on April 16 was similar to the matters discussed on April 15 as reflected in the President's notes of the meeting ("Presidential Statements," 11/12/73, 61)

comparison shows substantial differences in all eight transcripts. The most frequent difference is that Presidential remarks are omitted from the White House version.

When the President announced that he was providing transcripts to the Committee, he stated that everything that was relevant to the President's knowledge or actions with regard to Watergate was included in the transcripts. (Book IX, 993, 999) The White House transcripts, however, are incomplete. The House Judiciary Committee transcript of the March 22, 1973 conversation among the President, Haldeman, Ehrlichman, Mitchell and Dean shows that the participants continued to talk about Watergate after the point in the discussion when the White House transcript ends. In a portion of the discussion omitted from the White House version, the President tells Mitchell:

[. . .] Now let me make this clear. I, I, I thought it was, uh, very, uh, very cruel thing as it turned out—although at the time I had to tell [unintelligible]—what happened to Adams. I don't want it to happen with Watergate—the Watergate matter. I think he made a, made a mistake, but he shouldn't have been sacked, he shouldn't have been—And, uh, for that reason, I am perfectly willing to—I don't give a shit what happens. I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan. That's the whole point. On the other hand, uh, uh, I would prefer, as I said to you, that you do it the other way. And I would particularly prefer to do it that other way if it's going to come out that way anyway. And that my view, that, uh, with the number of jackass people that they've got that they can call, they're going to—The story they get out through leaks, charges, and so forth, and innuendos, will be a hell of a lot worse than the story they're going to get out by just letting it out there.

* * * * * * *

[. . .] [U]p to this point, the whole theory has been containment, as you know, John.

* * * * * * *

[. . .] That's the thing I am really concerned with. We're going to protect our people, if we can. (HJCT 183)

In response to the Committee's request for the conversation between the President and Dean on March 17, 1973 from 1:25 to 2:10 p.m., the President supplied the Committee with a four-page transcript that deals only with Segretti and the Fielding break-in. (WHT 157–60)

On June 4, 1973 however, the President described this March 17 conversation with Dean to Ron Ziegler. The Committee has a tape recording of that June 4 conversation. The President said:

[. . .] then he said—started talking about Magruder, you know: "Jeb's good, but if he sees himself sinking he'll drag everything with him."

* * * * * * *

[. . . .] And he said that he'd seen Liddy, Liddy right after it happened. And he said, "No one in the White House except possibly Strachan is involved with, or knew about it." He said, "Magruder had pushed him without mercy." [. . . .] I said, "You know, the thing here is that Magruder, Magruder put, put the heat on, and Sloan start pissing on Haldeman." I said, "That couldn't be uh [unintelligible]." I said, "We've, we've got to cut that off. We can't have that go to Haldeman."

* * * * * * *

[. . . .] And I said, "Well, looking to the future, I mean, here are the problems. We got this guy, this guy and this guy." And I said, "Magruder can be one, one

guy—and that's going to bring it right up to home. That'll bring it right up to the, to the White House, to the President." And I said, "We've got to cut that back. That ought to be cut out." (Book IX, 209–11)

The President has also provided the Committee with a five-page transcript of his conversation with Assistant Attorney General Henry Petersen on the afternoon of April 18, 1973. (WHT 1203–07) Petersen has testified as to his recollection of that conversation. The transcript is not in accord with Peterson's recollection. (Petersen testimony, 3 HJC 146)

Petersen has testified that during the telephone call the following conversation took place: The President called Petersen and told him that Dean had been immunized. The President told Petersen that, although Petersen had told the President that Dean had not been given immunity, the President knew that was not true. The President stated that he knew Dean had been immunized, and he knew it because Dean himself had told the President. Petersen again told the President that Dean had not been immunized. Later in the conversation, Petersen told the President he would doublecheck on Dean's status. (Book IV, 1474) Nowhere in the President's transcript of the conversation is there any discussion of Dean having been given immunity. (WHT 1203–07)

On June 24, 1974 this Committee issued a subpoena to the President requesting copies of certain of John Ehrlichman's notes which were impounded in the White House. On July 12, 1974 the Committee was informed that the President would furnish the Committee copies of Ehrlichman's notes which the President had turned over to Ehrlichman and the Special Prosecutor. On July 15, 1974 the White House provided the notes to the Committee. Some of the material on the notes had been blanked out. On July 16, the Committee obtained copies of the notes which the White House had furnished to Ehrlichman and the Special Prosecutor. Some of the material which had been blanked out on the copies provided to the Committee by the President had not been blanked out on the copies the Committee received from the Special Prosecutor.

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Appendix A

18-1/2 MINUTE GAP

On November 21, 1973, Chief Judge Sirica appointed a panel of six technical experts nominated by the Special Prosecutor and Counsel for the President for the purpose of studying a tape recording that contained a conversation on June 20, 1972 between the President and Haldeman that had been subpoenaed by the Watergate Grand Jury. In particular, the panel was to determine and report on the nature and cause of the obliteration of an 18½ minute portion of that tape-recorded conversation. (Book IX, 871) On January 15, 1974 the panel reported the conclusions of its study (Book IX, 926–28) and on May 31, 1974 the panel's final report on the EOB tape of June 20, 1972 was submitted. (The EOB Tape of June 20, 1972: Report on a Technical Investigation Conducted for the U.S. District Court for the District of Columbia by the Advisory Panel on White House Tapes, May 31, 1974, hereinafter cited as May 1974 Tape Report). The key conclusions of the panel were:

(1) The Uher 5000 tape recorder used by the President's secretary, Rose Mary Woods, to transcribe tapes of Presidential conversations probably produced the 18½ minute erasure and buzz.

(2) The 18½ minutes of erasure and buzz were accomplished by at least five, and perhaps as many as nine, contiguous and separate operations.

(3) Erasure and recording of each segment of erasure and buzz required manual operation of keyboard controls on the Uher 5000 recorder. (May 1974 Tape report, 35–36)

The Uher 5000 tape recorder, like the Sony 800B tape recorder used to record the Presidential conversation, has two magnetic "heads," an erase head and a record head. (The record head performs both recording and playback functions.) When the "playback" button on the tape recorder is depressed, the erase head is inactive while the record head is activated to pick up electronic signals from the magnetic tape as the tape is drawn across it. The machine then translates the electronic signals into sound. When the "record" button is depressed, both the erase head and the record head are activated. The tape is drawn first over the erase head where the tape is cleansed of prior magnetic signals and then over the record head where new magnetic signals, representing the sounds being recorded, are imparted to the tape. To erase a tape, the "record" button is depressed but no new sounds are introduced into the recording machine; the tape passes over the erase head and is erased, and then over the activated but silent record head.

The Uher 5000 machine may be used in conjunction with a foot pedal. The pedal is capable only of moving the tape forward at record-

ing speed or backward at the higher rewind speed. The foot pedal cannot, in effect, depress the "playback" or "record" button; it cannot activate or deactivate either the erase head or the record head. (Thomas Stockham testimony, *In re Grand Jury*, Misc. 47–73, 1/15/74, 16)

Whenever the record head is activated by depression of the "record" button, it leaves a distinctive "record-head-on" signal on the tape. (Richard Bolt testimony, *In re Grand Jury*, Misc. 47–73, 1/15/74, 2172) When the "record" button is released, and the erase and record heads are deactivated, the electronic pulses dying on those heads leave distinctive "erase-head-off" and "record-head-off" signals, respectively, on the tape. (Thomas Stockham testimony, *In re Grand Jury*, Misc. 47–73, 1/15/74, 12–13) The "record-head-on," "erase-head-off" and "record-head-off" marks vary from one type of machine to another, and may be used to help identify the machine on which tapes were recorded or erased.

The panel was able to identify five clear sets of "on" and "off" markings which enabled it to determine that erasure of 18½ minutes of the June 20 conversation was accomplished in at least five different segments. (Richard Bolt testimony, *In re Grand Jury*, Misc. 47–73, 1/15/74, 8)

When a segment of erasure is completed, and the machine is reversed and restarted, the "on" and "off" markings of previous erasures may themselves be erased. The panel found four additional markings that might have been part of segments of erasure where the matching "on" or "off" markings themselves had been erased; the panel could not be sure whether these marks were evidence of additional segments of erasure. (Thomas Stockham testimony, *In re Grand Jury*, Misc. 47–73, 1/15/74, 21–22)

The Advisory Panel conducted the following tests and analyses on the June 30 tape in reaching its conclusions:

1. Critical Listening

The panel played 67 minutes of the evidence tape, including the 18½ minute buzz, through high quality play-back equipment. Their expertise enabled them to identify and clarify significant acoustic phenomena on the tape. (May 1974 Tape Report, 8)

2. Magnetic Marks

The tape was treated with a liquid that "developed" the tape, that is, rendered visible the magnetic patterns and markings on the tape, such as "record-head-on," "record-head-off," "erase-head-off," and "K–1 pulse" (see below) marks. (May 1974 Tape Report, 8–11)

3. Wave Forms

When the electrical output of a recorded tape is fed into an oscilloscope, each signal on the tape produces a distinctive wave form. Wave form analysis enabled the panel to make a detailed study of the significant events on the June 20 tape. The panel scrutinized the wave forms of the events that occurred during the 18½ minute erasure and buzz, and found that the wave form analysis corroborated the conclusions drawn from examination of the magnetic marks. (May 1974 Tape Report, 11–13)

4. Spectra of Speech and Buzz

Through spectral analysis (analyzing the component frequencies and amplitudes of sound signals), the panel was able to study the differences, similarities, and time of the signals. Through use of a chart of the spectral analysis of the 18½ minute buzz (a spectrogram), the panel was able to examine "windows" (tiny fragments) of original speech, to conclude that 60-Hz power line hum was the source of the buzzing sound, and to corroborate the evidence of stops and starts indicated by the magnetic marks. (May 1974 Tape Report, 13–16)

5. Phase Continuity and Speed Constancy

There is a discernible wave pattern in the power line hum on all recorded tape; this wave pattern will be of a continuous nature until the recording is stopped. Each uninterrupted portion is called a phase. The panel could determine where the recording mode has been stopped and restarted by noting the phase discontinuities. The phase discontinuities on the June 20 tape corroborated the "stop" and "start" conclusions drawn by the panel from their study of the magnetic marks and wave forms. (May 1974 Tape Report, 16–18, 43)

6. Flutter Spectra

The mechanical irregularities in the rotating elements of every tape recorder are unique to that machine. These irregularities produce additional tones known as "flutter sidebands," distinct from the machine's original or "pure" tone.

The degree of "flutter" can be plotted, and this phenomenon will aid in the identification of a particular tape recorder.

The panel used this test to determine which machine was responsible for recording the 18½ minute buzz on the tape. (May 1974 Tape Report, 18–20)

7. Search for Physical Splices

The panel studied the June 20 tape with an instrument (an accelerometer) that could measure and detect any variances in tape thickness. The panel concluded as a result of their studies that the tape contained no physical splices. (May 1974 Tape Report, Technical Note 13.1)

8. The K–1 Switch

As further proof that the erasure was caused by manipulation of the keyboard, the panel studied evidence of K–1 pulses on the tape.

The K–1 switch is an internal mechanical switch. This switch only opens and closes as a result of pushing certain keys on the keyboard. It cannot be actuated by a malfunction in the electronics of the recorder. It cannot be actuated by the foot pedal. (May 1974 Tape Report, 45) The switch opens and closes as a result of a physical latching and unlatching action that only occurs when one of the keys is pressed down manually. There are four keys that can close this switch: the recording key, the rewind key, the start key, and the forward key. (May 1974 Tape Report, Technical Note 8.3)

K–1 switch activity is reflected on the tape by K–1 pulses. Because of the many other larger transient pulses that are generated by other electro-mechanical activity, K–1 pulses are difficult to discern. However, where a K–1 pulse is unambiguously identified, it is an unmistak-

able sign of manual activity of the keyboard. The expert panel was able to identify six distinct K–1 pulses. (May 1974 Tape Report, Technical Notes 8.3–8.5)

Alternate Hypotheses

A number of alternative hypotheses to the conclusions reached by the expert panel were considered and rejected by the panel in arriving at its conclusions, including the following.

Hypothesis No. 1.—That the 18½ minute gap was produced on the June 20, 1972 tape at the same time that the tape was originally recorded. This hypothesis fails because the June 20, 1972 original tape was recorded on a Sony 800B tape recorder. The experts determined that the 18½ minute gap was produced by a Uher 5000 tape recorder. (May 1974 Tape Report, Technical Notes 9.1–9.2)

Hypothesis No. 2.—That the 18½ minute obliteration was caused by setting the Uher tape recorder in the record mode and operating it in fast rewind. This hypothesis was rejected because if the tape had been erased in rewind the obliterated section would have had an audible tone of 500 cycles when played back at its usual operating speed of 24 millimeters per second. However, the frequency that is on the 18½ minute gap is the normal 60-cycle frequency. This shows that the tape was erased at its standard operating speed of 24 millimeters per second. Additionally, if the 18½ minute buzz had been recorded in rewind, there would have been no record and erase-head-off marks left on the tape. More than 20 such marks were found in the obliterated section. (May 1974 Tape Report, Technical Note 9.2)

Hypothesis No. 3.—The tape was erased through use of the foot pedal. This hypothesis was rejected because of the record and erase head signatures that were found on the tape; signatures that cannot be made by the footpedal. Second, a distinctive set of magnetic marks is made by the Uher tape recorder when stopped and restarted by the foot pedal. None of these marks was found on the 18½ minute buzz section. Furthermore, six K–1 pulses were found in the obliterated section. K–1 pulses also cannot be made by the foot pedal. (May 1974 Tape Report, Technical Notes 9.2–9.3)

Hypothesis No. 4.—The distinctive magnetic marks found on the 18½ minute gap came from a power supply failure within the Uher 5000 machine, *i.e.*, a defective diode caused the power supply to sputter on and off, thus putting the distinctive marks on the tape while the tape was still moving. The experts rejected this hypothesis because they were able to determine that the wave forms that would have been produced by this sort of activity were not present on the evidence tape. Furthermore, if this "sputter" activity had taken place, there would be no phase discontinuity following the record-head-on marks. The evidence tape shows phase discontinuity and erase head singatures associated with the record-head-on marks. Additionally, there are K–1 pulses found on the tape that could only be caused manually. (May 1974 Tape Report, Technical Notes 9.3–9.5)

Hypothesis No. 5.—Voltage irregularities on the AC power line working in conjunction with the failing diode of the bridge rectifier caused the distinctive magnetic marks. A voltage drop sufficient to put these marks in the tape would have caused a drop in motor speed with a resulting differential in tone frequency. There was no evidence

of this on the evidence tape. Moreover, a drop in voltage could not cause the recording of K–1 pulses. (May 1974 Tape Report, Technical Notes 9.6–9.8)

The Stanford Research Institute Report of May 31, 1974

Dr. Michael Hecker of the Stanford Research Institute conducted experiments for the counsel to the President with regard to the June 20, 1972 tape. It should be noted that while Dr. Hecker reviewed experiments and held a number of conferences with the expert panel, he never studied the June 20, 1972 tape directly. (Review of a Report Submitted to the U.S. District Court for the District of Columbia entitled "The Tape of June 20, 1972," May 31, 1974, hereinafter cited as SRI Report.) Dr. Hecker reviewed the findings of the expert panel and stated that he agreed with the panel's approach and agreed with the panel's expertise. (SRI Report, 3) Dr. Hecker stated further that he was in substantial agreement with the panel's final report. (SRI Report, 3) The Stanford Research Institute found evidence that there had been manual manipulation of the keyboard controls of the Uher 5000 tape recorder in order to cause some portions of the 18½ minute gap. The Stanford Research Institute studied and rejected all the alternative hypotheses that were considered by the panel. (SRI Report, 4)

Dr. Hecker was less willing to commit himself to at least five manual erasures than the expert panel. (Michael Hecker testimony, *In re Grand Jury*, Misc. 47–73, 5/13/74, 18–19; SRI Report, 3) The panel rejected the hypothesis that any of the magnetic marks suggesting manual operation could have been caused by a malfunctioning machine. (SRI Report, 3–4) Dr. Hecker was of the opinion that it was wrong to rule out conclusively the chance that the malfunctioning machine could have caused some of the indicia of manual operation. (SRI Report, 4; Michael Hecker testimony, *In re Grand Jury*, Misc. 47–73, 5/13/74, 18–19) Dr. Hecker stated this because the machine had broken down once during testing; and after a defective diode bridge rectifier was replaced, the distinctive buzz could no longer be reproduced. Dr. Hecker did not state that any of the indicia of manual operation were caused by the defect on the machine; he merely said that, in his opinion, this possibility could not be ruled out completely. (SRI Report, 4–5) However, Dr. Hecker remained convinced that some of the marks of the operations were caused by manual manipulation of the keyboard controls. Dr. Hecker stated that he was absolutely sure that three events associated with the 18½ minute gap were caused by manual operation of the keyboard controls and that he was practically certain that two other marks had been caused by manual operation of the keyboard controls. He testified on May 13, 1974 that he was willing to agree with the panel that at least five of the events on the 18½ minute buzz had been caused by manual operation of the machine. (Michael Hecker testimony, *In re Grand Jury*, Misc. 47–73, 5/13/74, 18–21) [1]

[1] The Committee staff understands that two reports were sent to the Court that questioned the conclusions of the Panel, whose conclusions in substance were also confirmed by the Stanford Research Institute, expert for the counsel to the President. The Committee staff has obtained copies of these reports. The organizations submitting the reports are Home Service, Inc., a Magnavox sales and service center in Cleveland Heights, Ohio, dated May 24, 1974, and Dektor Counterintelligence and Security, Inc. in Springfied, Virginia, dated May 30, 1974. Neither organization examined the evidence tape or Uher 5000 recorder, or reviewed the experiments with the expert panel.

Appendix B

U.S. House of Representatives
Committee on Banking and Currency,
Washington, D.C., May 11, 1974.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

Dear Mr. Chairman: On Monday, April 29, 1974, the President of the United States submitted to you copies of edited transcripts of White House conversations including a September 15, 1972 meeting between the President, H. R. Haldeman, and John Dean. This meeting is devoted largely to a discussion of a then-pending investigation before the House Banking and Currency Committee into various allegations concerning the Committee to Re-Elect the President and the Finance Committee to Re-Elect the President.

Questions have been raised at various points over the past eighteen months concerning efforts to block the Banking and Currency Committee investigation during the Fall of 1972 and the release of this transcript sheds new light on these activities and establishes that such an effort was underway. However, the September 15, 1972 transcript covers only the beginning of this operation and, in fact, this conversation took place even before we had scheduled a formal meeting to vote subpoenas. It seems reasonable to assume—in light of the furor evident in the transcript of this September 15 meeting—that there were subsequent White House conversations and activities relating to the Banking and Currency Committee investigation. But the transcripts skip over all of this period and leave a great blank as to when and how the activities and assignments discussed in the September 15 meeting were carried out.

As you are aware from previous transmittals that have been made from this Committee to your Committee, the subpoena list prepared by the Banking and Currency Committee in October of 1972 was extensive and did involve most of the major persons who have been named in other hearings and legal proceedings since that time. Since the President and his aides took the time to discuss the Banking and Currency Committee's activities on September 15, I am reasonably sure that they took even more time to discuss this subpoena list when it became public knowledge and I would think that transcripts and tapes covering these conversations would be most useful in your investigation. I am attaching another copy of this subpoena list which my Committee attempted to issue in 1972 but which was blocked by a 20 to 15 vote.

Therefore, I am urging that your Committee take the steps necessary to obtain the additional transcripts and tapes of Presidential conversations between September 15 and the October 3 meeting on the subpoenas in the Banking and Currency Committee. In addition, I urge that your Committee take steps to obtain the transcript and tape and/or notes which may exist in connection with a telephone call from the President of the United States to Maurice Stans. This telephone call interrupted a staff interrogation of Mr. Stans in the hearing room of the Banking and Currency Committee on the afternoon of August 30, 1972. Our records indicate this call took place sometime between 2:00 p.m. and 2:30 p.m. on that date.

