

Ervin Quotes From

Constitution During

Quiz of Dean

Here are excerpts of yesterday's testimony by former White House Counsel John W. Dean III during his fourth day before the Senate select Watergate committee.

The excerpts begin with questions by Committee Chairman Sam J. Ervin (D-N.C.) about a national domestic intelligence gathering plan that would have included government mail searches, wiretaps and burglaries. President Nixon said publicly on May 22, 1973, that he approved the plan in mid-July of 1971 but then rescinded his approval on July 28, 1971—just five days, he said, after word had gone out to various federal agencies to implement the plan.

Ervin: Do you know anything about a meeting having been held in the office of the President on or about the fifth of June, 1970, at which the President and Mr. (Thomas Charles) Huston and others discussed laying plans for gathering domestic intelligence?

Dean: I have hearsay knowledge of that, Mr. Chairman, that such a meeting did occur. That present at the meeting, Mr. Huston (then a White House aide) was there, various representatives of the intelligence agencies and the President at that point in time stated to those present that Mr. Huston would be in charge of the project for the White House.

Ervin: Now, you were informed in substance that the President assigned to Tom Charles Huston staff responsibility, that is White House staff responsibility for domestic intelligence and internal security affairs?

Dean: That is correct.

Ervin: Now, as a result of this meeting there was a review by the heads of the CIA, the FBI, the NSA and the DIA of the techniques used by these information or intelligence gathering organizations to gather intelligence both domestic and

foreign, was there not?

Dean: That was my general understanding on here-say again.

Ervin: The White House was dissatisfied with the work being done by the FBI, the CIA, the NSA and the other intelligence gathering agencies. It wanted to assume some degree of supervision over those agencies, didn't it?

Dean: That is correct.

Ervin: And I will ask you, as a lawyer, if you do not think that surreptitious entry or burglary and the electronic surveillance and penetration constituted a violation of the Fourth Amendment?

Dean: Yes, sir, I do.

Ervin: The Fourth Amendment, provides that "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. And no warrant shall issue other than upon probable cause supported by oath or affirmation, and particularly describing the place to be served and the personal things to be seized."

Hasn't it always been a violation of the Fourth Amendment under the decisions of the court to resort to burglary for the purpose of getting information?

Dean: Yes, sir, it has been.

Ervin: And hasn't the Supreme Court recently held by unanimous opinion that the use of electronic surveillance and penetration to obtain information concerning persons allegedly guilty of subversive—of domestic subversion activities is also a violation of the Fourth Amendment.

Dean: That is correct, Mr. Chairman

Ervin: Now, I call your attention to what I designate as document No. 3 and ask if you will read this document to the Committee.

Dean: This is a memorandum for Mr. Huston, subject, domestic intelligence review:

"It recommendations"—I might add here it is from Mr. H. R. Haldeman to Mr. Huston—"The recommendations you have proposed as a result of the review have been approved by the President. He does not, however, want to follow the procedure you have outlined on page 4 of your memorandum regarding implementation. He would prefer that the thing simply be put into motion on the basis of this approval. The formal official memorandum should, of course, be prepared than should be the device by which to carry it out.

"I realize this is contrary to your feeling as to the best way to get this done. I feel very strongly that this procedure won't work and you had better let me know and we will take another stab at it. Otherwise let's go ahead."

Ervin: Now, that letter can only be constructed as a statement on the part of Mr. H.R. Haldeman to Mr. Tom Charles Huston, the aide in charge of domestic intelligence, to the effect that the

President of the US! had approved his recommendations about removing the limitations on surreptitious, or rather, on electronic surveillance and penetration, surreptitious entry or burglary, the use of mail cover-age, and of sources of in-formation on the campuses and the military undercover agents for the purposes of gathering information upon the objectives of that.

Dean: That is correct, Mr. Chairman.

Ervin:

Now, when did Mr. Huston leave the White House?

Dean: I do not recall specifically the date. It seems to me he was on my staff six or eight months at the most, as I recall. He had been talking about leaving for some time and returning to private practice. This had been one of his pet projects. He had apparently gotten into a serious dispute with Mr. Hoover over it and he felt that his effectiveness at getting this accomplished had been diminished as a result of the fact that his plan was not being implemented and was floundering. I can recall him coming to me and asking me if I could do anything. I told him I could not.

Ervin: Now, do you not know that this plan was put into effect—was, rather, approved for use by the President without the prior knowledge of Mr. (then Attorney General John N.) Mitchell?

Dean: I do not know that for a fact, no, sir. When I talked to Mr. Mitchell about it, it had reached the stage that they wanted to do something. Mr. Mitchell and I talked about it and we decided that the best thing to do was to create the IEC (Intelligence Evaluation Committee) and that would possibly satisfy everybody's request to do something.

Ervin: Now, the IEC, in effect, was a proposal to set up a group representing or representatives from the FBI, CIA, (Central Intelligence Agency) NSA, (National Security Agency), (Defense Intelligence Agency) and the counter-intelligence units of the Army, the Navy, and the Air Force to furnish information about the activities of all of these agencies to the White House?