I feel that these transcripts, tapes and notes will contain important information on the President's attitude toward blocking Congressional inquiries into Watergate and I feel that it is reasonable to assume that such tapes and transcripts will provide insights into the President's knowledge of persons on the subpoena list and their possible involvement in matters then under investigation by the Banking and Currency Committee. In addition, this period—September 15 through October 3—was a time of fast-breaking news stories in various publications and subsequent statements by the White House denying various

allegations. It would seem that a review of Presidential conversations during this period would reveal what, if any, part the President may have played in cover-up activities which were occurring during the Fall of 1972 including those involving the Committee on Banking and Currency as well as providing an insight into the extent of his knowledge of these activities.

The September 15 transcript is filled with plans to bring various pressures to stop the Banking and Currency Committee investigation and the President is the focal point of the discussions. In fact, he orders specific courses of action in some areas and suggests moves in others. At times, there are discussions of involving defense counsel for some of the Watergate defendants and there is an implication that the Justice Department is to be used. Earlier in the same tape there is a rather bald threat by the President to gather "notes" on those pushing investigations and to use the Justice Department and the Federal Bureau of Investigation in this regard. The President states in the transcript:

". . . they were doing this quite deliberately and they are asking for it and they are going to get it."

A review of subsequent transcripts and tapes should reveal whether such threats were intended against the Banking and Currency Committee and whether they were carried out and whether the President issued orders for such activity.

In addition to shedding light on the impeachment issues before your Committee, a release of the additional transcripts would do much to preserve the integrity of the investigative processes of the Congress. Frankly, the name of this Committee has been pulled into the picture from time to time and the names of individual Members have been bandied about and I think the Committee and its individual Members would be better served if all the facts could be laid on the record through the release of additional transcripts. As it stands now there are only cryptic comments relating to individuals and events in the September 15 transcripts and these references may or may not be a fair and accurate indication of what occurred subsequently. It seems only fair to individuals and to the Committee and the Congress that transcripts and tapes following the September 15 meeting be released publicly. After other Committees of the Congress and other investigating agencies took up the matter, I sought to remain out of the picture and to abandon any efforts to re-open the issue in the Banking and Currency Committee. But through testimony in the Senate Watergate Committee and through the investigative efforts of your Committee and the President's decision to release edited transcripts, the name of this Committee has come up.

In addition to these questions, a release of the additional transcripts and tapes to which I refer would aid greatly in clarifying the role of Vice-President Gerald Ford in blocking the 1972 investigation. At this juncture in history, it seems very important that such an issue be cleared up.

As the transcript in your possession clearly shows, the President and his aides were attempting to bring the then Minority Leader Ford in to lead the effort to block the investigation. Mr. Ford conceded in his confirmation hearings that he had two meetings with the Republican Members of the Committee but he emphatically denied that he discussed the issue of the Banking Committee investigation with the President, Mr. Dean, Mr. Ehrlichman, or Mr. Haldeman. The transcript which is in your possession, however, contains an explicit statement by the President that Mr. Ford should become active in the effort. The transcript shows that Mr. Dean and Mr. Haldeman followed the President's statement with equally explicit comments about what Mr. Ford should do regarding the Banking Committee's hearings.

Later in the same transcript, the President is quoted:

"Tell Ehrlichman to get Brown and Ford in together and they can work out something. They ought to get off of their _____ and push it. No use to let Patman have a free ride here."

Despite the President's very clear statements in the several instances in the transcript, Mr. Ford denies any such approaches in answer to a question put by Senator Robert Byrd of West Virginia in hearings before the Committee on Rules and Administration of the U.S. Senate on November 5, 1973, and I quote from Pages 134–5 of the hearings:

"Senator Byrd: Mr. Ford, you undoubtedly would recall any conversation you might have had during that period of August-October with the President, with Mr. Haldeman, Mr. Ehrlichman, Mr. Dean, or anyone at the White House, in connection with the proposed investigation by the Patman committee. Do you

recall any such conversations that would indicate that the White House wanted you to lend your efforts, as a leader, to blocking such an investigation?

"Mr. FORD: I can say categorically, Senator Byrd, I never talked with the President about it, or with Mr. Haldeman, Mr. Ehrlichman, and Mr. Dean. I know emphatically I had no conversation with them now."

Obviously, either the President's orders were not carried out by his trusted aides or Mr. Ford's testimony before the Senate Committee is untruthful.

Mr. Chairman, all of us in the House appreciate the judicious manner in which you are carrying out your investigations and this letter is sent to you in a spirit of continuing cooperation with the activities of your Committee.

With very best regards, I am

Sincerely,

WRIGHT PATMAN, *Chairman.*

OPENING STATEMENT OF CHAIRMAN WRIGHT PATMAN, HOUSE BANKING AND CURRENCY COMMITTEE, TUESDAY, OCTOBER 3, 1973

This morning the Committee will decide whether to meet its responsibility to investigate those aspects of the Watergate case that fall under the jurisdiction which has been assigned us by the House of Representatives.

It is clear that both the domestic and foreign banking systems were widely utilized to transfer and conceal large campaign contributions which have become involved in the Watergate affair.

We know that at least $100,000 was exported and/or imported from Mexico and that at least $89,000 of Mexican checks went through the Finance Committee to Re-Elect the President and ended up in the Miami bank account of Bernard Barker, one of the persons indicted in the Watergate burglary.

We also know that another $25,000 contribution which involved two applicants for a Federal bank charter—Dwayne Andreas and Kenneth Dahlberg—also passed through the Finance Committee to Re-Elect the President and on to the same bank account in Miami. We also know that this particular bank charter was granted by the Comptroller of the Currency under what appear to be unusual procedures.

This Committee, of course, sounded the alarm nearly four years ago about the growing use of foreign bank channels—and the international transfer of cash—to further tax evasion, drug traffic, stock manipulation and other criminal activities in the United States. We had bipartisan suport in investigating these cases and the Foreign Bank Secrecy Act passed this Committee on a 35 to 0 vote and went through the House on an unanimous vote.

It would now seem strange if this Committee were to ignore the international transfer and concealment of massive campaign contributions which may have been used to finance the greatest political espionage case in the history of the United States. Surely our concern is no less simply because this particular use of foreign bank accounts may have involved leading political figures.

This is a serious case—one which goes right to the heart of our system of Government. The charges and allegations have touched high levels of our Government, reaching right into the White House and involving former members of President Nixon's Cabinet.

In light of the seriousness of these charges—and their reflection on the integrity of our Governmental and political processes—it is reasonable to expect these officials to come forward with the facts. Many of them have issued carefully worded denials through their attorneys and through the Republican campaign apparatus, and I would think that these gentlemen would welcome an opportunity to present the facts in an open forum.

NOTE.—The date of Chairman Patman's statement was October 3, 1972.

In fact, the President of the United States—Richard Nixon—on August 29 conducted a nationally televised press conference to explain the Watergate affair, and at that time he called for an airing of the facts. I quote:

"What really hurts in matters of this sort is not the fact that they occur, because overzealous people in campaigns do things that are wrong. What really hurts is if you try to cover it up. . . . We have indicated that we want all the facts brought out. . . . This kind of activity, as I have often indicated, has no place whatever in our political process. We want the air cleared. We want it cleared as soon as possible."

The hearings we are asking for in this Committee would do exactly what the President told the American public he wanted done—"clear the air."

But, since the President's televised statement, his campaign functionaires have done everything possible to prevent this Committee from proceeding. The President's own finance chairman, Maurice Stans, refused to appear voluntarily in an open session of this Committee, and others connected with the campaign have done everything possible to avoid questions about the case. It is obvious that there will be no "clearing of the air" unless this Committee issues subpoenas and conducts open hearings.

Faced with the obvious contradictions of the President's August 29 press conference, some—including the President's Justice Department—have claimed in recent days that the opposition to the hearings is based solely on a concern for the rights of the seven indicted by the Federal Grand Jury on September 15. Concern for the defendants' rights is proper, and I am not going to criticize newly-found converts to the cause of civil liberties.

The tracing of the wanderings of these campaign monies through foreign countries and back into the United States; the investigation of a "quickie" bank charter; the determination of how the banking systems were used to conceal these massive transfers of funds; and the other financial aspects do not directly involve the charges in the indictments against the seven defendants.

The grand jury, for its own reasons, chose to deal only with the questions concerning the break-in at the Watergate and the immediate eavesdropping aspects of the case. As the Members of this Committee know the grand jury did not deal with the broader questions involving the finances and there is no reason why these hearings cannot be conducted without prejudicing the rights of any of these defendants. It is my intention to conduct them—and I am sure this is the intention of all Members of the Committee—in a careful manner to avoid impinging of the criminal cases already underway.

The Delaney case and other cases which have been cited in the attempt to block this investigation simply do not apply to the kind of situation that is before the Committee today and I have attached a memorandum to my statement outlining why this is clearly so.

This last-minute concern being expressed about the defandants' rights is, in my opinion, nothing more than a smokescreen to hide the real reasons why some people do not want these hearings to proceed.

Somewhere along the line I hope we will hear some voices raised about the rights of the American people to know the facts—the full

facts—about this sordid case. Some people will shout "politics" and I want to remind them that we do have a political process by which we select our leaders in this nation. It is a proud process—an integral part of our entire system and it should be preserved.

The people have a fundamental right to select their leaders—their President—unhindered by criminal subversion of the political process. Totalitarian governments often engage in the harassment of opposition political parties through espionage and other means, but this has no place in our system.

It has been suggested that the Committee should wait and conduct these investigations at some later date. All of us are aware of the stories which have appeared in the Washington Post in recent days describing the hurried efforts to destroy records and to obstruct those seeking the facts. If these hearings are delayed until after the election and until these political committees are dissolved and their personnel scattered, the American people will never have the facts. We either act now or we simply come up with meaningless shreds of paper and a long list of witnesses who can no longer be found.

But there are other more important facts to consider about the timing of these hearings. In a national election the American people—the voters—are the jury and it is proper—and essential—that the jury have the facts before it renders its verdicts. The people who are opposing immediate hearings seem to be saying "let the jury render its verdict first and then we will tell them what actually happened."

The issues here today are not complicated. The Members of this Committee will either vote to give the American people the facts—all the facts—about this political espionage or they will shut the door—possibly for all times—on this sorry affair.

RESOLUTION

Resolved, That the Committee on Banking and Currency authorizes the Chairman to use all necessary and proper means within the Rules of the House of Representatives and the rules of the Committee on Banking and Currency, including the use of subpoena power, to compel the attendance of the witnesses specified in section 2 and the production by such witnesses of all books, records, minutes, memoranda, correspondence and other related documents and materials which will enable the Committee to fully investigate the extent to which—

(1) financial institutions and foreign financial arrangements were used in providing or facilitating the collection of funds for the Committee to Re-Elect the President or any affiliate fundraising entities;

(2) contributions to the Finance Committee to Re-Elect the President were involved in the application for, or granting of, a charter of any institution governed or regulated or under legislation which is within the jurisdiction of this Committee;

(3) any such funds were involved in the commission of illegal acts, if any; and

(4) the import or export of foreign or domestic monies were used in the funding of the Finance Committee to Re-Elect the President; in order to determine whether legislative proposals, the subject matter of which is in the jurisdiction of this Committee, should be initiated.

The use of subpoena power shall be authorized to obtain only such books, records, minutes, memoranda, correspondence and other pertinent documents and materials and the attendance and testimony of witnesses from the Committee to Re-Elect the President, its officers, officials, and directors, both past and present, as well as from all parties to such funding and financial transactions mentioned above, only so long as they are relevant to the transactions, and from institutions, within the jurisdiction of this Committee.

Sec. 2. Subpoenas under this resolution shall issue to—

(1) Robert Allen;

(2) American Telephone & Telegraph Company and all Federal and State licensed telephone companies, including: Chesapeake & Potomac Telephone Company of Washington; Chesapeake & Potomac Telephone Company of Maryland; Chesapeake & Potomac Telephone Company of Virginia; Southwestern Bell Telephone Company of Houston, Texas; and Southern Bell Telephone Company of Miami, Florida;

(3) Dwayne Andreas;

(4) Alfred Baldwin;

(5) Paul Barrick;

(6) Records relating to the Mexican transfer of campaign funds in the possession of appropriate Federal Reserve Banks and the Internal Revenue Service;

(7) John Caulfield;

(8) Arden Chambers;

(9) Maury Chotiner;

(10) Chase Manhattan Bank;

(11) Continental Illinois Bank and Trust Company of Chicago;

(12) Kenneth H. Dahlberg;

(13) John Dean;

(14) Edward Failar;

(15) Finance Committee to Re-Elect the President and other committees related thereto;

(16) Financial institutions which have in the past or in the present maintained accounts for the Finance Committee to Re-Elect the President or related committees, including: National Savings and Trust Company of Washington; First National Bank of Washington; Riggs National Bank; and, American Security and Trust Company;

(17) First City National Bank of Houston;

(18) First National Bank Building, 1701 Pennsylvania Avenue, N.W.;

(19) First National City Bank of New York;

(20) Harry Fleming;

(21) Sally Harmony;

(22) Gulf Resources and Chemical Corporation and all its subsidiaries;

(23) Frederick La Rue;

(24) Clark MacGregor;

(25) Jeb Stuart Magruder;

(26) Robert C. Mardian;

(27) John N. Mitchell;

(28) Robert Odle;

(29) Herbert L. Porter;
(30) Ectore Reynaldo;
(31) Republic National Bank of Miami;
(32) Hugh W. Sloan;
(33) Maurice H. Stans;
(34) The Bank of America;
(35) William Timmons;
(36) The Watergate Hotel, 2600 Virginia Avenue, N.W., Washington, D.C.;
(37) Watergate Office Building, 600 New Hampshire Avenue, N.W., Washington, D.C.;
(38) Watergate East Apartments, 2500 Virginia Avenue, N.W., Washington, D.C.;
(39) Watergate South Apartments, 700 New Hampshire Avenue, N.W., Washington, D.C.;
(40) Watergate West Apartments, 2700 Virginia Avenue, N.W., Washington, D.C.

Sec. 3. The Chairman of this Committee is authorized to take all necessary and proper action, as provided under H. Res. 114, adopted by the House March 2, 1971, and in his capacity as Chairman, to implement the provisions of this resolution and facilitate such investigation.

ABUSE OF PRESIDENTIAL POWERS

Introduction

Evidence related to the Watergate break-in and cover-up, reviewed above in detail, demonstrates abuses of Presidential power, which include the following:

A directive to the CIA to interfere with the FBI investigation.

Use of Counsel to the President John Dean to interfere with the investigation.

Offers of executive clemency for improper purposes.

Obtaining information from Assistant Attorney General Petersen and passing it on to targets and potential targets of the investigation.

Discouraging the prosecutor from granting immunity to Dean.

The firing of Special Prosecutor Archibald Cox.

This section of the memorandum examines other instances of possible abuse of Presidential powers, in seven areas: (1) intelligence gathering, including the 1969–1971 wiretaps authorized by the President and conducted by the FBI, the wiretap and FBI surveillance of Joseph Kraft, the Huston Plan, the Secret Service wiretap of Donald Nixon, and the FBI investigation of Daniel Schorr; (2) the Special Investigations Unit, including the Fielding break-in and the use of the CIA; (3) concealment of the intelligence gathering activities, including concealment of records of the 1969–1971 wiretaps, the Fielding break-in and the offer of the position of FBI Director to the judge presiding in the Ellsberg trial; (4) efforts to use the Internal Revenue Service for the political benefit of the President; (5) misleading testimony during the confirmation hearings of Richard Kleindienst to be Attorney General; (6) the 1971 milk price support decision, and (7) expenditures by the General Services Administration on the President's properties at Key Biscayne and San Clemente.

The issue in each of these areas is whether the President used the powers of his office in an illegal or improper manner to serve his personal, political or financial interests.

Illegal Intelligence Gathering

From early in the President's first term, employees of the White House, at the President's direction or on his authority, engaged in a series of activities designed to obtain intelligence for his political benefit. These activities involved widespread and repeated abuses of power, illegal and improper activities by executive agencies, and violations of the constitutional rights of citizens.

A. The 1969–1971 Wiretaps

In May 1969, the President authorized a program of wiretaps of government employees and newsmen, originally in an effort to determine the sources of leaks of secret information related to foreign Policy. (Book VII, 147, 153) Under this program, electronic surveillance was instituted by the FBI at the request of the White House on seven National Security Council (NSC) employees, three employees of government agencies, four newsmen, and three White House staff members. (Book VII, 153, 192–97, 204–05, 261–65, 294) The FBI was instructed by NSC official Alexander Haig at the time of the first taps not to enter records of the surveillance in FBI indices. (Book VII, 182–83, 186, 189)

Normally, the Justice Department reviews the necessity and propriety of wiretaps every ninety days. This practice was not followed with respect to the taps of any of these 17 individuals. (Book VII, 175, 178, 189–90)

The directions to the FBI to institute the wiretaps came variously from Haig, Mitchell, and Haldeman, but the President has acknowledged that he authorized each of them. (Book VII, 147, 159, 189, 198, 243–44, 269–71) Reports on the special wiretaps were sent during 1969 and 1970 to the President, Haldeman, Ehrlichman, and Kissinger.[1] From May 12, 1970 to February 11, 1971 reports were sent only to Haldeman. (Book VII, 187, 370)

The reports sent to the White House included information on the personal and political activities of the persons who were wiretapped. They included information with respect to the voting plans of certain Senators, the activities of critics of administration policies, a Democratic Presidential candidate's campaign and the personal activities and political plans of White House employees. None of the reports related to the disclosure of classified material. (Book VII, 224–30, 253–56, 280–82, 302–04) The President acknowledged that the reports contained no information useful to national security, and demonstrated an awareness of the political nature of the contents of the reports in his conversation with John Dean on February 28, 1973. (HJCT 37)

[1] The President received 34 reports, Kissinger 37 (of which all but three were copies of those sent to the President), Ehrlichman 15, and Haldeman 52. (Book VII, 371–73)

Three of the seven NSC staff members subject to the special wiretaps continued to be wiretapped for substantial periods after leaving the NSC, one tap remaining in place 19 months after Assistant FBI Director Sullivan recommended that coverage be removed and nine months after the employee terminated all relationship with the NSC. Two of these three former NSC employees who had left the government were wiretapped while they were serving as advisers to a United States Senator who was a candidate for the Democratic presidential nomination. (Book VII, 203–05, 211–17, 326) The reports from these taps, which had previously been sent to Kissinger, were shifted to Haldeman at the direction of the President after the two men's affiliation with the NSC ended. (Book VII, 370) Three White House staff members working in areas unrelated to national security and with no access to NSC materials were wiretapped. (Book VII, 260–65) The requests for two of these wiretaps were oral, one by Haldeman and one by Mitchell. A wiretap of a member of Ehrlichman's staff was specifically denominated as off the record. Reports of the wiretap and physical surveillance of this staff member were sent to Ehrlichman. (Book VII, 267–73)

On at least one occasion, material contained in a summary letter sent by FBI Director Hoover to the President was used by the President's staff for political purposes.[2] Director Hoover's letter disclosed former Secretary of Defense Clark Clifford's plan to write an article attacking President Nixon in connection with the Vietnam war. (Book VII, 360–61) White House staff members devised methods of countering Clifford's article and sent them to Haldeman. Haldeman directed Magruder to be ready to react and suggested finding methods of "pre-action." He concluded, ". . . the key now is how to lay groundwork and be ready to go—as well as to take all possible preliminary steps;" and, "Let's get going." Ehrlichman characterized the Clifford information as "the kind of early warning we need more of." He further stated to Haldeman, "Your game planners are now in an excellent position to map anticipatory action." (Book VII, 365–68)

B. JOSEPH KRAFT WIRETAP AND SURVEILLANCE

In June 1969 Ehrlichman directed his assistant, John Caulfield, to have a wiretap installed on the telephone of newspaper columnist Joseph Kraft. The wiretap was installed by John Ragan, a security consultant to the Republican National Committee, and it remained in place for one week. Kraft was in Europe, and none of his conversations were intercepted. (Book VII, 314–18) Ehrlichman has testified that he discussed the wiretap with the President and that the wiretap was authorized for a national security purpose, but that Ehrlichman did not know that the wiretap had in fact been installed. (Book VII, 323)

The wiretap on Kraft's home was not approved by the Attorney General and no record was made of it. (Book VII, 314, 317, 356–57) The Kraft tap was installed within three weeks after the first FBI wiretaps under the President's special program (Book VII, 192–93),

[2] The evidence shows that summary letters were signed by Director Hoover and hand-carried to the offices of the addressees. (Book VII, 187–88)

and within a week after a tap on another newsman was installed by the FBI. (Book VII, 241) Kraft had no history of using leaked national security information in his newspaper column.