Dean: I believe that is cor-

rect, but I believe that at that time also, the military I— am not sure they were involved because they had already made a decision that they were not going to do any domestic intelligence work.

Ervin: Now, as a lawyer, you are aware of the fact that the Section 403 (d) (d) of Title 50 of the U.S. Code provides that the CIA "Shall

ute. have no police, subpoena, law enforcement powers, or internal security functions"

Dean: Domestically.

Ervin: Yes, internal security functions.

Dean: Yes, I was entirely aware of that. I was not specifically aware of the statute.

Ervin: Yet, despite the fact that the statute forbade the CIA exercising any internal security functions, here was a consolidation, in a sense, of activities or at least a coordination of activities of the CIA in the domestic intelligence field, was there not?

Dean: Mr. Chairman, I believe what the CIA did in this instance was to share their own intelligence from a foreign nation that would have a domestic implication. They were a part because of their expertise in analysis and evaluation of intelligence to—

Ervin: And notwithstanding the fact that the statute gave them no internal security functions, they were called upon to evaluate domestic intelligence-gathering by other agencies?

Dean: That is correct. Now, I am not familiar specifically with how the evaluation group operated at all as to the mechanics of that. But they were a part of the group, yes, sir.

Ervin: As a lawyer, do you know of any statute which gives the White House the power to set up interagency units of this kind?

Dean: I do not know of any statute, no, sir.

Ervin: Now, the letter, the memo from Mr. Haldeman to Mr. Huston is dated the 14th day of July and states that the President has approved the recommendations made by Mr. Huston, does it now?

Dean: That is correct.

Ervin: The President made a statement on May 20, I believe, to the effect that he rescinded this approval after five days. Do

you recall that?

Dean: It was late July (1970) when I came on and I do not recall whether it was rescinded or not.

Ervin: Now, on yesterday, Sen. Weicker interrogated you about one of the documents that you turned over to Judge Sirica and Judge Sirica turned over to this committee, one dated Sept. 18, 1970, which consisted of

a memorandum from you to the Attorney General —

Dean: Yes, sir.

Ervin: —in which you recommended the setting up of this interagency evaluation unit.

DEAN: That is correct. I might add that when Mr. Mitchell and I talked about that, we decided that with Mr. Haldeman and others being aware of this, we thought this might satisfy the needs and the requests at the time to do something.

I also recall that the liaison between the FBI and other intelligence agencies had really broken down. I believe Mr. Hoover had withdrawn all of his liaison relationships with everyone except the White House and Mr. Mitchell hoped that this might be a vehicle to start getting the FBI dealing with the agencies, because there are, of course, quite proper and natural reasons to have liaison amongst the intelligence community.

Ervin: Anyway, . . . do you know of any written document which tends to show that the President disapproved of or rescinded these plans which Mr. Haldeman said he had approved on the 14th of July?

Dean: No, sir, I have never seen such a document.

Ervin: Now, after Mr. Huston left the White House, you had some responsibility in this field, did you not?

Dean: That is correct.

Ervin: Did you ever receive any instruction from anybody to the effect that the President had rescinded these plans recommended by Mr. Huston?

Dean: No. To the contrary, as this document indicates, on Sept. 18, I was asked to see what I could do to get the first step started on the document. This was reflective of that effort.

Ervin: Isn't it true to say

that among some of the officials in the Committee to Re-Elect the President and the White House, there was a great complement of fear during 1970 and '71?

Dean: I would say there was a great concern about demonstrators. I think demonstrators were viewed as a political problem.

You used the word "fear." That connotes to me physical concern about them. As one who has walked with many demonstrators, to go out and get the pulls of the crowd, they are certainly not a fearsome group. There were some militants who were bent on, you know, destroying office buildings and breaking windows and things of that nature, the looters and the trashers and the groups like that. But I would not say—I would say there was a concern.

Ervin: Well, there are two kinds of fear. There is physical fear and intellectual fear. Don't you think there was an intellectual fear prevalent at that time among some people in the Committee and some people in the White House about Americans who undertook to exercise their First Amendment right to peti-

tion for regress of grievances?

Dean: I think that is correct when you put it in the political context.

Ervin: With all of this was in the political context, was not it?

Dean: Yes, it was.

Ervin: Now, was not there a feeling there among some White House officials such as Mr. Colson, and perhaps among some in the Committee to Re-Elect the President, that every person who was not backing their efforts to re-elect the President or who dissented from the programs of the President as an enemy?

Dean: I think that many people who were most vocal and could command some audience in their dissent were considered opponents



by James K. W. Atherton—The Washington Post

Chairman Ervin of the Watergate committee directs question to witness John Dean.

or enemies, yes.

Ervin: And that was applied to a great list of people, including some of the most distinguished commentators of the news media on the national scene, was not it?