After the tap was installed, Ehrlichman told Caulfield that the FBI had been persuaded to take over the surveillance of Kraft. The FBI arranged for a microphone to be installed in Kraft's hotel room in a European country. FBI records state that in July and November of 1969 reports on the coverage were sent to Ehrlichman. From November 5 to December 12, 1969 the FBI conducted spot physical surveillance on Kraft in Washington, D.C. (Book VII, 315, 356–57)

C. THE "HUSTON PLAN"

On June 5, 1970 the President appointed an ad hoc committee consisting of the heads of the FBI, CIA, National Security Agency (NSA), and Defense Intelligence Agency (DIA) to study the need for better domestic intelligence operations in light of an increasing level of bombing and other acts of domestic violence. (Book VII, 377) On June 25 the ad hoc committee submitted a report containing options for relaxing existing restraints on intelligence gathering procedures. Footnotes in the report noted the FBI's objection to relaxing the restraints on intelligence gathering. (Book VII, 384–431)

During the first week of July, Presidential Staff Assistant Tom Charles Huston sent a memorandum to Haldeman recommending that the President adopt options presented in the report of the ad hoc committee to relax restraints on intelligence gathering collection. Huston noted that the options to relax restraints for surreptitious entries and covert mail covers were illegal, but nevertheless recommended them and wrote that in earlier years Hoover had conducted surreptitious entries with great success. (Book VII, 438–40, 443)

On July 14 Haldeman sent a memorandum to Huston stating that the President had approved Huston's recommendations. (Book VII, 447) On Haldeman's instructions Huston prepared and distributed to the members of the committee a formal decision memorandum advising that the President had decided to relax restraints on electronic surveillances and penetrations, mail covers and surreptitious entries. (Book VII, 450)

FBI Director Hoover and Attorney General Mitchell opposed the decision and Mitchell has testified that he informed the President and Haldeman of his opposition. On July 27 or 28, 1970 on Haldeman's instructions, Huston recalled the decision memorandum. (Book VII, 470–71, 474–77)

Huston had also endorsed the ad hoc committee's recommendation for the establishment of an Intelligence Evaluation Committee. (Book VII, 442) The recommendation was implemented in late 1970 for the stated purpose of coordinating and making more effective the separate intelligence efforts of the DIA, NSA, CIA and FBI. (Book VII, 499) Some of the material gathered by the Intelligence Evaluation Committee was sent to Haldeman in a Political Matters Memorandum dated February 1, 1972 reporting on potential demonstrations at the Republican National Convention. (Political Matters Memorandum, 2/1/72, 5)

D. THE DONALD NIXON SURVEILLANCE AND WIRETAP

In 1969 Haldeman and Ehrlichman requested the CIA to conduct physical surveillance of Donald Nixon, the President's brother, because he was moving to Las Vegas and would come in contact with criminal elements. The CIA refused. (Report of conversation between CIA Inspector General and Robert Cushman, 6/29/73)

In late 1970 the Secret Service, whose primary duty is the physical protection of the President, placed a wiretap on the telephone of Donald Nixon. (Book VII, 509) The President has said that the wiretap "involved what others who were trying to get [Donald Nixon], perhaps, to use improper influence, and so forth, might be doing and particularly anybody who might be in a foreign country." The President also said that his brother knew about the wiretap "during the fact." (Book VII, 522)

While there is no direct evidence that the President ordered the installation of the tap, it is unlikely that a wiretap on his brother would have been undertaken without the President's approval.

E. DANIEL SCHORR INVESTIGATION

In August 1971 Daniel Schorr, a television commentator for CBS News, was invited to the White House to meet with staff assistants to the President about what they considered to be unfavorable news analsis by Schorr of a Presidential speech. (Book VII, 1113) Shortly thereafter, while traveling with the President, Haldeman directed Lawrence Higby, his chief aide, to obtain an FBI background report on Schorr. Following Higby's request, the FBI conducted an extensive investigation of Schorr (Book VII, 1120, 1123–24), interviewing 25 persons, including members of Schorr's family, friends, employers, and the like, in seven hours. (Book VII, 1118–19) Following public disclosure of the investigation, a "cover story" was created. Colson testified that the President and Colson agreed to state that Schorr was investigated in connection with a potential appointment as an assistant to the Chairman of the Council on Environmental Quality. Colson testified that the President knew Schorr had never been considered for such a position. (Colson testimony, 3 HJC 238–39) Haldeman has testified that Schorr was not being considered for any federal appointment and that he could not remember why the request was made. (Book VII, 1120)

Wiretaps without a court order are generally illegal and violate the constitutional right of citizens to be free from unreasonable searches and seizures. (18 U.S.C. § 2510, *et seq.*; *Katz* v. *United States*, 389 U.S. 347 (1967)) The Supreme Court held in 1972 that the President had no constitutional power to authorize warrantless wiretaps for domestic security purposes; it reserved the question of the President's constitutional authority to conduct national security electronic surveillance to gather foreign intelligence information. (*United States* v. *United States District Court*, 407 U.S. 297 (1972)) The wiretaps conducted by the FBI in 1969–71, however, did not meet the Justice Department criteria then in effect for national security wiretaps or the definition contained in 18 U.S.C. § 2511(3). In the

case of the three taps of members of the President's domestic staff and the continuation of reports of the political activities of two NSC employees long after they had terminated their relationship with the NSC, there could be no national security justification under any reasonable interpretation of that term.

Similarly, the Kraft wiretap was illegal. The eavesdropping in Kraft's hotel room in a foreign country also violated his constitutional rights—which do not end at the nation's borders. (*Reid* v. *Covert*, 354 U.S. 1 (1957)) It also involved the FBI in foreign operations which exceeded its authority.

The Donald Nixon wiretap exceeded the statutory authority of the Secret Service to provide physical protection for the President and his immediate family; a consensual wiretap is nonetheless illegal unless the consent is obtained before the interception of conversations. (18 U.S.C. § 2511(2) (c) and (d))

These activities and other surveillance that may not have been illegal per se [3] were intended to serve the personal political purposes of the President, not any national policy objective. They were often directed at people whose sole offense was their constitutionally protected political views. The fruits of the intelligence gathering were provided to the President's political aides and in at least one instance used by them for political purposes. The Committee could conclude that these activities constituted an abuse of the powers of the Office of the President.

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[3] Such as the activities of Anthony Ulasewicz from 1969 to 1971. Ulasewicz was paid by Herbert Kalmbach out of surplus 1969 campaign funds, but was given his orders by the White House. (Book VII, 336–53)

Special Investigations Unit

There is evidence that the President encouraged and approved actions designed to provide information that would be used to discredit Daniel Ellsberg, the peace movement, the Democratic Party, and prior administrations. These actions included the break-in at the office of Dr. Lewis Fielding, Ellsberg's psychiatrist. There is also evidence that in aid of this information-gathering program the President authorized activities by the Central Intelligence Agency that violated its statutory authority.

In the week following the June 13, 1971 publication of excerpts from a top secret Defense Department study of the history of American involvement in Vietnam (the "Pentagon Papers") the President authorized the creation of a special investigations unit within the White House. (Book VII, 593) He has stated that the mission of the unit, which became known as the "Plumbers," was to investigate security leaks and prevent future leaks. The President has also stated that the first priority of the Plumbers was the investigation of Daniel Ellsberg. (Book VII, 593) who was under federal indictment for the theft of the Pentagon Papers. (Book VII, 616–17)

Documents written at the time of the formation of the Plumbers, however, show that the Pentagon Papers matter was viewed primarily as an opportunity to discredit Ellsberg, the peace movement, the Democratic party and prior administrations. In a memorandum to Haldeman dated June 25, 1971 Colson wrote that it was important to keep the Pentagon Papers issue alive because of their value in evidencing the poor judgment of prior Democratic administrations, to the disadvantage of most Democratic candidates. The memorandum made no mention of any effect on national security of the disclosure of the Pentagon Papers, but said that the greatest risk to the Administration would be to get caught and have its efforts become obvious. (Book VII, 664–73)

Patrick Buchanan, in declining to serve as the person responsible for the project, wrote in a memorandum to John Ehrlichman dated July 8, 1971 that the political dividends would not justify the magnitude of the investigation recommended for "Project Ellsberg." He referred to an investment of "major personnel resources" in a "covert operation" over a three-month period timed to undercut the McGovern-Hatfield opposition by linking the theft of the Pentagon Papers with "ex-NSC types," "leftist writers" and "left-wing papers." (Book VII, 708–09)

John Ehrlichman's handwritten notes taken during meetings with the President in June and July 1971 confirm that the President viewed the prosecution of Ellsberg not principally as a national security matter, but with a view toward gaining a public relations and political advantage.

On June 17, 1971, under the designation π (Ehrlichman's symbol for the President), Ehrlichman noted: "Win PR, not just court case." And on June 19, the notes state, "Win the case but the NB thing is to get the public view right. Hang it all on LBJ."

On June 23, 1971,[1] ten days after publication of the Pentagon Papers and several weeks before the organization of the Plumbers, the notes show that Secretary of Defense Laird advised the President and Ehrlichman that 98% of the Pentagon Papers could have been declassified. This was acknowledged on July 1 when the President said, according to the notes, "Espionage—not involved in Ellsberg case," and "don't think in terms of spies." The President advised Ehrlichman to read the Alger Hiss chapter in the President's book *Six Crises*, observing "It was won in the press." At the same meeting Ehrlichman wrote, "Leak stuff out—This is the way we win."

On July 6, "π to JM: must be tried in the papers. Not Ellsberg (since already indicted). Get conspiracy smoked out thru the papers. Hiss and Bently cracked that way." During the same conversation, Ehrlichman wrote: "π Leak the [evidence] of guilt." The President also asked, "put a non[legal] team on the conspiracy?" The July 9 notes reflect the assignment of David Young "to a special project." The overall goal of the Ellsberg matter was set out in Ehrlichman's notes of July 10: "Goal—Do to McNamara, Bundy, JFK elite the same destructive job that was done on Herbert Hoover years ago." (John Ehrlichman handwritten notes of meetings with the President, 7/15/74, hereinafter cited as Ehrlichman notes.)

At the recommendation of Charles Colson, E. Howard Hunt was hired by the White House as of July 6, 1971. (Book VII, 706, 714–16, 721) Hunt was asked to examine that the portions of the Pentagon Papers being published to determine whether they included information derogatory to Democratic administrations. (Book VII, 717–25) In a July 1, 1971 telephone conversation Colson asked Hunt if the Pentagon Papers could be turned into a major public case and Ellsberg and his co-conspirators tried in the newspapers. Hunt said yes. (Book VII, 700–01)

On July 7, 1971 after Ehrlichman was introduced to Hunt by Colson. (Book VII, 718–19) Ehrlichman called CIA Deputy Director Robert Cushman and said:

> 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 some things for the President. He is a long-time acquaintance with the people here. He may want some help on computer runs and other things. You should consider he has a pretty much carte blanche. (Book VII, 728)

While denying any recollection of this telephone call, (Book VII, 733.) which was transcribed by Cushman's secretary, (Book VII, 729–32.) Ehrlichman has testified that the President authorized enlisting the aid of the CIA in the activities of the Plumbers and that his only contacts with the CIA were at the direction of the President. (Book VII, 734–38)

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[1] The House Judiciary Committee on June 24, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced an edited transcript.

On the weekend of July 17, 1971 Ehrlichman recruited David Young and Egil Krogh as co-chairmen of the Plumbers. (Book VII, 796, 807) During the following week, G. Gordon Liddy and Hunt joined the Unit. (Book VII, 816–25) Krogh and Young were told to report to Ehrlichman. (Book VII, 651, 654) Colson was given the task of publicly disseminating the material acquired by the unit in the course of its investigation. (Book VII, 830–32) Memoranda and the organizational chart of the Unit show that the group intended to accumulate data from the various agencies and executive departments, pass it through Ehrlichman and Haldeman to the President, and make it available to the press and to Congressional Committees. (Book VII, 814, 834–36, 841)

Hunt began receiving assistance from CIA on July 22, 1971, when the CIA provided him with alias identification and disguise materials. (Book VII, 844–58) This assistance was in excess of the statutory jurisdiction of the CIA.[2] On July 28 Hunt sent a memorandum to Colson suggesting that the CIA be asked to supply a psychological profile on Ellsberg. The memorandum also suggested that the files on Ellsberg be obtained from his psychiatrist, for use in destroying Ellsberg's public image and credibility. (Book VII, 914.) Young subsequently requested such a profile from the CIA's Director of Security and the Director of the CIA himself, stressing the high level of interest of the White House and the personal interest of Ehrlichman in the project. (Book VII, 898–903) The profile, the only one ever prepared by the CIA on an American civilian, was delivered to the White House on August 11. (Book VII, 1009, 1011–19.) The CIA staff psychiatrist involved in the profile met with the Plumbers on August 12 and Young requested that the profile be further developed. (Book VII, 1083–84, 1090–91)

The Plumbers had been informed that the FBI failed on July 20 and 26, 1971 to obtain the cooperation of Daniel Ellsberg's psychiatrist. (Book VII, 975, 982–83, 987–90) On or about August 5, Krogh and Young informed Ehrlichman of the FBI's failure to cooperate fully in the Ellsberg investigation and Krogh recommended that Hunt and Liddy be sent to California to complete the Ellsberg investigation. Ehrlichman stated that he discussed with the President the conversation with Krogh and the FBI's failure to cooperate and that he passed on the President's instruction to Krogh that he should do whatever he considered necessary. Ehrlichman has testified that the President approved the recommendation that the unit become operational and approved a trip by Hunt and Liddy to California to get "some facts which Krogh felt he badly needed. . . ." (Book VIII, 982–83, 993–95, 997–98, 1000–01)

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[2] The CIA's jurisdiction is limited by a provision in the National Security Act of 1947, as amended, which states: "[T]he agency shall have no police, subpoena, law-enforcement powers, or internal-security functions . . . [and] the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 403(d)(3).

Hunt first used the disguise materials for an interview intended to obtain derogatory information about the Kennedy political group. (Book VII, 853.) As Hunt continued to make requests, the Agency recognized that he drew it "into the sensitive area of domestic operations against Americans." While the CIA asked Ehrlichman to restrain Hunt when his demands became excessive, (Book VII, 1226–38.) the materials were used again in Hunt's interview with Dita Beard in the spring of 1972 and in the Watergate break-in. (House Armed Services Committee Report No. 93–25, October 23, 1973, 3.)

On August 11 Krogh and Young recommended in a memorandum a covert operation to obtain Ellsberg's psychiatric files from his psychiatrist because the CIA psychological profile received that day was unsatisfactory. Ehrlichman initialed his approval. The only qualification Ehrlichman imposed was an assurance that it not be traceable to the White House. (Book VII, 1625–28)

Hunt and Liddy, equipped with alias identification, disguise materials and a camera provided by the CIA, made a reconnaissance trip to California to inspect Dr. Fielding's office, and the CIA developed the photographs taken there. (Book VII, 1152, 1156–60) Krogh and Young have testified that on August 30, 1971, after Hunt and Liddy reported that their reconnaissance satisfied them that an entry operation was feasible, they called Ehrlichman and told him that they believed it was possible to conduct an operation which could not be traced to the White House, and Ehrlichman gave his approval. (Book VII, 1240–44)

The break-in of Dr. Fielding's office was carried out over the Labor Day weekend of September 3 and 4, by a team under the direction of Hunt and Liddy.[3] (Book VII, 1276, 1281–92, 1296–98) The operation was financed by Colson, who borrowed $5,000 in cash from a Washington public relations man, and repaid him with a $5,000 political contribution Colson solicited from the dairy industry. (Book VII, 1248–49, 1252–53, 1265–74) It remains uncertain whether the burglary netted any information about Ellsberg, because of conflicting testimony by the burglars and Dr. Fielding. (Book VII, 1290–97)

On September 8, 1971, Ehrlichman met with Krogh and Young and later with the President. On September 10 Ehrlichman went directly from a meeting with the President to meet with Krogh and Young.[4] (Books VII, 1335–37.)

The President's concern with the Ellsberg case was not with espionage or national security, but politics and public relations. He discussed with Colson disseminating to the press derogatory information about Leonard Boudin, Ellsberg's attorney. (Colson testimony July 15, 1974, 3 HJC 212–24.) A memorandum by Hunt on Boudin was subsequently leaked. (Book VII, 1126, 1128–41, 1144) The Plumbers hoped to find damaging material about Ellsberg in the psychiatric records that could be incorporated into a media and Congressional publicity campaign.[5] When the break-in at Dr. Fielding's office produced no usable material, Young asked the CIA for a follow-up psychological profile of Ellsberg. The CIA resisted attempts to produce a second profile. Internal CIA memoranda demonstrate that the staff was opposed to preparing the profile because it was beyond the Agency's jurisdiction and because the staff was suspicious of the use that might be made of the profile. (Book VII, 1408–11) The affidavit

[3] Krogh pleaded guilty to a violation of 18 U.S.C. § 241 for conspiring to injure Dr. Fielding in the free exercise or enjoyment of his Fourth Amendment rights. (Book VII, 1608–13.) On July 12, 1974 Ehrlichman was found guilty of violating 18 U.S.C. § 241 for his participation in approving the break-in. Liddy and two others were also found guilty. (*U.S.* v. *Ehrlichman*, July 12, 1974, transcript.)

[4] The House Judiciary Committee on June 24, 1974 subpoenaed the tape recordings and other material related to these conversations. The President has refused to produce these materials.

[5] This was articulated in an August 26 memorandum from Young to Ehrlichman entitled, "Status of Information Which Can Be Fed Into Congressional Investigation on Pentagon Papers Affair." (Book VII, 1215–19)

of the staff psychiatrist who directed the efforts concluded that the purpose was to defame or manipulate Ellsberg. (Book VII, 1400–07) Despite this resistance, a second profile was prepared and delivered through Helms to the White House. (Book VII, 1414–20) Helms sent a separate letter to David Young expressing the CIA's pleasure in being of assistance but impressing upon Young the importance of concealing the CIA's involvement. (Book VII, 1412–13)

The Plumbers had no police powers or statutory authority; indeed their existence was kept secret until 1973, after they had ceased functioning. Their primary purpose—to discredit Daniel Ellsberg for the President's political advantage—violated Ellsberg's constitutional right to a fair trial on the criminal charges against him; it interfered with the fair administration of justice. On June 3, 1974 Charles Colson pleaded guilty to obstructing justice in connection with the trial of Daniel Ellsberg by carrying out a plan to publicly discredit Ellsberg. (Book VII, 1139–49)

The Fielding break-in, conducted by agents of the Plumbers, also was a violation of Dr. Fielding's constitutional rights and at least one federal civil rights law, 18 U.S.C. § 241. The President's former chief domestic aide, John Ehrlichman, has been convicted of this offense. The Committee could conclude that the break-in was a natural and foreseeable consequence of activities authorized by the President.

The use of the Central Intelligence Agency to prepare psychological profiles of Ellsberg and to provide materials for Hunt's use in the Ellsberg project as well as in political intelligence gathering by Hunt, was a misuse of the President's power as Chief Executive. The CIA has no authority to engage in domestic activities. Indeed, its jurisdiction is expressly limited by statute to prohibit its involvement in domestic intelligence gathering.

Concealment of the Evidence of Intelligence Gathering Activities

There is evidence that the President directed and engaged in activities to prevent the revelation of the 1969–1971 wiretaps and the Fielding break-in, including concealment of the wiretap records, creation of a national security justification for the Fielding break-in and ordering Assistant Attorney General Petersen not to investigate the break-in on the basis of this justification, and the offer of the position of Director of the FBI to the presiding judge in the Ellsberg trial. In addition, as discussed in previous sections of this memorandum, the President's desire to conceal the Fielding break-in was one of the reasons for the Watergate cover-up and a specific objective of the payment of money to Hunt.

A. CONCEALMENT OF RECORDS OF THE 1969–1971 WIRETAPS

When the FBI conducts national security wiretaps, it normally maintains a central file and indices of the records of the taps so that the names of persons overheard are retrievable for production in a criminal trial.[1] The FBI was expressly ordered by Haig, "on the highest authority," not to maintain records of the wiretaps initiated under the President's 1969 authorization. (Book VII, 189)

In June 1971 publication of the Pentagon Papers began (Book VII, 593), and on June 28 Daniel Ellsberg was indicted in connection with their release. (Book VII, 616–17) On July 2 the Internal Security Division of the Justice Department, which had responsibility for the Ellsberg prosecution, asked the FBI to check its files to determine if Ellsberg had been overheard during any electronic surveillance. (Book VII, 686–87)

Morton Halperin's telephone had been tapped for 21 months and Ellsberg had been overheard on it 15 times. (Book VII, 204–05, 696) Shortly after the Internal Security Division had requested the FBI check of its files, Assistant FBI Director William Sullivan informed Assistant Attorney General Robert Mardian, the head of the Internal Security Division, that he had custody of the files and logs of the 1969–1971 wiretaps, that he expected to be forced out of the FBI by Director Hoover and that he desired to turn the wiretap records over to Mardian. Mardian has testified that Sullivan said he feared Hoover would use the wiretap material to pressure the President to keep him on as Director of the FBI. (Book VII, 757, 766–67)

Mardian sought advice from Attorney General Mitchell and then contacted the White House. He was instructed to fly to San Clemente

[1] Under the rule of *Alderman* v. *United States*, 394 U.S. 169 (1969), the Government is required to produce all materials generated by wiretaps for inspection by the defendant in a criminal case.

to discuss the matter with the President. (Book VII, 758, 767) John Ehrlichman's notes of a July 10 meeting with the President include: "Re: Grand Jury—Don't worry re taps on discovery—re WH." (Ehrlichman notes, 7/15/74)

On July 12, Mardian met with the President and Ehrlichman at San Clemente (John Ehrlichman Logs, July 12, 1971) and the President directed Mardian to obtain the logs and files from Sullivan and to deliver them to the White House. (Book VII, 776)

Mardian delivered the wiretap files to the Oval Office of the White House, but he has refused to say to whom he actually delivered them. (Book VII, 2063) Ehrlichman has testified that the President asked him to take possession of the files and that he picked up the documents in the Oval Office and placed them in a filing cabinet in his office, where they remained until April 30, 1973 when they were removed and filed with Presidential papers. (Book VII, 782)

As a result of the concealment of the wiretap logs and files at the direction of the President, the Government filed three false affidavits in the Ellsberg trial denying that Ellsberg had been the subject of, or had been overheard during electronic surveillance. (Book VII, 1504–11)

In February 1973 the White House learned of a forthcoming *Time* magazine story disclosing the existence of wiretaps of newsmen and White House employees. (Book VII, 1742) John Dean, who had learned of the files from Mardian, investigated the *Time* story by contacting Assistant FBI Director Mark Felt, Sullivan and Mitchell. Dean confirmed the existence of the wiretaps and called Ehrlichman who told him that he had the files, but directed Dean to have Press Secretary Ronald Ziegler deny the story. (Book VII, 1742–43) The *Time* article, published on February 26, 1973 stated that a "White House spokesman" had denied that anyone at the White House had authorized or approved any taps of newsmen and White House employees. (Book VII, 1748) On February 28, 1973 Dean reported to the President on the *Time* story and his meeting with Sullivan about the wiretaps. Dean told the President that the White House was "stonewalling totally" on the wiretap story and the President replied, "Oh, absolutely." (HJCT 36)

The next day, Acting FBI Director L. Patrick Gray publicly testified before the Senate Judiciary Committee during his confirmation hearings for the position of Director of the FBI. He stated that FBI records did not reflect the existence of any such taps and that, as a result of the White House denial of their existence, he had not investigated the matter further. (Book VII, 1756–60)

The White House continued to deny the existence of the wiretaps and the files and logs remained in Ehrlichman's safe until May 1973. On May 9, Acting FBI Director William Ruckelshaus received a report that an FBI employee recalled hearing Ellsberg on a wiretap three years earlier. Ruckelshaus reported this information to Assistant Attorney General Petersen, who forwarded it to Judge Matthew Byrne, the presiding judge in the Ellsberg trial. Petersen also informed Judge Byrne that the logs could not be located and that there were no records of the date, duration, or nature of the wiretap. (Book VII, 2046–55) Judge Byrne requested additional information. (Book

VII, 2046–47, 2053) On May 10 the FBI interviewed Mardian, who revealed that he had delivered the records to the White House. (Book VII, 2061–63) Ehrlichman could not be located until the following day. Two hours before Ehrlichman was interviewed, Judge Byrne dismissed all charges against Ellsberg and his co-defendant on the basis of misconduct by the Government, specifically including the failure of the Government to produce the wiretap records. (Book VII, 2079, 2084–85)

B. CONCEALMENT OF THE PLUMBERS' ACTIVITIES

The President's objective in authorizing the Plumbers' activities was to obtain information to discredit Ellsberg, the peace movement, the Democrats and past Democratic administrations. Following the Watergate break-in, the President initiated a policy of keeping federal investigations from discovering the Plumbers' activities, repeatedly using a national security justification for that purpose. On June 23, 1972, the President directed Haldeman to discuss with Ehrlichman, CIA Director Helms and Deputy CIA Director Walters the possible disclosure of the Plumbers' activities. (Book VII, 1534–40) Ehrlichman and Dean subsequently directed FBI and Justice Department personnel to concentrate on the Watergate burglars themselves to prevent interviews and investigations of individuals who could reveal the Plumbers' activities. (Book II, 447, 451–59, 474–75, 484–99, 502–12, 518)

In March and April 1973, the threat that Hunt might reveal the Fielding break-in arose in conjunction with his threat to disclose White House involvement in the Watergate break-in. On March 17, John Dean told the President that Hunt and Liddy had broken into the office of Ellsberg's doctor.[2] (WHT 157–60) On March 21, Dean and the President discussed Hunt's threat to reveal the Fielding break-in and other "seamy things" Hunt had done for Ehrlichman. Dean told the President that Hunt and Liddy were totally aware that "it was right out of the White House." The President said, "I don't know what the hell we did that for," and Dean said, "I don't either." (HJCT 92)

Later in the same conversation, Dean suggested putting the Fielding break-in on a "national security" basis:

PRESIDENT. You see, John is concerned, as you know, Bob, about, uh, Ehrlichman,[3] which, uh, worries me a great deal because it's a, uh, it—and it, and this is why the Hunt problem is so serious, uh, because, uh, it had nothing to do with the campaign.

DEAN. Right, it, uh—

PRESIDENT. Properly, it has to do with the Ellsberg thing. I don't know what the hell, uh—

HALDEMAN. But why—

PRESIDENT. Yeah Why—I don't know.

HALDEMAN. What I was going to say is—

PRESIDENT. What is the answer on that? How do you keep that out? I don't know. Well, we can't keep it out if Hunt—if—You see the point is, it is irrelevant. Once it has gotten to this point—

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[2] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials, but has produced a four-page edited transcript.

[3] ". . . worries me a great deal . . ." reads ". . . worries him a great deal . . ." in the White House transcript. (WHT 220)

DEAN. You might, you might put it on a national security ground basis, which it really, it was.

HALDEMAN. It absolutely was.

DEAN. And just say that, uh,

PRESIDENT. Yeah.

DEAN. that this not not, you know, this was—

PRESIDENT. Not paid with CIA funds.

DEAN. Uh—

PRESIDENT. No, seriously. National security. We had to get information for national security grounds.

DEAN. Well, then the question is, why didn't the CIA do it or why didn't the FBI do it?

PRESIDENT. Because they were—We had to do it, we had to do it on a confidential basis.

HALDEMAN. Because we were checking them?

PRESIDENT. Neither could be trusted.

HALDEMAN. Well, I think

PRESIDENT. That's the way I view it.

HALDEMAN. that has never been proven. There was reason to question their

PRESIDENT. Yeah.

HALDEMAN, position.

PRESIDENT. You see really, with the Bundy thing and everything coming out, the whole thing was national security.

DEAN. I think we can probably get, get by on that. (HJCT 112)

Dean told the President, however, that a national security justification "won't sell, ultimately, in a criminal situation," though it might be mitigating on the sentences.[4] (HJCT 125) And, in an afternoon meeting on March 21, Ehrlichman said that the break-in was "an illegal search and seizure that may be sufficient at least for a mistrial" in the Ellsberg case, or even a dismissal after conviction. (HJCT, 139.)

On March 27, the President and Ehrlichman discussed whether it would be necessary for Krogh to take responsibility for the Fielding break-in. Ehrlichman said he did not believe it would be necessary because if it came to light he would "put the national security tent over this whole operation." The President agreed with Ehrlichman's recommendation to "just hard-line it." [5] (WHT 334–37)

In April 1973, the President relied upon a national security justification to prevent investigation of the Fielding break-in and other activities by Hunt. In a conversation with Attorney General Kleindienst on April 15, the President told Kleindienst that the "deep six thing" related to some of Hunt's operations in the White House on national security matters and had nothing to do with Watergate.[6] (WHT, 721–23) On April 16, 1973, the President was told by Henry Petersen that the Department of Justice had information that Hunt had received documentation and a camera from the CIA. The President told Petersen that the CIA's assistance was perfectly proper because Hunt was then conducting an investigation in the national security area for the White House.[7] (WHT 883)

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[4] In a May 22, 1973 statement the President reiterated the national security justification for his order that investigations that might lead to the Plumbers not be pursued. (Presidential Statements," May 22, 1973, 21–23.)

[5] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other materials related to this conversation. The President has refused to produce this material, but produced an edited transcript.

[6] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other materials related to this conversation. The President has refused to produce this material, but has produced an edited transcript for a portion of this conversation.

[7] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other materials related to this conversation. The President has refused to produce this material, but produced an edited transcript.

The President told Haldeman and Ehrlichman on April 17 that he had instructed Dean not to discuss certain areas, including the Fielding break-in, because they were subject to national security and executive privilege and that Dean had agreed. The President said that it would be necessary to instruct Petersen that these were matters of national security, which were subject to executive privilege and that Petersen should be instructed to pass the word down to the prosecutors.[8] (WHT 1028–30)

In a telephone conversation with Petersen on the evening of April 18, the President ordered the Department of Justice not to investigate allegations concerning the break-in of the office of Daniel Ellsberg's psychiatrist.[9] Petersen told the President that Dean had informed the Justice Department that Hunt and Liddy had burglarized Ellsberg's psychiatrist's office. He asked the President if he knew about it. The President said he knew about it and told Petersen to stay out of it because it was national security and Petersen's mandate was Watergate. (Book VII, 1951–52, 1956–66) On April 27, the President reminded Petersen of the President's call from Camp David on April 18, in which, according to the President, he told Petersen not to go into "the national security stuff." On April 27, the President told Petersen that Petersen's phone call of April 18 was the first knowledge he had of the Fielding break-in. (WHT, 1266–67)

On April 25, 1973, Attorney General Kleindienst told the President that he knew about the Fielding break-in. Kleindienst recommended to the President that Judge Byrne be informed.[10] According to Kleindienst, the President was upset but agreed that the information should be transmitted to Judge Byrne. (Book VII, 1984–85, 1990)

The next day, memoranda regarding the break-in were filed *in camera* with Judge Byrne. (Book VII, 1996–97.) He reconvened the court later that day and asked the government for its position on turning the materials over to the defendants. The following morning a government attorney informed Judge Byrne that the Department of Justice opposed disclosure of the contents of the memoranda to the defense, but Judge Byrne ordered disclosure. (Book VII, 2005–13)

On May 11, 1973, Judge Byrne dismissed the charges against Ellsberg and his codefendant, on the grounds of governmental misconduct, including the Plumbers' use of CIA equipment and psychological profiles, the Fielding break-in, and the government's inability to produce logs of wiretaps on which Ellsberg's voice was intercepted.[11] (Book VII, 2076–83)

C. THE OFFER OF THE POSITION OF FBI DIRECTOR TO JUDGE BYRNE

On April 5, 1973, at the direction of the President, Ehrlichman contacted Judge Matthew Byrne, who was then presiding in the Ells-

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[8] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other materials related to this conversation. The President has refused to produce this material, but produced an edited transcript.

[9] The House Judiciary Committee on April 11, 1974 subpoenaed the tape recording and other material and other material related to this conversation. The President has stated that the telephone conversation was not recorded.

[10] The House Judiciary Committee on June 24, 1974 subpoenaed the tape recording and other material related to this conversation. The President has refused to produce these materials.

[11] In a public statement on May 22, 1973, the President repeated that there was a national security justification for his order that investigations that might lead to the Plumbers not be pursued.

berg trial, and asked whether Byrne would be interested in becoming the Director of the FBI. (Book VII, 1881–82, 1885–87) Byrne met with the President briefly at that time, but they did not discuss the trial or the FBI directorship. (Book VII, 1883, 1885–87)

As has been noted above, at that time the President was concerned that the Fielding break-in and other Plumbers' activities might be revealed, and he had decided that the matter would be cloaked in national security. On March 28, 1973 Hunt had been given use immunity, and had begun testifying before the Grand Jury. (Book VII, 1863) Liddy was granted immunity on March 30, 1973. (*In re Grand Jury*, Misc. 47–73, docket) The President may have thought it likely that their testimony would expose the Fielding break-in, which would then be disclosed to Judge Byrne, since it affected a defendant in his court. In addition, the President was probably concerned with disclosure of the 1969–71 wiretaps, which he had authorized (WHT 330–37) and which had been reported by *Time* magazine on February 26, 1973. (Book VII, 1747–48)

Although there had been repeated court orders for the production of any electronic surveillance material on both Ellsberg and Morton Halperin because of the removal and concealment of the files in the White House, the Justice Department had filed three false affidavits denying the existence of overhears or surveillance of Halperin and Ellsberg. (Book VII, 1504–1511) Only a month before the offer was made to Judge Byrne, the President agreed with John Dean that the White House should "stonewall totally" on the existence of these wiretaps after the *Time* magazine story. (HJCT 36)

The potential motives for this offer to Byrne which may be inferred from the evidence are complex. The conclusion most likely from the evidence is that Byrne was in a unique position to protect the President from damage resulting from disclosure of the Fielding break-in and the 1969–71 wiretaps. Byrne, if he accepted the national defense justification, could have held the matters *in camera*,[12] could have minimized their impact, or could have excused them entirely. The offer to him of the directorship of the agency that conducted the taps could be concluded to have been intended not only to make him friendly to the Administration in a general sense, but to have been designed to give him a direct stake in protecting the FBI from damaging disclosures.

The President's concealment of the wiretap records and the Fielding break-in involved a number of abuses of his powers as Chief Executive. By obtaining and concealing the wiretap records, the President prevented the Justice Department from performing its duty to the court in the Ellsberg trial. (Book VII, 2076–83) His failure to reveal the Fielding break-in, his fabrication of a national security justification for it and his order to Petersen not to investigate it also impeded the Justice Department in the performance of its duty to the court. Under all of these circumstances the President's offer of the position of FBI Director to Judge Byrne raises serious concern

[12] When circumstances forced the release of information to Byrne about the Fielding break-in, the prosecutor was in fact ordered by the Justice Department to file it *in camera*. Byrne refused to accept it and released it to the press. (Book VII, 1996–2013)

that it was made in bad faith to induce Judge Byrne not to reveal the wiretaps or the break-in.

There is no question that the President directed these activities. He ordered the concealment of the wiretap records at the White House (Book VII, 782, 2063); he ordered Petersen not to investigate (Book VII, 1957, 1959); he directed Ehrlichman to convey the offer to Byrne. (Book VII, 1874–75) The purpose of these actions, the Committee could conclude, was to conceal politically embarrassing information about illegal and improper White House activity. The Committee could conclude that this conduct was a serious breach of his responsibilities as President.

Misuse of the Internal Revenue Service

The evidence before the Committee demonstrates that the power of the office of the President was used to obtain confidential tax return information from the Internal Revenue Service and to endeavor to have the IRS initiate or accelerate investigations of taxpayers.

A. WALLACE TAX INVESTIGATION

In early 1970 H. R. Haldeman directed Special Counsel to the President Clark Mollenhoff to obtain a report from the IRS about its investigation of Alabama Governor George Wallace and his brother, Gerald, and assured Mollenhoff that the report was for the President. (Book VIII, 38.) Mollenhoff requested a report from Commissioner Thrower, received it, and gave it to Haldeman. (Book VIII, 38) Material contained in the report was thereafter transmitted to Jack Anderson, who published an article about the IRS investigation of George and Gerald Wallace on April 13, 1970 during George Wallace's Alabama gubernatorial primary campaign. (Book VIII, 37, 39–41)

B. LIST OF MC GOVERN SUPPORTERS

During 1971 and 1972 lists of political opponents and "enemies" were circulated within the White House. (Book VIII, 66–75, 104–09, 113–29) On September 11, 1972 Dean, at the direction of Ehrlichman, gave a list of McGovern campaign staff and contributors to IRS Commissioner Walters and asked that the IRS investigate or develop information about the people on the list. (Book VIII, 238; Dean testimony, 2 HJC 229) Walters warned Dean that compliance with the request would be disastrous and told him he would discuss it with Treasury Secretary Shultz and advise that the IRS do nothing. (Book VIII, 239, 243) Two days later Walters and Shultz discussed the list and agreed to do nothing with respect to Dean's request. (Book VIII, 275, 279)

On September 15, Haldeman informed the President that Dean was "moving ruthlessly on the investigation of McGovern people, Kennedy stuff, and all that too." Haldeman said that he didn't know how much progress Dean was making, and the President interrupted to say, "The problem is that's kind of hard to find." Haldeman told the President that Colson had "worked on the list" and Dean was "working the, the thing through IRS." (HJCT 1) Later, Dean joined the meeting, and there was a discussion of using federal agencies to attack those who had been causing problems for the White House. (HJCT, 10–11, 15)

They also discussed the reluctance of the IRS to follow up on complaints (Book VIII, 333) and Dean informed the President of his difficulties in requesting Walters to commence audits on people. (Dean

testimony, 2 HJC 229) The President became annoyed and said that after the election there would be changes made so that the IRS would be responsive to White House requirements. (Dean testimony, 2 HJC 301; Book V, 335–36) The President also complained that Treasury Secretary Shultz had not been sufficiently aggressive in making the IRS responsive to White House requests. (Dean testimony, 2 HJC 229, 302; Book VIII, 334–36) [1] Because of his conversation with the President, Dean again contacted Walters about the list, but Commissioner Walters refused to cooperate. (Book VIII, 354, 356; Dean testimony, 2 HJC 229)

C. O'BRIEN INVESTIGATION

During the spring or summer of 1972, John Ehrlichman received an IRS report concerning an investigation of Howard Hughes' interests that included information about Democratic National Committee Chairman Lawrence O'Brien's finances. (Book VII, 223–24) Ehrlichman later obtained information from Assistant to the Commissioner Roger Barth about O'Brien's tax returns.[2] Ehrlichman also told Shultz that the IRS should investigate and interview O'Brien about his tax returns. (Book VIII, 219) Ehrlichman's demand caused the IRS to accelerate an interview of O'Brien in connection with the Hughes investigation (normally an interview of a politically prominent person like O'Brien would have been held in abeyance until after the election), and to intensify its investigation of O'Brien. (Book VIII, 219–22)

The evidence suggests that about September 5, 1972 Walters gave Shultz figures concerning O'Brien's tax returns, which Shultz was to give to Ehrlichman.[3] (Book VIII, 235) In early September 1972 Ehrlichman gave Kalmbach figures about O'Brien's allegedly unreported income and requested that Kalmbach plant the information with the press. Kalmbach refused to do so, despite subsequent requests by Ehrlichman and Mitchell. (Kalmbach testimony, 3 HJC 615–17) On September 15, 1972 during the meeting among the President, Haldeman and Dean, the IRS investigation of O'Brien was discussed. (Book VIII, 337–39, 344–45)

D. OTHER TAX INFORMATION

From time to time in 1971 and 1972, a member of Dean's staff obtained confidential information about various people from the IRS (Book VIII, 138–42, 148–54, 161–63) and, at the request of Haldeman and under Dean's direction, endeavored to have audits conducted on certain persons. (Book VIII, 166–70, 176–82)

On March 13, 1973 during a conversation among the President, Haldeman and Dean, they discussed campaign contributions to the McGovern campaign. The President asked Dean if he needed "any

[1] This discussion is not reflected in the portion of the conversation that was furnished by the President to the Committee. The House Judiciary Committee on June 24, 1974 subpoenaed the tape recordings and other materials related to the conversations preceding and following this recorded conversation. The President has refused to produce these materials.

[2] Roger Barth testimony, SSC Executive Session, June 5, 1974. This testimony was received after presentation of Book VIII, Internal Revenue Service, to the Committee.

[3] Johnnie Walters, SSC interview, June 14, 1974. This information was received after presentation of Book VIII, Internal Revenue Service, to the Committee.

IRS [unintelligible] stuff." Dean responded that he did not at that time. Dean said, "[W]e have a couple of sources over there that I can go to. I don't have to fool around with [Commissioner] Johnnie Walters, or anybody, we can get right in and get what we need." (HJCT 50)

This use of the IRS is an abuse of the powers granted to the President by the Constitution to superintend the agencies of the Executive Branch. The Constitution entrusts that power to the President with the understanding that it will be used to serve lawful ends, not the personal political ambitions of the President. This misuse of power is a challenge to the integrity of the tax system, which requires taxpayers to disclose substantial amounts of sensitive personal information. It is also a crime to interfere with the administration of the internal revenue laws, and to divulge confidential information.[4] This policy of using the IRS for the President's political ends is an abuse of office and may be deemed by the Committee to constitute a violation of the President's duty to take care that the laws are faithfully executed.

The Committee could conclude that attempts to bring about political discrimnation in the administration of the tax laws—to have them "applied and administered with an evil eye and unequal hand," [5] to use the classic test of discriminatory enforcement of the laws—is a serious abuse of the President's power and breach of his duty as Chief Executive.

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[4] 26 U.S.C. § 6103 provides for the confidentiality of an individual's tax return and 18 U.S.C. § 1905 makes it a crime for an officer or employee of the United States to disclose confidential information. I.R.C. § 7212 forbids intimidating or impeding an I.R.S. agent in the performance of his duty.

[5] *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886).

Kleindienst Appointment—ITT

In 1969 three antitrust suits were filed by the United States against the International Telephone and Telegraph Corporation (ITT), each seeking to prevent a corporate acquisition or to require a corporate divestiture. (Book V, 91) During 1970 and 1971, particularly in August of the former year and March and April of the latter, officials of ITT made numerous personal contacts and had substantial correspondence with Administration officials for the purpose of attempting to persuade the Administration that the suits should be settled on a basis consistent with the interests of ITT. (Book V, 142, 144–46, 256–58, 268–70, 284–305, 367–70, 378–92, 404–22)

On April 19, 1971 the President, in the course of a meeting with John D. Ehrlichman and George P. Shultz, telephoned Deputy Attorney General Kleindienst. The President ordered Kleindienst to drop an appeal pending before the Supreme Court in one of the antitrust suits. (Book V, 312, 315–16) He criticized Antitrust Division chief McLaren and said that, if the order to drop the appeal was not carried out, McLaren was to resign. (Book V, 316)

On April 21, 1971 the President met with Attorney General Mitchell. In this meeting, Mitchell stated that it was inadvisable for the President to order that no appeal be taken in the *Grinnell* case, because there would be adverse repercussions in Congress and Solicitor General Griswold might resign. The President agreed to follow the Attorney General's advice, (Book V, 372–73) and the appeal was subsequently filed. (Book V, 534)

During June 1971 the Antitrust Division proposed a settlement of the three ITT antitrust cases, which was accepted by ITT. (Book V, 550–52, 555–56) The final settlement was announced on July 31, 1971. (Book V, 602.)

On February 15, 1972 the President nominated Richard G. Kleindienst to be Attorney General to succeed John Mitchell, who was leaving the Department of Justice to become head of CRP. (Book V, 606–08) The Senate Judiciary Committee held hearings on the nomination and recommended on February 24, 1972 that the nomination be confirmed. (Book V, 609–12)

On February 29, 1972 the first of three articles by Jack Anderson relating to the settlement of the ITT suits was published, alleging a connection between a pledge by an ITT subsidiary to support the 1972 Republican convention and the antitrust settlement. The article reported that both Mitchell and Kleindienst had been involved. (Book V, 634) Kleindienst immediately asked that the Senate Judiciary Committee hearings on his nomination be reopened so he could respond to the allegations. (Book V, 637)

About March 1, 1972 as a result of information published in the Anderson column, the Securities and Exchange Commission demanded that ITT turn over any documents in the files of ITT's Washington

office within the scope of subpoenas previously issued. (Book V, 646–47.) Within the files of ITT's Washington office were several documents that reflected ITT contacts with the Administration in 1970 and 1971 and would have been embarrassing to the Administration if disclosed. (Book V, 647–48) On March 2, 1972 the first day of the resumed Kleindienst nomination hearings, (Book V, 678) attorneys for ITT gave copies of one or more of these documents to White House aide Wallace Johnson, who gave them to Mitchell. (Book V, 713–14) The following week others of these documents were also furnished to Johnson. (Book V, 684–85) Later, during March and April, 1972 copies of the documents were provided by ITT attorneys to the SEC. (Book V, 685–86)

During the first day of the resumed Kleindienst hearings, March 2, 1972, and again on the following day, Kleindienst denied under oath having received directions from the White House about the handling of the ITT cases. (Book V, 680, 732) On March 3, 1972 Kleindienst also was asked by Senator Edward Kennedy about the extension of time to appeal the *Grinnell* case, which had in fact and to Kleindienst's knowledge resulted from the President's April 19, 1971 telephone call to Kleindienst. Kleindienst responded:

> Senator Kennedy, I do not recollect why that extension was asked. (Book V, 734)

Four days later, Kleindienst read a prepared statement describing in detail circumstances surrounding the request for an extension. There was no mention of the President's telephoned order to drop the case. (Book V, 753–54)

The President and Haldeman returned from a five-day stay in Key Biscayne on March 5, 1972. (Book V, 739–40) The next day, immediately after meeting with the President and Haldeman, Ehrlichman met with SEC Commissioner Casey. (Book V, 736, 740) Evidence before the Committee tends to establish that it was at this meeting that Ehrlichman expressed concern about documents relating to ITT contacts with the Administration that ITT lawyers had collected and were about to furnish to the SEC. (Book V, 743–48)[1]

At about this time the President established a White House task force to monitor the Kleindienst nomination and hearings; the task force operated throughout the month. (Colson testimony, 3 HJC 381–82, 400; Book V, 765)

On March 12, 1972, John Mitchell appeared before the Senate Judiciary Committee. (Book V, 772) He twice testified that there had been no communication between the President and him with respect to the ITT antitrust litigation or any other anti-trust litigation (Book V, 773–74) That evening Mitchell had a telephone conversation with the President. (Book V, 775)[2]

On March 24, 1972 the President held his only press conference during this period. He said:

> . . . as far as the [Senate Judiciary Committee] hearings are concerned, there is nothing that has happened in the hearings to date that has in no way

[1] The House Judiciary Committee on June 24, 1974 subpoenaed the tape recordings and other materials related to the conversations between the President and Ehrlichman, Haldeman and Colson on this date. The President has refused to produce this material.

[2] The House Judiciary Committee on June 24, 1974 subpoenaed the tape recording and other materials related to this conversation. The President has refused to produce this material.

shaken my confidence in Mr. Kleindienst as an able, honest man, fully qualified to be Attorney General of the United States. (Book V, 801)

The President refused to comment on any respect of the hearings "while the Senate is still conducting them . . . and is still trying to determine the authenticity of the evidence that is before it." He said it was a matter for the Committee "to continue to consider" but expressed the opinion Kleindienst would "go in as Attorney General with no cloud over him" when the hearings were concluded. (Book V, 801)

Colson has testified before the Committee that during the period of the Kleindienst hearings he attended a meeting with the President and Haldeman and heard them briefly discuss the telephone call between the President and Kleindienst on April 19, 1971. (Colson testimony, 3 HJC 383) According to Colson the President expressed relief when told by Haldeman that they had not discussed the ITT case. (Colson testimony, 3 HJC 383) Colson testified further that he met with the President throughout March and discussed with him what Colson knew about the Kleindienst hearings and related events, but not specific testimony. (Colson testimony, 3 HJC 382–83, 401–02)

According to Colson, on March 27 and 28, 1972 the President discussed with Haldeman, Colson and MacGregor whether the Kleindienst nomination should be withdrawn. (Colson testimony, 3 HJC 384–85) On the morning of March 30, 1972 according to Colson, Haldeman told him and MacGregor that the President had met with Kleindienst and talked with Mitchell by telephone the day before, and had decided not to withdraw the nomination. (Colson testimony, 3 HJC 356, 525) After meeting with Haldeman, Colson wrote a memorandum addressed to Haldeman (Colson testimony, 3 HJC 392–95) stating disagreement with continuing the Kleindienst nomination. (3 HJC 393, 395, 397; Book V, 805–09) His reasons included the possibility that documents Colson had reviewed would be revealed and show that the President had a meeting with Mitchell about the ITT case in 1971 and would contradict statements made by Mitchell under oath during the Kleindienst hearings. (Book V, 808–09) Colson testified that, assuming normal White House practice was followed, the President received this memorandum.[3] (Colson testimony, 3 HJC 243, 397)

On April 4, 1972 the President, Haldeman and Mitchell met and discussed among other things changing the convention site from San Diego to Miami. (Transcript submitted to the Committee by the White House, 3–13) A White House edited transcript of this conversation has been supplied to the Committee.[4]

On April 25, 1972 the Chairman of the Senate Judiciary Committee requested access to ITT documents in the possession of the SEC. (Book V, 865–66.) Had the SEC complied, the Senate Judiciary Committee would have received and been able to review documents previously collected by ITT attorneys and turned over to the SEC reflecting

[3] The House Judiciary Committee on June 24, 1972 subpoenaed the tape recordings of and other materials related to conversations between the President and Haldeman and Colson on this date. In response to this subpoena the President has supplied to the Committee only edited copies of selected White House news summaries.

[4] The House Judiciary Committee on June 24, 1974 subpoenaed the tape recordings and other materials related to several other conversations between the President and Haldeman on April 4, 1972. The President has refused to produce these materials.

efforts by ITT to obtain favorable treatment from the Administration with respect to the ITT cases. Chairman Casey, who had previously discussed the documents with Ehrlichman, refused Chairman Eastland's request. (Book V, 866)

On April 27, 1972 Kleindienst testified that no one in the White House had called him and instructed him on the handling of the ITT case. (Book V, 852) On June 8, 1972 Kleindienst's nomination was confirmed. (Book V, 903) At his swearing-in ceremonies on June 12, 1972 the President expressed his great confidence in Kleindienst's honesty, integrity and devotion to law. He said that the Senate confirmation proceedings had in no way reduced that confidence. (Book V, 908)

Article II, section 2 of the Constitution provides that the President "shall nominate, and, by and with the advice and consent of the Senate, appoint" certain officers established by law whose appointments are not otherwise provided for by the Constitution. The Attorney General of the United States is among the officers nominated by the President and appointed by him with the advice and consent of the Senate. The right of advise and consent is one of the key checks the legislative branch has over the power of the President. There is no surer way to frustrate this Constitutional safeguard than for the President or others in the executive branch to permit perjury to be conducted or evidence withheld in connection with the confirmation process.

In this connection the statement before the North Carolina Constitutional convention by James Iredell, later a Supreme Court Justice, is noteworthy. In the context of the treaty-making power, where (as with nominations to office) the Senate's role is to advise and consent, Iredell said, the President "must certainly be punishable for giving false information to the Senate." It would be an impeachable misdemeanor, Iredell contended, if "he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them." [5]

The two primary factual questions are whether the President knew about Kleindienst's and Mitchell's false testimony before the Senate Judiciary Committee and whether the President remembered the nature of the telephone conversation with Kliendienst and discussion with Mitchell ten and one-half months before. Given the strident tone of the telephone call, the fact that the conversation with Mitchell caused the President to rescind his order, the extensive press coverage of the Kleindienst hearings, the personal interest that the President took in them, the existence of a White House task force whose job it was to monitor the progress of the nomination hearings, and the observation in Colson's March 30 memorandum to Haldeman that there existed evidence contradicting Mitchell's sworn testimony, it would appear likely that the President had such knowledge. Yet Colson had testified that the President was assured by Haldeman (who had not overheard either critical conversation between the President and Kleindienst or Mitchell) that the President had not discussed the ITT

[5] 4 Elliot 127.

case with Kleindienst. And Colson has testified that he did not discuss in detail with the President the testimony before the Judiciary Committee. Evidence exists in the tape recordings of key Presidential conversations that would probably enable the Committee to determine the facts. But the President has refused to comply with the Committee's subpoena for such tapes.

If the President had knowledge that false testimony had been given under oath by Kleindienst and Mitchell, he neither informed the Senate Judiciary Committee or the full Senate about the actual facts nor withdrew Kleindienst's nomination. Instead, at his March 24 press conference, he reiterated his confidence in Kleindienst's honesty and qualifications to be Attorney General, saying that nothing had happened in the hearings to shake that confidence in one way. After Kleindienst's nomination was confirmed, the President appointed him Attorney General.

The Agriculture Adjustment Act of 1949 authorizes and directs the Secretary of Agriculture to make available an annual price support to producers of milk. Under the Act as it applied in 1971 the price of milk was to be supported at such level, between 75 and 90 percent of the parity price, "as the Secretary determine[d] necessary to provide an adequate supply." [1] The statute further provides that the Secretary's determinations "shall be final and conclusive." [2]

After detailed study and review in the Department of Agriculture, the Secretary decided by March 3, 1971 that the then current support price of $4.66 per cwt. should be continued for the 1971 marketing year, which was to begin on April 1, 1971 (Book VI, 361–62) This represented approximately 79 percent of parity. The decision was reviewed and concurred in by officials of the Office of Management and Budget, economic advisors to the President and members of the President's staff. (Book VI, 367, 371, 379, 385) The President approved the decision (Book VI, 396, 399) and on March 12 the Secretary announced the milk price support and his determination that it assured an adequate supply of milk (Book VI, 392)

After the Secretary's decision was announced, a number of bills were introduced in Congress to increase the minimum level of price supports for milk to at least 85 percent of parity, partially as a result of intense lobbying by certain milk producer cooperatives. (Book VI, 164, 431–32) Some 118 Members of the House and 29 Senators sponsored these bills. (Book VI, 332–36, 350–57.) Milk producer cooperatives engaged in further intense efforts to contact Administration officials and obtain a reversal of the Secretary's decision and an increase in milk price supports. (Book VI, 403–04, 409–10, 425–29) They also determined to cancel plans to purchase between $60,000 and $100,000 in tickets to a Republican fund-raising dinner. (Book VI, 525–28)

On March 23 the President met in the morning with representatives of the dairy industry and thanked them for their past political support, which, as the President knew, had included financial contributions and pledges. (Book VI, 566, 569–70) In the afternoon, the President met with his advisors and directed that the milk price support levels be increased to approximately 85 percent of parity. (Book VI, 641, 669–70) According to figures that OMB had developed, the increase had a "budget cost" to the American taxpayer of approximately $60 million. (Book VI, 374) The President directed that announcement of the decision be delayed while certain political and other contacts were made. (Book VI, 669)

Then-Secretary of Agriculture Clifford Hardin has stated in an affidavit filed in a civil suit challenging the increased price support

[1] 7 U.S.C. 1446(c).
[2] 7 U.S.C. 1426.

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that the decision was based entirely on a reconsideration of the evidence on the basis of the statutory criteria. (Book VI, 776–77) But the President has stated otherwise. The President has said that he was motivated largely by political considerations in directing the Secretary to increase the price support level. (Book VI, 165, 641) Indeed, just 11 days earlier, the President had approved the Secretary's determination not to increase the support level, on the recommendation of his key economic policy advisors, based upon economic considerations. (Book VI, 396, 399) In the deliberations leading to the March 23 decision, there is no evidence that new economic arguments or data with respect to the adequacy of the milk supply were considered. During the President's afternoon meeting on March 23 when the decision was reached, Treasury Secretary Connally, at the President's request, discussed in detail with concerned officials the politics of the decision. (Book VI, 630–31, 634–35, 638)

The President was aware of past financial support from the dairy cooperatives and their pledge of $2 million to his reelection campaign. (Book VI, 154, 174) A memorandum sent to the President on March 22, 1971 reminded him that the dairy lobby had decided to spend a lot of political money. (Book VI, 546) These considerations may also have influenced the decision to increase the price support level.[3] (Book VI, 733–34)

The Committee could conclude from the evidence before it that the President, who is without statutory power to do so, ordered the increase on the basis of his own political welfare rather than the statutory criteria.

Evidence before the Committee also suggests that the President directed or was aware of a plan to secure a reaffirmation of the milk producers' $2 million pledge to his reelection in return for the milk price support decision. (Book VI, 546–47, 556–58, 669; Kalmbach testimony, 3 HJC 611–12) The President's refusal to comply with the Committee's subpoena has left the evidence incomplete as to whether the milk producer cooperatives' contributions were made with the intent to influence the President's official acts or whether the President acquiesced in their acceptance with this knowledge. If these elements were present, then the President's acceptance constituted bribery, whether or not the contributions actually influenced the price support decision.[4]

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[3] The House Judiciary Committee on June 24, 1974 subpoenaed tape recordings and other materials related to conversations during this time period between the President and various aides involved in the price support decision and in soliciting or receiving dairy cooperative contributions. The President has refused to produce these materials.

[4] *United States v. Brewster*, 408 U.S. 501 (1972).

Improvements Made by Government Agencies to the President's Properties

On December 19, 1968, the President purchased two houses at Key Biscayne, Florida.[1] On July 15, 1969, he purchased a residence at San Clemente, California.[2] Since that time, the General Services Administration (GSA) has spent approximately $701,000 directly on the San Clemente property,[3] and $575,000 directly on the Key Biscayne property for capital expenses, equipment, and maintenance.[4] Congress has recognized that the Secret Service may require the installation of security devices and equipment on the private property of the President or others to perform its mission of protecting the President.[5] The General Services Administration is authorized to make expenditures for this purpose at the request of the Secret Service. The General Services Administration is also authorized to provide services and administrative support to the Executive Office of the President.[6]

Evidence before the Committee establishes that substantial expenditures for improvements and maintenance services on the President's properties were made by GSA that cannot be justified on the basis of the duty to protect the President. Some of these expenditures were made by GSA at the direction of the President or his representatives, with no Secret Service request. Others were made pursuant to Secret Service requests but included substantial amounts to meet aesthetic or personal preferences of the President and his family. Yet others, while they have served security purposes, involved items that are normally paid for by a homeowner himself, such as replacement of wornout or obsolete equipment or fixtures and routine landscape maintenance. The staff of the Joint Committee on Internal Revenue Taxation concluded that more than $92,000 of expenditures on the President's properties was for personal benefit and constituted income to him.[7] The Internal Revenue Service concluded that the President had realized $62,000 in such imputed income.[8]

Certain of the improvements were made at the President's express direction and others upon the instructions of John Ehrlichman. Many

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[1] Report to the Congress—Protection of the President at Key Biscayne and San Clemente (with information on protection of past Presidents), Comptroller General of the United States, December 8, 1973, 11. Hereinafter cited as Comptroller General Report.

Because the staff report with respect to this matter is being presented simultaneously with this memorandum, citations in this section are to the original source.

[2] *Ibid.*, 27.

[3] "Expenditure of Federal Funds in Support of Presidential Properties," Hearings before the Government Activities Subcommittee on the House Government Operations Committee, October 10, 11, 12 and 15, 1973, 47. Hereinafter cited as House Government Activities Subcommittee Hearings.

[4] *Ibid.*, 18.

[5] PL 90–331, June 6, 1968, 82 Stat. 170.

[6] "Examination of President Nixon's Tax Returns for 1969 through 1972," prepared by the staff of the Joint Committee on Internal Revenue Taxation, April 3, 1974, 169. Hereinafter cited as Joint Committee Report.

[7] *Ibid.*, 201.

[8] Internal Revenue Service Examination Report of 1969–1972 Tax Returns of President and Mrs. Nixon, April 2, 1974, Sections II and III.

involved asethetic choices that were likely to have been made by the President. Alexander Butterfield has testified before the Committee that the President was "very interested in the grounds at Key Biscayne, Camp David, San Clemente, the cottage, the house, the grounds. . . ."[9] The President knew of the improvements as they were being made from his visits to San Clemente and Key Biscayne; presumably he also knew that he was not personally paying for them. In any event, on August 20, 1973, he received a specific breakdown of the personal expenditures at San Clemente and Key Biscayne,[10] but to date has made no attempt to reimburse the government for any expenditures for his personal benefit on these properties.

The Committee could conclude that the President directed or knowingly received the benefit of improper expenditures on his San Clemente and Key Biscayne properties.

Article II, Section 1, clause 7 of the Constitution provides that the President shall not receive "any . . . emolument from the United States" during his term of office other than a stated compensation for his services. This explicit constitutional prohibition applies solely to the President. It reflects the fear of the framers of the Constitution that "powers delegated for the purpose of promoting the happiness of a community" might be "perverted to the advancement of the personal emoluments of the agents of the people."[11] The Committee could conclude that, by knowingly receiving the benefits of expenditures on his personally owned properties, the President violated this Constitutional prohibition.

In addition, the Committee could conclude that the President directed or caused the Secret Service and the GSA to exceed their authority and to violate the constitutional provision by authorizing and making these expenditures.

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[9] Butterfield testimony, 1 HJC 34.

[10] Coopers & Lybrand Financial Statements, August 20, 1973, 9 Presidential Documents 1438–47.

[11] III Elliott, *The Debates on the Adoption of the Federal Constitution,* 117 (reprint of 2d ed.) (Randolph).

Conclusion

There is evidence before the Committee from which it may conclude that the President has used the powers of his office in an illegal and improper manner for his personal benefit. This evidence, especially in the area of intelligence gathering, demonstrates a continuing pattern of conduct, beginning soon after the President took office, of using the FBI, the CIA, the Secret Service, and White House aides and agents to undertake surveillance activities unauthorized by law and in violation of the constitutional rights of citizens. These activities were conducted in the political interests of the President.

The President directed or participated in efforts to conceal these activities. He had the files and logs of the FBI wiretaps transferred to the White House, where they were concealed. He invoked a false national security justification and ordered the Justice Department not to investigate the Fielding break-in. He used his power to choose an FBI Director in a possible endeavor to prevent the revelation of both these matters in the Ellsberg trial. And he made deceptive and misleading public statements in an apparent effort to further this concealment.

The use of the powers of the office to obtain confidential information for the political benefit of the President was not limited to surveillance activities. In addition, there is evidence that the White House endeavored to misuse the Internal Revenue Service to obtain confidential tax return information on individuals and to accelerate or initiate IRS investigations or audits of political critics or opponents of the President.

Concealment was also apparently involved in the nomination and appointment of Kleindienst for the office of Attorney General. Kleindienst and Mitchell testified falsely in Kleindienst's confirmation hearings as to the President's role in the ITT litigation. If the President knew of the testimony and its falsity, he failed to correct the record or to withdraw the Kleindienst nomination and publicly reiterated his confidence in Kleindienst's honesty. Such conduct would be an abuse of the President's appointment power and a deprivation of the Senate's right of advise and consent.

In the case of the 1971 milk price support decision, the President ordered that the price support be raised, despite an earlier decision that there was no statutory justification for doing so, for his own political gain—a consideration outside the authority granted by statute. There is evidence suggesting that political contributions by milk producers cooperatives may have been given with the intention of influencing this decision. If the President knew of this—and he has failed to comply with subpoenas for evidence bearing upon it—then his abuse of his discretion as Chief Executive might also involve bribery.

Finally, there is evidence that the President abused his office to obtain personel pecuniary benefit from expenditures on his properties at San Clemente and Key Biscayne. GSA made expenditures for the President's personal benefit beyond its legal authority with the apparent knowledge and consent of the President.

The Committee could conclude that these instances—and those disclosed by the evidence on Watergate and its cover-up—are part of a pattern of the use of the powers of the Presidency to serve the President's personal objectives, without regard to the legality or propriety of the conduct involved. The Committee could conclude that this pattern constitutes a serious abuse of the Office of President.

THE REFUSAL OF PRESIDENT NIXON TO COMPLY WITH SUBPOENAS OF THE COMMITTEE ON THE JUDICIARY

The Committee's Subpoenas and the President's Responses

On February 6, 1974, the House adopted H. Res. 803, directing the Committee on the Judiciary 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. That resolution specifically authorized the Committee to compel the production by subpoena of all things it deemed necessary for the investigation.

A. EFFORTS OF COMMITTEE TO OBTAIN PERTINENT MATERIALS FROM WHITE HOUSE

1. Introduction

On February 25, 1974, acting pursuant to the instructions of Chairman Rodino and Ranking Minority Member Hutchinson, John Doar, Special Counsel to the Committee, wrote to James D. St. Clair, Special Counsel to the President, requesting specified tape recordings, transcripts and other materials, including 19 tape recordings and certain other materials previously furnished by the President to the Watergate Special Prosecution Force.

Following the February 25 letter a number of other letters were sent requesting tapes and other documents. Ultimately, the Committee on the Judiciary issued eight subpoenas to the President between April 11 and June 24, 1974. Those subpoenas required the production of: (1) the tape recordings of 147 conversations and documents relating to those conversations; (2) a listing of presidential meetings and telephone conversations (termed presidential "daily diaries") for five specified periods; (3) documents from the White House files of specified former White House employees relating to the Watergate matter and the White House Special Investigations Unit (the "Plumbers"); and (4) copies of daily news summaries relating to the ITT matter for a specified period in 1972 containing presidential notations.

In response to these letters and subpoenas, the President produced:

(1) 19 tape recordings and certain documents which had previously been supplied to the Special Prosecutor;

(2) edited White House transcripts of 32 subpoenaed conversations;

(3) edited White House transcripts of 7 conversations not subpoenaed and of 3 public statements;

(4) selected notes of John Ehrlichman relating to the Fielding break-in and wiretaps, which were extensively edited;

(5) White House news summaries, without Presidential notations, for a period in 1972 relating to the Kleindienst hearings;

(6) On July 18, 1974, in the course of his counsel's oral statement, a 2½ page excerpt for the edited transcript of an hour and twenty-four minute meeting on March 22, 1973 between the President and Haldeman.

In addition to the above, the Committee—when its staff was re-recording a conversation which took place on September 15, 1972 to secure a better copy of the tape—also obtained as a result of an accident by White House personnel approximately fifteen minutes of conversation not previously supplied to the Special Prosecutor or to the Committee. This additional conversation proved to be relevant to the Committee's inquiry. Apart from this small segment obtained by accident, the Committee has not received a single tape recording which was not in the possession of the Special Prosecutor. The Committee has not received any of the 147 tape recordings which it has subpoenaed (98 of which relate to the Watergate matter); nor, except as specified above, has it received any of the documents or materials it has sought. As indicated, the bulk of the materials which the Committee has received were not in response to its subpoenas, but stemmed from the fact that the Special Prosecutor received the same materials as a result of public pressure following the firing of Archibald Cox.

2. The Subpoenas

On April 11, May 15, May 30 and June 24, 1974, after receiving detailed memoranda from its staff setting forth facts that demonstrated the need for the materials to be subpoenaed, the Committee issued a total of eight subpoenas to the President. In each instance the subpoena was issued only after the President refused to produce voluntarily materials which had been requested by the Committee. The staff memoranda setting forth the bases of the requests were provided to the Special Counsel to the President.

(*a*) *The Four Watergate Subpoenas*

(*i*) *April 11, 1974.*—The subpoena of April 11, 1974 required the production of all tapes, dictabelts, notes, memoranda and other things relating to 42 Presidential conversations in February, March and April 1973. In a letter of April 4, 1974 to Mr. St. Clair, Mr. Doar explained that the Committee believed that the conversations were likely to:

(1) bear upon the knowledge or lack of knowledge of, or action or inaction by the President and/or any of his senior administration 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) bear upon the President's knowledge or lack of knowledge of, or participation 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. *Mitchell, et al.*; and

(3) 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 the District Court for the District of Columbia in the cases of *United States* v. *Magruder*, *United States* v. *Dean*, *United States* v. *Chapin*, and *United States* v. *Ehrlichman* or other acts that may constitute illegal activities.

The Committee discussed in open session the necessity and pertinency of the materials with respect to the President's knowledge or lack of knowledge and involvement or lack of involvement in Watergate. The subpoena was authorized by a vote of 33 to 3 and was properly issued and served. It had a return date of April 25, which was extended for five days at the request of the President.

The subpoenaed tape recordings included four conversations prior to March 21, 1973—the date on which the President has stated he originally learned of White House involvement in the Watergate coverup. The first three conversations included: (1) a meeting on or about February 20, 1973 at which Haldeman and the President discussed a possible government appointment for Jeb Magruder, who had perjured himself in the Watergate trial; (2) a conversation among the President, Haldeman and Ehrlichman on or about February 27, 1973, at which they discussed the assignment of Dean to report Watergate matters directly to the President; and (3) a March 17, 1973 meeting between Dean and the President. The other subpoenaed tape recordings contained conversations of the President with Haldeman and Ehrlichman from April 14 to April 17, 1973; and of the President with Kleindienst and Petersen from April 15 to April 18, 1973—the four days immediately following the prosecutors' breakthrough in the Watergate case.

(*ii*) *May 15, 1974.*—On May 15, after the Inquiry Staff's initial presentation had begun, the Committee issued two additional subpoenas. Again this was done after public consideration of the necessity to obtain materials sought. The first subpoena, authorized by a vote of 37 to 1, covered tape recordings and other materials related to eleven conversations on April 4, June 20 and June 23, 1972, which the Committee believed were likely to bear on the President's involvement or lack of involvement in the Watergate matter. The second covered the President's daily diaries for four time periods in 1972 and 1973; each of the time periods was separately voted upon by the Committee. That portion of the subpoena covering the diaries from April-July 1972 was authorized by a vote of 36 to 1; the portions for February-April and October 1973, by votes of 32 to 6; and the portion for July 12–July 31, 1973 by a vote of 29 to 9. The two subpoenas of May 15 were properly issued and served. They had a return date of May 22, 1974.

The eleven subpoenaed conversations were pertinent to the questions of whether or not the President had advance knowledge of the Liddy Plan, what the President was informed of on June 20, 1972, and the President's directive on June 23, 1972 to the CIA in connection with the Watergate investigation. Six of the subpoenaed conversations occurred on July 20, 1972. The President had previously produced for the Special Prosecutor a tape of another June 20 conversation containing an 18½ minute gap, which Court-appointed experts have concluded resulted from five to nine manual erasures.

The four time periods reflected in the subpoenaed Presidential daily diaries related to (1) the period immediately preceding and following the break-in at DNC headquarters; (2) the period immediately preceding and following the March 21, 1973 meeting and the reconvening of the Watergate grand jury; (3) the period immediately

preceding and following Butterfield's disclosure of the White House taping system; and (4) the period immediately preceding and following the President's dismissal of Special Prosecutor Cox.

(*iii*) *May 30, 1974.*—The subpoena of May 30, which was authorized at a public meeting by a vote of 37 to 1, directed the production of tape recordings and other materials related to forty-five conversations that might bear upon the President's involvement or lack of involvement in the Watergate matter. This subpoena also sought all papers prepared by, sent to, received by or at any time contained in the files of five former White House aides (Haldeman, Ehrlichman, Colson, Dean and Strachan) to the extent that they related to the Watergate matter. This subpoena was properly issued and served. It had a return date of June 10.

The forty-five conversations, the recordings of which were sought by the May 30 subpoena, occurred between November 15, 1972 and June 4, 1973. The initial presentation to the Committee showed that there was a reasonable basis to conclude that the conversations might include, among others: Presidential discussions of clemency for Hunt; statements by Colson to the President about the Watergate cover-up in February 1973; conversations in March 1973 among the President, Dean, Colson, Haldeman and Ehrlichman; and discussions among the President, Haldeman, Ehrlichman or their attorneys during the period in April when Petersen was reporting Watergate investigative developments directly to the President.

The evidence also indicated that on April 25 and 26, 1973, Haldeman, at the President's request, listened to the March 21 tape, among others, and reported about it to the President in several meetings—one of which lasted six hours. The subpoenaed conversations included the meeting at which Haldeman reported to the President about the March 21 tape. The subpoenaed conversations were relevant to the President's knowledge or lack of knowledge about Watergate prior to March 21, 1973 as well as the President's actions after that date.

Of the 98 conversations subpoenaed by the Committee relating to the Watergate matter, 64 have been subpoenaed by the Special Prosecutor for the trial of *United States* v. *Mitchell*. Judge Sirica has ordered the President to produce the recordings of these conversations. That order has been appealed to the United States Supreme Court.

(*b*) *The ITT, Dairy, IRS and Domestic Surveillance Subpoenas*

On June 24, 1974, following the Staff's initial presentation of evidence, the Committee authorized the issuance of four subpoenas compelling the production of material related to the 1971 milk price support decision, the ITT antitrust case, domestic surveillance, and allegedly improper use of the Internal Revenue Service. The first two of these subpoenas were authorized by votes of 34 to 4; the other two by voice vote. All were properly issued and served and had a return date of July 2.

The subpoena for dairy tape recordings and documents was designed to determine whether or not the President caused milk producers cooperatives to believe he would be influenced in raising the milk price support level in March 1971 by campaign contributions or pledges. The subpoena relating to domestic surveillance ordered the production

of tape recordings and documents that might show the President's knowledge or lack of knowledge of the Fielding break-in before March 17, 1973. An edited transcript of one of the conversations (April 19, 1973, between the President and Petersen) had been produced in *United States* v. *Ehrlichman*. The subpoena in the ITT area was designed to determine whether or not the President knew of the false testimony given by Kleindienst relating to the ITT antitrust litigation during the hearings before the Senate Judiciary Committee on the nomination of Kleindienst to be Attorney General. The subpoena relating to the inquiry about misuse of the IRS ordered the production of two tapes on September 15, 1972, one of which Judge Sirica said involved discussions relating to use of the IRS.

B. THE PRESIDENT'S RESPONSE TO LETTERS AND SUBPOENAS

1. Response to February 25, 1974 letter

After the Grand Jury informed Judge Sirica on March 1, 1974 that it wished to make a submission to the House Judiciary Committee, Mr. St. Clair on March 6, 1974 announced in open court that President Nixon had agreed to supply to the Committee those materials previously furnished to the Special Prosecutor.

Subsequently, between March 8 and March 15, 1974 the Committee received those materials that had been furnished to the prosecutors. This included the tape recordings of 10 Watergate-related conversations or portions of conversations on June 30, 1972, September 15, 1972, February 28, 1973, March 13, 1973, March 21, 1973 (two conversations), March 22, 1973, April 16, 1973 (two conversations) and June 4, 1973. Also included were tapes of presidential recollections respecting conversations on June 20, 1972 and March 21, 1973, making a total of 12 Watergate-related conversations produced by the President.

The recordings of June 30, September 15, March 13, 21 and 22 and the tapes of the two presidential recollections, had been surrendered pursuant to a grand jury subpoena obtained by Special Prosecutor Cox and sustained by the Court of Appeals in *Nixon* v. *Sirica*. The tape recordings of two conversations between the President and Dean on April 16, 1973 had been submitted when the President was unable to deliver the tape of the conversation of April 15, 1973. The President announced following the Court of Appeals decision upholding Special Prosecutor Cox's subpoena that the April 15 conversation between the President and John Dean had not been recorded because the tape in the President's EOB office allegedly ran out. The tape recordings of two other conversations submitted to the Committee in March, those on February 28, 1973 and June 4, 1973, had been previously given by the President to Special Prosecutor Jaworski. The Committee also received from the President logs and documentary materials previously supplied to the Special Prosecutor.

Each of the 12 tape recordings relating to the Watergate matter which the Committee received from the President between March 8 and 15, 1974 was already part of the Grand Jury submission announced on March 1, 1974. Thus, with respect to the Watergate matter, the Committee did not receive from the President a single tape recording of a conversation which it had not been scheduled to receive and did

receive on March 26, 1974 from the Grand Jury. As will be seen, apart from these 12 Watergate-related conversations which the President delivered to the Committee after the announcement of the existence of a Grand Jury submission, the Committee to date has not received a single additional Watergate-related recording, despite the issuance of 3 subpoenas in this regard requesting 98 such recordings.

2. Responses to April 11, 1974 subpoenas

In response to the Committee's first subpoena—that was issued on April 11, 1974—the President on April 29, 1974 appeared on nationwide television. He said that he would submit to the Committee, on the next day, edited transcripts of subpoenaed conversations that had been taped, as well as transcripts of some taped conversations that had not been subpoenaed. The President also announced that these transcripts, which had been prepared at the White House, would be made public. The next day these transcripts were delivered to the Committee and released to the public; the Committee received no tapes, dictabelts, memoranda, or other subpoenaed documents.

With respect to the three earliest subpoenaed conversations, the President responded that a search of the tapes failed to disclose either the February 20, 1973 or February 27, 1973 conversations. With respect to the March 17, 1973 conversation, the President produced a four page edited transcript relating only to a discussion of the Fielding break-in. On June 4, 1973, the President listened to the March 17, 1973 recording. In a recording of a conversation on June 4, 1973 the President talked to Ziegler about Watergate-related matters that the President had just heard on the March 17 tape. The President recalled that on March 17, after hearing that Magruder had put the heat on and Sloan had started blaming Haldeman, the President stated, in effect, "We've got to cut that off. We can't have that go to Haldeman." On May 21, 1974, the Chairman directed the Committee's Special Counsel to discuss with the President's Special Counsel the omission of this material in the edited transcript of March 17, 1973. The President has, to date, declined to produce the other portions of the conversation.

Of the other 39 subpoenaed conversations, the President reported that five were not recorded because the tape in the EOB office ran out on April 15, 1973; that four telephone conversations were not recorded because they were made on a residence telephone; and that another telephone call on April 18, 1973 to Henry Petersen (during which the President alluded to the existence of a tape recording relating to his allegedly unrecorded April 15, 1973 conversation with Dean, and in the course of which Petersen told the President about the Fielding break-in) had been made from Camp David and was not recorded.

The President's submission included seven other transcripts, three of which did not involve the President. None of the volunteered transcripts related to conversations prior to March 21, 1973. Specifically, the volunteered transcripts did not relate to the following conversations relevant and necessary to a determination of the President's direction or lack of direction in the Watergate cover-up: (1) the conversations on June 20, 1972 with Haldeman and Colson; (2) the conversations on June 23, 1972 with Haldeman relating to the President's

directions to Haldeman to meet with the CIA; (3) conversations with Colson on January 5, 1973, February 13 and 14, 1973 and (4) conversations of the President with Dean, Colson, Haldeman and Ehrlichman prior to March 21, 1973; (5) the long conversations with Haldeman on April 25 and April 26 after Haldeman had listened to the tape recordings; and (6) the conversation between the President and Henry Petersen on April 25 immediately after the President had talked with his Chief of Staff Haldeman about what Haldeman had heard on the tape recordings. The President nonetheless stated on May 22, 1974, that after the production of the edited transcripts, "the Committee has the full story of Watergate, in so far as it relates to Presidential knowledge and Presidential actions."

Accompanying the submission of edited White House transcripts was an unsigned memorandum setting forth the President's interpretation of the contents of the transcripts. The memorandum said that the Committee had called for the production of tapes and other materials relating to forty-two Presidential conversations, the subpoena had been issued "without regard to the subject matter, or matters, dealt with in these conversations." The memorandum stated that the President considered the subpoena "unwarranted," and that he would not permit what he termed "unlimited access to Presidential conversations and documents."

The memorandum claimed that the President "does recognize that the House Committee on the Judiciary has constitutional responsibilities to examine fully into his conduct." The memorandum said the President was providing transcripts "of all or portions of the subpoenaed conversations that were recorded and of a number of additional non-subpoenaed converastions that clearly show what knowledge the President had of an alleged cover-up of the Watergate break-in and what actions he took when he was informed of the cover-up."

The President invited the Chairman and Ranking Minority Member of the Committee "to review the subpoenaed tapes to satisfy themselves that a full and complete disclosure of the pertinent content of these tapes had, indeed been made." The Committee declined this offer. Chairman Rodino explained that 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. He explained that the procedures followed by the Committee must give all Members—each of whom has to exercise his or her personal judgment on this matter of enormous importance to the nation—a full and fair opportunity to judge all the evidence for themselves. It was therefore necessary that the Committee not depart from the ordinary and accepted process in the way the President suggested, or in any other manner that might raise questions about the thoroughness, fairness and objectivity of the Committee's work. Accordingly, on May 1, 1974, the Committee advised the President by a letter, which was approved by a vote of 20 to 18, that he had not complied with the subpoena of April 11.

Both the Committee's Special Counsel and Special Counsel to the Minority have repeatedly cautioned Members of the Judiciary Committee to consider the White House edited transcripts skeptically. The

staff, by comparing those edited transcripts for which the Committee previously had recordings with the Committee's transcripts, isolated seven categories of inaccuracies: (1) misstatements, (2) omissions, (3) additions, (4) paraphrasing, (5) misassignment of conversations to other speakers, (6) selection of relevant portions and (7) unintelligibles. Examples of these inaccuracies appeared in the "Comparison of Passages" of Committee transcripts of eight recorded conversations and the White House edited transcripts, released on July 9, 1974.

In addition, throughout the edited transcripts there were references to "material unrelated to Presidential action deleted." Mr. Doar and Mr. Jenner advised the Committee that they did not know of any precedent for that kind of judgment with respect to the deletion or omission of material. They added that they did not know what those words meant, nor did they understand what standards were being used in deleting material.

3. Responses to seven other subpoenas

Subsequent to his televised response to the April 11, 1974 subpoena, the President has virtually ignored the seven other subpoenas issued by the Committee on the Judiciary in its exercise of the House's sole power of impeachment.

For example, the President failed to comply with the two subpoenas of May 15. On May 30, following the return date of those subpoenas, the Committee advised the President by letter of the grave consequences of his noncompliance. The letter, approved by a vote of 28 to 10, said that noncompliance might be considered independent grounds for impeachment, and that the Committee would be free to consider whether noncompliance might warrant the drawing of adverse inferences concerning the substance of the materials not disclosed.

On June 9, 1974, the President wrote the Chairman a letter in which the President invoked "executive privilege" as his justification for the refusal to comply with the subpoenas of May 15.[1] "My refusal to comply with further subpoenas with respect to Watergate is based, essentially, on two considerations," the President wrote. "First, preserving the principle of separation of powers—and of the Executive as a co-equal branch—requires that the Executive, no less than the Legislative or Judicial branches, must be immune from unlimited search and seizure by the other co-equal branches." And the President continued, "Second, the voluminous body of materials that the Committee already has—and which I have voluntarily provided, partly in response to Committee requests and partly in an effort to round out the record—does give the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions."

The President's letter of June 9th went on to argue that an adverse inference could not properly be drawn "from my assertion of executive privilege with regard to these additional materials," contending that to draw such an inference would fly in the face of "established

[1] On June 5, 1974, the President produced an edited transcript of a conversation on April 4, 1972 between the President, Mitchell and Haldeman. This conversation had been subpoenaed on May 15, 1974 and also requested by letter in connection with the ITT matter.

law on the assertion of valid claims of privilege." Otherwise, the President claimed, "the privilege itself is undermined, and the separation of powers nullified."

Accompanying the President's letter of June 9 was a short letter dated June 10, 1974 from the President's special counsel, stating that the President declined to comply with the subsequent subpoena of May 30 for the reasons set forth in the June 9 letter concerning the subpoena of May 15, 1974.

The four subpoenas issued by the Committee on June 24 had a return date of July 2, 1974. On July 12, 1974 the Special Counsel to the President informed the Chairman that the President declined to produce either the tapes of the subpoenaed conversations or the subpoenaed daily diaries of the President. The President agreed to produce copies of the White House news summaries relating to the Kleindienst confirmation hearings without the President's notes and copies of some of Ehrlichman's subpoenaed notes relating to the Fielding break-in and the 1969–71 wiretaps. The xeroxed copies of Ehrlichman's notes given to the Committee were edited so as to delete significant portions that the White House had produced to the Court in *United States* v. *Ehrlichman*. On July 18, 1974 Mr. St. Clair advised the Committee this was done in error.

The Power of the House in an Impeachment Inquiry

The power of impeachment is an extraordinary remedy to be used as "an essential check in the hands of [the legislature] upon the encroachments of the executive."[1] As a power conferred by the Constitution, it is not to be construed in a manner that would cripple its execution or "render it unequal to the object for which it is declared to be competent."[2] It is to be interpreted so that "it will attain its just end and achieve its manifest purpose."[3] Of necessity this must include the power—indeed, the duty—to inquiry—to find out the truth.

As early as 1796, it was stated on the floor of the House that the power of impeachment "certainly implied a right to inspect every paper and transaction in any department, otherwise the power of impeachment could never be exercised with any effect."[4] The impeachment power is "the most undebatable power from which to deduce an implied investigatory power."[5] The "true spirit" of impeachment, Alexander Hamilton wrote in *The Federalist* No. 65, is that it is, "designed as a method of national inquest into the conduct of public men," initiated by the representatives of the people.[6]

Throughout all of our history this power of inquiry has been recognized as essential to the impeachment power. Before the current inquiry, sixty-nine officials have been the subject of impeachment investigations. With one possible exception, in which the officials invoked the privilege against self-incrimination,[7] none of them challenged the power of the committee conducting the investigation to compel the production of evidence it deemed necessary.

In 1867, the Committee on the Judiciary conducted the initial inquiry concerning the impeachment of President Andrew Johnson. Hearings were held over a period of eleven months. Records were requested from a number of executive departments and from the Executive Mansion itself; there is no evidence of any failure to comply with these requests, nor of any objection to them by President Johnson. Cabinet officers and Presidential aides were questioned in detail about

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[1] *The Federalist*, No. 66 at 430. (Modern Library ed., A. Hamilton, hereinafter cited as *Federalist*.)

[2] *Gibbons* v. *Ogden*, 22 U.S. 1, 83, 9 Wheat. 1, 188 (1824) (Marshall, C.J.)

[3] *Prigg* v. *Pennsylvania*, 41 U.S. 539, 611, 16 Pet. 345, 398 (1842).

[4] 5 *Annals of Congress* 601 (1796)

In 1843, in a dispute with President Tyler about the production of documents requested for a legislative investigation (which he ultimately provided), a House Committee said: "The House of Representatives has the sole power of impeachment. The President himself, in the discharge of his most independent functions, is subject to the exercise of this power—a power which implied the right of inquiry on the part of the House to the fullest and most unlimited extent. . . . If the House possess the power to impeach, it must likewise possess all the incidents of that power—the power to compel the attendance of all witnesses and the production of all such papers as may be considered necessary to prove the charges on which the impeachment is founded. If it did not, the power of impeachment conferred upon it by the Constitution would be nugatory. It could not exercise it with effect. H. Rep. No. 271, 27th Cong., 3d Sess., 4–6." (Excerpts from this report are printed in 3 *Hind's Precedents of the House of Representatives*, § 1885 at 181–86 (1907) (hereinafter cited as *Hind's Precedents*).

[5] Dimock, *Congressional Investigations* 120 (1929).

[6] *Federalist*, No. 65 at 424.

[7] See, H. Rep. No. 141, 45th Cong., 3d Sess. (1879); also printed in 3 *Hind's Precedents* § 1699 at 56–57.

meetings and conversations with the President that led to decisions about the prosecution of Jefferson Davis, Presidential pardons, the issuance of executive orders, the conduct of Reconstruction and the vetoing of legislation.[8]

Only one witness in the hearings, Jeremiah Black, an adviser to President Johnson who later served as one of his counsel in his impeachment trial, protested against a question relating to private conversations that took place between him and the President in the preparation of a veto message. Black recognized, however, that he was bound to answer the question if the Committee pressed it, and he acknowledged that "a witness sworn to testify before any tribunal is bound in conscience to answer a question which that tribunal declares he ought to answer; that he is himself not the judge of what he ought to answer and what he ought not." After deliberation, the Committee required Black to answer, and he did so.[9] Black and other witnesses answered detailed questions on the opinions of the President and advice expressed to him in the formulation of Presidential decisions.[10]

Other Presidents, beginning with George Washington,[11] have recognized the power of the House to compel the production of evidence in the custody of the Executive branch in an impeachment investigation. The clearest acknowledgment of the reach of this investigative power was made in 1846 by President James K. Polk. Polk, regarded by historians as a strong President, protested a legislative investigation being conducted by a House committee. In his message to the House, Polk "cheerfully admitted" the right of the House to investigate the conscience to answer a question which that tribunal declares he impeachment power. "In such a case," he wrote,

> The safety of the Republic would be the supreme law, and the power of the House, in pursuit of this object would penetrate into the most secret recesses of the Executive Departments. It could command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts, within their knowledge.[12]

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[8] See, generally, Reports of Committees, Impeachment Investigation, 40th Cong., 1st Sess. 183–578 (1867).

[9] *Id.* at 271.

[10] The only evidence of President Johnson's views concerning the investigation relates to whether his personal bank records should be produced for the Committee. The cashier of the bank, who was reluctant to produce the records "simply upon the general principle of never imparting any information to outsiders in regard to the business of our customers," had told President Johnson of the request. The cashier told the Committee that the President made no objection to the production of the records:

"He smiled, and said he had no earthly objection to have any of his transactions looked into; that he had done nothing clandestinely, and desired me to show them anything I had relating to his transactions." *Id.* at 182–83.

[11] 1 Richardson, *Messages and Papers of Presidents* 194–95 (1896).

[12] *H. R. Jour.*, 29th Cong., 1st Sess. 693 (1846); 4 Richardson, *Messages and Papers of the Presidents* 434–35 (1896).

Analysis of the President's Asserted Reasons for Noncompliance with the Subpoenas

A. Relevance or Need

In his letter of June 9 to Chairman Rodino, the President stated that one of the considerations on which he based his refusal to comply with subpoenas was that "the voluminous body of materials" that the Committee already has gives "the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions." The suggestion is either that the subpoenaed material is not needed because it duplicates what the Committee already has or that it is not relevant. This asserted justification for noncompliance is invalid because the material is both relevant and needed. What is more important, it is for this Committee, not the President, to decide what is needed and what is relevant.

In an investigatory or adjudicative proceeding, the judge of the need or relevancy of subpoenaed evidence is the requesting tribunal, not the subject of the investigation. The subject is not permitted to determine the relevancy or the need for particular evidence. This is clearly established in judicial proceedings. As Dean Wigmore stated:

> . . . The question of relevancy is never one for the witness to concern himself with . . . It is his duty to bring what the Court requires; and the Court can then to its own satisfaction determine by inspection whether the documents produced are irrelevant. . . .[1]

The same rule must apply in an impeachment inquiry.

It should be emphasized that there is no requirement that relevancy and need be established to a certitude before the issuance of a subpoena. Investigative bodies cannot be required to know all the facts before seeking evidence to determine them. What is required is a reasonable belief that the subpoenaed material is relevant and needed for the inquiry. The Supreme Court has held that inquiry cannot "be limited . . . by forecasts of the probable result of the investigation." [2] Even administrative agencies may determine their own investigative jurisdiction, and they may demand the production of documents that permit that determination to be made.[3]

Each subpoena to the President was justified by a detailed memorandum describing the information that led the staff to request the Committee to authorize the subpoena. These memoranda show how limited and tailored the Committee's subpoenas have been and how necessary the material sought is to its inquiry. The President has asserted that the edited transcripts he provided in response to the first Committee subpoena gave the "full story" of Watergate. They do not, however, constitute the best evidence even of the conversations they cover. They were prepared by members of the President's staff,

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[1] 8 Wigmore, *Evidence* 117–18 (3rd Ed. 1940).
[2] *United States* v. *Morton Salt Co.*, 388 U.S. 632, 642–43, 652–53 (1950).
[3] See *United States* v. *Morton Salt Co.*, *supra*; *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946); *United States* v. *Powell*, 379 U.S. 48 (1964).

and the President himself made the final decisions as to what to excise from the transcripts. Moreover, the Committee cannot be bound by the President's determination as to whether subpoenaed material is "duplicative" of what the Committee already has. The subject of an inquiry cannot be the judge of what is needed to conduct it, for, as James Madison wrote, "his interest would certainly bias his judgment." [4]

As described above, the President has refused to provide the Committee with any Watergate-related materials predating March 21, 1973—the date on which the President claims he first learned of Watergate. There are only two minor exceptions: (1) an edited transcript of a telephone conversation with Dean on the evening of March 20, and (2) a four-page edited transcript from a conversation that lasted 45 minutes between the President and Dean on March 17. Every pre-March 21 tape in the possession of the Committee—June 20, 1972, June 30, 1972, September 15, 1972, February 28, 1973, and March 13, 1973—was previously provided to the Special Prosecutor. The President has voluntarily given the Committee transcripts of seven conversations it did not subpoena (only four of which involved the President), all in the period from March 28 to April 30, 1973 to complete, according to the President, the record. Within that same period, he has refused to provide his April 25 and 26 conversations with Haldeman just after Haldeman had listened to the March 21 tape of the President's conversation with Dean. Thus, as a factual matter, his claim to have provided "the full story of Watergate"—much less materials the Committee deems necessary for other aspects of its inquiry—is insupportable.

Moreover, as has been made clear above, all of the 19 tape recordings and the bulk of the documentary material which the Committee has received from the President has not been in response to the subpoenas issued as part of the Committee's impeachment inquiry. Rather, these recordings and materials were supplied to the Committee only after they had been delivered to the Special Prosecutor before this Committee's inquiry ever began, in response to Grand Jury subpoenas and court orders, and then only after a public outcry following the firing of Special Prosecutor Cox. The response of the President to this Committee's inquiry—the ignoring of its subpoenas for recordings and other documents, the production only of materials previously given to another entity, for other purposes, under other circumstances—does not constitute a reasoned effort to respond to the powers granted to the House of Representatives under the Constitution. The conclusion cannot be avoided that the Committee has been refused the evidence which it has sought to conduct a full and complete inquiry as authorized and directed by the House of Representatives.

B. PRESIDENTIAL CLAIMS OF EXECUTIVE PRIVILEGE

In refusing to comply with the subpoenas the President invoked what he denominated as executive privilege. It is for this Committee and the House, not the President, to decide the validity of this claim of privilege. Wholly apart from any questions of waiver, it is sub-

[4] *Federalist* No. 10 at 56.

mitted that there can be no place for executive privilege in an impeachment inquiry.

1. Separation of Powers

The claim of executive privilege was in part based on a view that it was the President's duty to "preserve the principle of separation of powers." But separation of powers is simply inapplicable to an impeachment inquiry. As Hamilton said in *The Federalist* No. 66, the "true meaning" of separation of powers is "entirely compatible with a partial intermixture" of departments for special purposes. This partial intermixture, he wrote, "is even, in some cases, not only proper but necessary to the mutual defense of the several members of the government against each other." According to Hamilton, the "powers relating to impeachment" are such a case—"an essential check" in the hands of the legislature "upon the encroachments of the executive." [5]

The records of the Constitutional Convention establish that the Framers intended impeachment to be an exception to separation of powers. Impeachment was considered by the Framers almost exclusively in terms of the removal of the executive; it was written into the Constitution despite repeated arguments by its opponents that it would make the President overly dependent on Congress. Charles Pinckney asserted in the major debate on impeachment of the executive that, if the legislature had the power, they would hold impeachment "as a rod over the Executive and by that means effectively destroy his independence." Rufus King argued that impeachment by the legislature violated the separation of powers and would be "destructive of [the executive's] independence and of the principles of the Constitution." These arguments were decisively rejected by the Convention, which voted eight states to two to make the executive impeachable by the legislature.[6]

2. The need for confidentiality

The President also based his claim of executive privilege on an asserted need to preserve confidentiality in the Executive. The President argued that if the House may compel the production in an impeachment inquiry of evidence of communications between the President and his advisers, the ability of Presidents to obtain candid advice in the future would be impaired.

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[5] *Federalist*, No. 66 at 429–30.

[6] 2 *The Records of The Federal Convention* 63–69 (M. Farrand ed. 1911). The constitutional exception to the President's pardon power, that it should not extend to cases of impeachment, provides support for the argument that he cannot seek to impede the House in the exercise of its sole power to impeach. Justice Story wrote, "The power of impeachment will generally be applied to persons holding high office under the government; and it is of great consequence, that the President should not have the power of preventing a thorough investigation of their conduct, or of securing them against the disgrace of a public conviction by impeachment, if they should deserve it. The Constitution has, therefore, wisely interposed this check upon his power, so that he cannot, by any corrupt coalition with favorites, or dependents in high offices, screen them from punishment." 2 *J. Story Commentaries on the Constitution of the United States* § 1501 at 368 (3rd ed. 1858) (hereinafter cited as *Story*). See also, 1 Kent, *Commentaries on American Law*, Lect. XIII at 184 (6th ed. 1848.)

Story also asserted that the President should not have the power to pardon those whom the legislature held in contempt, a position later adopted by the Supreme Court in *The Laura*, 114 U.S. 411, 413 (1885). The main object of the contempt power of Congress, Story wrote, "is to secure a purity, independence, and ability of the legislature adequate to the discharge of all their duties. . . . If the executive should possess the power of pardoning any such offender, they would be wholly dependent upon his goodwill and pleasure for the exercise of their own powers. Thus, in effect, the rights of the people intrusted to them would be placed in perpetual jeopardy." 2 *Story* § 1502 at 369.

This is essentially a contention that the need for free and unfettered communications between a President and his advisers outweighs the need to determine whether there has been impeachable wrong-doing by the incumbent President. But the balance seems to have been struck, and struck the other way—in favor of the power of inquiry—when the impeachment provision was written into the Constitution. Moreover, the President's argument exaggerates the likelihood of an impeachment inquiry and thus the impairment of confidentiality.[7] Only two Presidents (including President Nixon) out of thirty-seven have ever been the subject of impeachment investigations. It can scarcely be contended that the far-reaching inquiry into the deliberations between President Johnson and his aides resulted in any impediment of the communications between Presidents and their advisers. There is no more reason to think that this inquiry will have that effect.

3. Who should decide whether these claims of privilege are valid?

There is always a risk that the power of inquiry might be abused in the future. But the question is who is to draw the line. The sole power of impeachment is confided to the House; thus the Constitution commits the power to draw the line to the House. The power is subject to review by the Senate when it must decide whether to remove the officer impeached. Both are accountable to the people. As Chief Justice Marshall wrote:

> The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances . . . the sole restraints on which [the people] have relied to secure [them] from . . . abuse [of a constitutional power]. They are the restraints on which the people must often rely solely, in all representative governments.[8]

To permit the President, the subject of the inquiry, to decide upon his own claim of privilege is to violate Lord Coke's maxim—"no man shall be the judge in his own cause"[9]—and it would enable the President to put himself beyond the impeachment power. To rely upon the Courts to resolve these questions of privilege would be inconsistent with the Constitutional commitment to the House of the "sole power of impeachment."

Although it is for the House, in the first instance, to decide the question of the validity of these claims of privilege, there is no need to insist upon a formal finding of contempt by the entire House. A finding of contempt adds nothing to the impeachment process. The President has made clear his intention to continue with his actions of noncompliance. Willful default has occurred, and the Committee has been advised of the President's rationale. The House can judge the validity of this in voting on a resolution of impeachment. The President's procedural rights are fully preserved by his opportunity for trial in the Senate.[10]

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[7] As Justice Story wrote, "[T]he power of impeachment is not one expected in any government to be in constant or frequent exercise. It is rather intended for occasional and extraordinary cases, where a superior power, acting for the whole people, is put into operation to protect their rights, and to rescue their liberties from violation." 1 *Story* § 751 at 522.

[8] *Gibbons* v. *Ogden*, 22 U.S. at 86–87, 9 Wheat. at 197.

[9] *Dr. Bonham's Case*, 8 Coke Rpts. 1136, 77 B.R. 646 (1610).

[10] The Supreme Court has stated that fundamental fairness in a legislative hearing does not require the full range of rights given within the judicial setting but only "reasonable notice of a charge and an opportunity to be heard in defense before punishment. . . ." *Groppi* v. *Leslie*, 404 U.S. 496, 502 (1972).

The President's Refusal To Comply with the Committee's Subpoenas as Grounds for Impeachment

In only one instance has a person under investigation for possible impeachment refused to comply with Congressional demands for information. In 1879, the Committee charged with the duty of inquiry reported articles of impeachment against George Seward, former consul general at Shanghai. One article included a charge that Seward had concealed and refused to deliver certain records to the Committee. This suggests that the refusal to comply has been treated as grounds for impeachment. The precedential value is limited because the House adjourned before voting on the articles.[1] Moreover, the Judiciary Committee, which had considered the question of Seward's refusal to comply with the demands of the Committee, concluded that he had validly claimed his Fifth Amendment privilege against self-incrimination and thus refused to recommend a contempt citation.[2]

Apart from precedent, however, the refusal to comply with impeachment inquiry subpoenas may well be considered as grounds for impeachment. Thus, the President's refusal likely violates two federal statutes—2 U.S.C. § 192, making willful noncompliance with a Congressional Committee subpoena a misdemeanor and 18 U.S.C. § 1505, making it a felony to obstruct a lawful Congressional inquiry. But much more significant than the possible violation of a criminal statute is the conclusion that the President's noncompliance with the Committee's subpoenas is a usurpation of the power of the House of Representatives and a serious breach of his duty to "preserve, protect and defend the Constitution of the United States." In refusing to comply with limited, narrowly drawn subpoenas, which seek only materials necessary to conduct a full and complete inquiry into the existence of possible impeachable offenses, the President has undermined the ability of the House to act as the "Grand Inquest of the Nation." His actions threaten the integrity of the impeachment process itself; they would render nugatory the power and duty of the legislature, as the representative of the people, to act as the ultimate check on Presidential conduct. For this most fundamental reason the President's refusal to comply with the Committee's subpoenas is itself grounds for impeachment.

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[1] H. Rep. No. 134, 45th Cong., 3d Sess. at 6 (1879).
[2] H. Rep. No. 141, 45th Cong., 3d Sess. (1879); 3 Hind's *Precedents* § 1699 at 56–57.

WILLFUL TAX EVASION

I

On December 30, 1969 President Nixon signed the Tax Reform Act of 1969 into law. That Act included a provision eliminating the tax deduction for contributions of collections of private papers made to the government or to charitable organizations after July 25, 1969.

On April 10, 1970 the President (an attorney who in the past had engaged in tax practice) signed his income tax return for 1969, claiming a deduction for the donation to the National Archives of pre-Presidential personal papers allegedly worth $576,000. (President Nixon news conference, June 22, 1972, 8 Presidential Documents 1084) The President and his attorney Frank DeMarco went over the return page by page and discussed the tax consequences of the gift of papers deduction. (Kalmbach testimony, 3 HJC 671) An appraisal valuing the donated papers at that amount and a sheet describing the gift were attached to the return. These documents, which constitute part of the return signed by the President, assert that the gift had been made on March 27, 1969. (Book X, 336–63)

The Internal Revenue Service has disallowed this deduction because it found that, as a matter of fact, the gift of papers was not made on or before July 25, 1969. (Book X, 405–11) While the papers which constituted the gift were in the custody of the Archives before July 25, they were at that time merely an unsegregated part of a much larger mass of pre-Presidential papers. This large group of papers had been transferred on March 26 and 27, 1969 to the Archives at its request for purposes of sorting and storage. (Book X, 81–83) Prior to July 25, 1969 no one other than Archives personnel had viewed the papers at the Archives. They had not been appraised, nor as of that date, had anyone made any determination as to which of these papers would constitute papers making the 1969 gift. That selection was begun only in November 1969; it was completed by Archives personnel in March 1970.

The evidence indicates that the President knew that the Tax Reform Act required that, for the claim of a deduction to be valid, a gift must have been completed by July 25, 1969. It is also clear that the President knew that his return indicated that the gift had been made on March 27, 1969. The question which remains is whether the President knew that the gift had not been made on that date.

II

On the basis of its investigation, the IRS concluded that the President was negligent in the preparation of his tax returns and assessed a negligence penalty of 5%. (Book X, 405–09, 412–15) While the IRS did not assess a penalty for fraud its conclusion should not be con-

sidered determinative of the issue before the Committee. First, of course, the Committee must reach its own independent conclusion, it cannot be bound by the conclusions of others. Second, IRS documents indicate that its investigation was incomplete. The IRS had no direct contact with the President—as it would have with an ordinary taxpayer whose return was being investigated. When the IRS made a decision as to a penalty, it had not interviewed at least one key witness, John Ehrlichman. Other witnesses had told inconsistent stories. The only memorandum in the files of the IRS which addresses the question of assessing a fraud penalty in the President's case is deficient. (Book X, 387–94) It accepts at face value self-serving testimony by several witnesses, and contains material errors.[1]

The staff of the Joint Committee on Internal Revenue Taxation, which also concluded that the gift of papers had not been made by July 25, 1969, refused to draw any conclusions about whether the President had committed fraud. The staff report said that it did not address the question of fraud (or the question of negligence) on the part of the President because it might be inappropriate, in view of the impeachment inquiry. (Staff Report of Joint Committee on Internal Revenue Taxation, Examination of President Nixon's Tax Returns for 1969 through 1972, 4. Hereinafter cited as Joint Committee Report).

III

To be found guilty of criminal tax fraud, a taxpayer must have acted willfully to evade taxes. Willfulness in this context is construed to require an act that is intentional or knowing, or voluntary, as distinguished from accidental." (*United States* v. *Murdock*, 290 U.S. 389, 394 (1933)) While the staff believes that the applicable standard for the Committee is not whether the President's conduct violated the criminal law, mere mistake or negligence by the President in filing false returns would clearly not provide grounds for impeachment. Therefore the Committee may want to consider the willfulness standard in deciding whether the President's tax deduction for the gift of papers constitutes ground for impeachment.

The question of willfulness in this case turns on whether the President knew that no gift had been made before July 26, 1969. This knowledge need not be proved by direct testimony or other proof of the President's state of mind; it may be inferred from all the events and circumstances surrounding the making of the gift and the preparation and execution of the tax return. (*Battjes* v. *United States*, 172 F.2d 1, 5 (6th Cir. 1949), *United States* v. *Commerford*, 64 F.2d 28, 30 (2d Cir. 1933))

It is most unlikely that the President—or any taxpayer—would have been unaware of the details of a charitable contribution which involved over $500,000. At the end of 1968, the President made a much smaller gift to the Archives—$80,000 worth of his papers (Book X, 62)—and he was deeply involved in that gift. He discussed the deduction with his attorneys, and was briefed on the initiatives his attorneys were taking to deliver the papers to the government and on the contents of alternative deeds of gift. (Book X, 40–42, 44–58) After the

[1] For example, it concludes that the date of the appraisal of the President's papers by Ralph Newman is irrelevant.

receipt of a memorandum and a detailed discussion with his attorney, the President personally, in late December 1968, signed a deed conveying papers worth approximately $80,000 to the United States. (Book X, 58) For the gift alleged to be made in 1969, however, of $576,000 worth of papers, the President did not sign a deed of gift; it was signed by Edward Morgan, a White House attorney. (Book X, 109–24, 325–26) Morgan had no written or oral power of attorney from the President, and never before or after executed a document of such importance in the President's name. (Book X, 128–29)

The deed signed by Morgan was delivered to the Archives in April 1970. It was dated March 27, 1969, which precedes the July 25, 1969 cut-off date; the notarization by the President's tax attorney, Frank DeMarco, stated that the deed was executed on April 21, 1969. In fact, as previously indicated, the selection of the papers constituting the $576,000 gift was not completed until March 1970. The deed ultimately delivered to the Archives was itself not executed until April 10, 1970. The claim of DeMarco and Morgan that the April 10, 1970 deed was a "re-execution" of a deed signed on April 21, 1969 has not been accepted by the IRS or the Joint Committee. (Book X, 131–32.) (IRS Examination Report, Section I) Herbert Kalmbach, who was with Morgan and DeMarco on April 21, 1969, has no recollection of seeing a deed of gift of papers executed on that date or of any discussion respecting a gift of papers or a deed. (Kalmbach testimony, 3 HJC 661–64) No deed executed in 1969 has ever been produced.

The President's attorneys have claimed that, in late February, 1969, the President told John Ehrlichman that he intended to make a bulk gift of papers during that year. They did not claim, however, that the President told Ehrlichman that such a gift was to be made at once, or at any certain time before the end of the year, or, more important, before July 26, 1969. Nor was there any indication that the President was notified before July 26, 1969 of the delivery of the gift. If the President had expressed the wish in February that a completed gift be made promptly, he presumably would have executed the appropriate papers at the time of the transfer, or at least have been notified of the delivery. In fact, as has been noted, the papers were transferred to the Archives on March 26–27, 1969, not on the initiative of the President or his staff, but at the request of the Archives personnel. (Book X, 81–83)

On February 6, 1969, John Ehrlichman wrote a memorandum to the President on the subject of "Charitable Contributions and Deductions." Ehrlichman recited the 1968 gift of papers, and suggested that the President could continue to obtain the maximum charitable deduction of 30% of his adjusted gross income by first contributing to charities proceeds from the sale of the President's writings in an amount equal to 20% of his adjusted gross income. With respect to "the remaining 10%," Ehrlichman's memorandum noted that it would "be made up of a gift of your papers to the United States. In this way, we contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30% maximum." There is a notation on the memorandum in the President's handwriting, which states "(1) good (2) let me know what we can do on the foundation idea—." The February 6 memorandum did not sug-

gest making a gift of papers in the year 1969 in an amount which would be sufficient to constitute the President's entire 30% charitable deduction for 1969 and succeeding years. Rather, Ehrlichman recommended, and the President apparently approved, annual papers donations to use up only part of the gift tax deduction. (Book X, 64–65)

On June 16, 1969 Ehrlichman, in a memorandum to Morgan, conveyed a number of the President's decisions and concerns respecting his income taxes. An example of the extent to which the President was concerned with the details of his tax returns is represented by the following statement in Ehrlichman's memorandum: "He wants to be sure that his business deductions include all allowable items. For instance, wedding gifts to Congressmen's daughters, flowers at funerals, etc. He has in mind that there is some kind of a $25 limitation on such expenses." With respect to charitable deductions the following was noted: "Will you please have someone carefully check his salary withholding to see if it takes into account the fact that he will be making a full 30% charitable deduction." Again, there is no indication that less than three months earlier a gift of papers in excess of $500,000 had been intended or made. (Book X, 177–79)

It was not until shortly after November 7, 1969 that the President was given an appraisal respecting the papers sent to the Archives in March 1969. On November 7 the appraiser Ralph Newman who had viewed the papers at the Archives for the first time on November 3, wrote to the President that he estimated the value of the entire collection of papers and other items at $2,012,000. (Book X, 190–96.) According to Newman, at a White House reception a week later, the President expressed to Newman his surprise at the high valuation. (Book X, 197–98)

There is no evidence that in February or March 1969, anyone, including the President and his advisers, could have foreseen the July 25 cut-off date for the deduction of personal papers as a charitable contribution. Absent knowledge of such a cut-off date, it would appear to be contrary to rational tax planning to make so early in the year a charitable contribution in an amount so large as to eliminate the possibility of making other deductible charitable contributions not only for that year, but for the five following years.

The chronology of the 1969 tax reform legislation shows that no one could have anticipated in February or March 1969 a July 25 cut-off date. The tax reform act which the President sent to Congress on April 21, 1969 did not include any provisions affecting charitable deductions for gifts of papers. (Book X, 146–49) The House Ways and Means Committee did not announce until May 27, 1969 that it was even considering the elimination of the deduction for such gifts. On July 25, 1969, the Ways and Means Committee announced it had decided to recommend this action to the House. (Book X, 152–53) The bill thereafter reported by the Committee on August 2, and passed by the House on August 7, would have continued to permit the deduction to be taken for gifts made until the end of 1969. (Book X, 154–69) On November 21, the Senate Finance Committee reported out a provision with a retroactive cut-off date of December 31, 1968. This was the first indication that an individual might not have until the end of 1969 to make a final gift of papers. The bill passed the Senate

on December 11, with a December 31, 1968 cut-off date. (Book X, 205–41) Until December, 1969, when the conflict between the Senate and House bills was settled in conference, there was no reason to have completed early in the year any contributions for 1969. If the House date prevailed, a portion of the papers could be donated to the Archives just before the end of the year, as the President had done in 1968. If the Senate date prevailed, the President had no opportunity at all to make a deductible contribution in 1969.

The conference committee, however, resolved the conflict between the House and Senate bills by selecting the retroactive date of July 25, 1969. (Book X, 253–57) A deduction for a gift of papers was therefore possible for 1969, but only if the President had made the gift by July 25. Having a large group of papers physically present at the Archives before the cut-off date provided a basis for claiming that a gift had been made. However, because only a portion of the papers was to be contributed, and restrictions imposed as to who could examine them, a deed designating the specific gift papers, and indicating the restrictions imposed was required.

On April 10, 1970, just before the President signed his tax return, Morgan signed the deed of gift dated March 27, 1969. Within an hour, the President executed his return, claiming under penalties of perjury that the gift had been made on March 27, 1969, and, contrary to the terms of the deed itself, that the gift was made "free and clear," without restriction.

The willful evasion of taxes by a President would be conduct incompatible with his duties of office, which obligate him faithfully to execute the laws. A violation of law in the context of the tax system, which relies so heavily on the basic honesty of citizens in dealing with the government, would be particularly serious on the part of the President also if it entailed an abuse of the power and prestige of his office. As Chief Executive, he might assume that his tax returns were not subject to the same scrutiny as those of other taxpayers.

It was unlikely, for example, that the Archives would question a President as to the date of his gift. Archives documents show that its employees thought that no gift was made in 1969. (Book X, 282, 284) Nevertheless, the Archives raised no question when the deed dated a year earlier was delivered in 1970. (Book X, 297)

In May 1973, when the President's tax returns for 1971 and 1972 were selected for audit by an IRS computer, agents were shown a copy of Newman's appraisal, which evaluated the papers as of March 27, 1969. The agents were satisfied without further inquiry. They did not ask whether the gift itself was made on that date; they did not ask to see the deed, as they would have done with any ordinary taxpayer, who did not have the power and prestige of the President. (Joint Committee Report, 94)

Only after questions about the legitimacy of the deduction were raised in the press, did the Internal Revenue Service and the National Archives begin to re-examine their earlier acceptance of the President's claim. And only after the President learned that the IRS was going to reaudit his returns (Book X, 369) did he request the Joint Committee on Internal Revenue Taxation to examine his deduction for the gift of papers. (Joint Committee Report, 1)

Archives personnel discovered that the deed of gift was not signed when it was purported to be signed. Only after this fact was disclosed did DeMarco and Morgan begin revising their earlier stories, which had mentioned only a 1969 deed execution. When the Internal Revenue Service began investigating the deduction for the gift of papers, the accounts of actions by DeMarco, Morgan and Newman, which had previously meshed with one another, began to differ. Even then, though substantial questions had arisen about the President's own involvement in the deduction, the IRS made no attempt to contact the President directly. When the staff of the Joint Committee submitted written questions to the President with respect to the gift of papers and other matters (Book X, 516–22),[2] he failed to respond. Considering all of the circumstances surrounding the alleged gift of papers and its inclusion as a deduction on the President's 1969 return, including the lack of a satisfactory response by the taxpayer, it was the judgment of Fred Folsom, a consultant to the Committee (who for 24 years was an attorney in the Criminal Section of the Justice Department's Tax Division and Chief of that section for 12 years) that "in the case of an ordinary taxpayer, on the facts as we know them in this instance, the case would be referred out for presentation to a Grand Jury for prosecution." (Folsom testimony, HJC 6/21/74, T 1976)

[2] The charitable deduction taken for the gift of papers was not the only item disallowed by the IRS. It determined that for the period 1969 through 1972 there were over eleven categories of improper deductions and unreported income totalling over $790,000. (Book X, 410–11) The Joint Committee staff rendered a harsher verdict; it determined that the President's improper deductions and unreported income for that period amounted to over $960,000. (Joint Committee Report, 7.)

CITATIONS

FORM	SOURCE
1. Book I, 34–35	House Judiciary Committee, "Statement of Information," Books I–XII.
2. WHT 586	"Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, April 30, 1974."
3. HJCT 85	House Judiciary Committee, "Transcripts of Eight Recorded Presidential Conversations."
4. Butterfield testimony, 1 HJC 9–10.	House Judiciary Committee, "Testimony of Witnesses," Books 1–3.
5. Political Matters Memorandum 12/6/71, 51.	Series of memoranda prepared by Gordon Strachan for H. R. Haldeman in 1971 and 1972 and submitted to the House Judiciary Committee by President Nixon.
6. "Background—White House/CRP," 6.	House Judiciary Committee, "Background Memorandum: White House Staff and President Nixon's Campaign Organizations."
7. "Presidential Statements," 8/15/73, 24–25.	House Judiciary Committee, "Presidential Statements on the Watergate Break-In and Its Investigation."
8. Statement of Information Submitted on Behalf of President Nixon, Book I, 14–16.	Counsel for the President, Statement of Information Submitted on Behalf of President Nixon, Books I–IV.
9. Haldeman testimony, 7 SSC 2871.	Senate Select Committee on Presidential Campaign Activities, Hearings, Books 1–15.
10. Gray logs, 6/21/72	L. Patrick Gray, Appointment Logs, received by the House Judiciary Committee from the Senate Select Committee on Presidential Campaign Activities.
11. Meetings and Conversations between the President and John Ehrlichman, 4/18/73.	Document submitted to the House Judiciary Committee by President Nixon.
12. Report of conversation between CIA Inspector General and Robert Cushman, 6/29/73.	Document received by the House Judiciary Committee from the CIA.
13. Ehrlichman notes.	John Ehrlichman handwritten notes of meetings with the President, received by the House Judiciary Committee from the Watergate Special Prosecution Force.
14. Tax Report, Note 44	House Judiciary Committee, "Report Respecting Deduction Taken by the President for Years 1969 through 1972 for Gift of Papers Claimed to be made on March 27, 1969."
15. Joint Committee Report, 94–	Joint Committee on Internal Revenue Taxation, "Staff Report—Examination of President Nixon's Tax Returns for 1969 through 1972."

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