Dean: Yes sir.

Ervin: Not only that, yesterday a document was put in evidence and identified by you, as I recall, as coming from Mr. Colson's office, entitled "Opponent Priority Activity." On Page 3 of that document it has this, among the opponent priority activity, No. 14, Samuel M. Lambert, L-a-m-b-e-r-t, president, National Education Association, "Has taken us on vis-a-vis federal aid to parochial schools, a '72 issue."

Didn't those in the White House interested in President Nixon's re-election and then the Re-election Committee classify among their enemies people who dissented from President Nixon's programs?

Dean: As I say, those who were able to command audience were singled out.

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Ervin: Here is a man listed among the opponents or the enemies whose only offense is that he believed in the First Amendment and shared Thomas Jefferson's conviction as expressed in the Virginia Statute for Religious Freedom that to compel a man to make contributions of money for the dissemination of religious opinions he disbelieves is sinful and tyrannical. Isn't that true?

Dean: I cannot disagree with the chairman at all.

Ervin: So we have here plans to violate the Fourth Amendment, which were approved by the President according to Mr. Haldeman; we have people being branded enemies whose mere offense is that they believed in enforcing the First Amendment as proclaimed by the Supreme Court of the United States just about a week ago.

Dean: That is correct.

Ervin: . . . Do you know of any action that the President took at any time between the 17th day of June until the establishment of this committee and until February that is mentioned here by (Special Presiden-

tial counselor) Buzhardt, to have the facts concerning this matter discovered?

Dean: I do know that after the election there was discussion with Mr. Haldeman in his office in which Mr. Haldeman said that the President would like to lay out some of the facts and we discussed what the implications of those would be, and when I said that I felt that, —well, I did not know everything that had happened in advance, I did know what had happened since June 17, and I thought that as a result of those activities that Haldeman, Ehrlichman and Dean, and I might have mentioned some other at that time also, could be indicted, Mr. Haldeman's response, which I can remember very clearly because it stuck in my mind, he said, "that does not seem like a very viable option, does it?"

Ervin . . . Now, returning to the President's desire about the truth, you spoke of some meeting that the President attended in which, after a press conference in which, he wondered if the committee was going to swallow the bait he had put out in the press conference about a court decision?

Dean: That was on St. Patrick's Day.

Ervin: That was—St. Patrick's Day is the 17th, I believe. Now, before that, the President had a press conference, did he not, on March 12, 1973, which was approximately a month after Mr. Buzhardt said in his statement that the President was anxious that the facts be revealed, and I will ask you if at this press conference he did not say, and I quote from presidential documents: "A member or former member of the President's personal staff normally shall follow the well-established precedent and decline a request for formal appearance before a committee of the Congress."

Are you familiar with that press conference?

Dean: I recall hearing that at the press conference, yes.

Ervin: "At the same time it will continue to be my policy to provide all these and relevant information through informal contacts between my present staff

and committees of the Congress in ways which preserve intact the constitutional separation of the Branches." I believe that was the thing that provoked my statement that I was not going to let anybody come down to see me, travel by night like Nicodemus and whisper in my ear something that he was not willing for all of the American people to hear.

(Laughter.)

Ervin: Now, at the press conference on March 15, 1973, this question was asked: "Mr. President, does your offer to cooperate with the Ervin committee include the possibility that you would allow your aides to testify before his committee? And if it does not, would you be willing to comply with a court order if

Ervin went to court to get one that required some testimony from White House aides?

"The President: In answer to your first part of the question, the statement that I made yesterday answered that completely—not yesterday, the 12th I think it was—my statement on executive privilege. Members of the White House staff will not appear before a Committee of Congress in any formal session."

Then skipping: "We will furnish information under the proper circumstances. We will consider each matter on a case-by-case basis.

"With regard to the second point that is not before us, let us say, however, that if the Senate feels at this time that this matter of separation of powers were, as I said, this administration has been more forthcoming than any Democratic administration I know of. If the Senate feels that they want a test case, we would welcome it. Perhaps this is the time to have the highest court of this land make a definitive decision with regard to this matter. I am not suggesting that we are asking for it, but I would suggest that if the members of the Senate in their wisdom decide that they want to test this matter in court we will, of course, present our side of the case and we think that the Supreme Court will uphold, as it always usually has, the great constitutional princi-

ple of separation of powers rather than to uphold the Senate."

Now was that the bait that the President mentioned in the meeting on the St. Patrick's Day?

Dean: That is correct.

Ervin: And the President discussed again on St. Patrick's Day he was not willing for any of his aides past or present to appear before the committee and give testimony in person.

Dean: Well, we had discussed that before he made that statement, Mr. Chairman, that he certainly did not want Mr. Haldeman and Mr. Ehrlichman coming up here before the committee nor did he want me appearing before this committee.

Ervin: And this was on the 15th and the 17th day of March, about a month after Mr. Buzhardt says that the President was anxious for all the facts to be revealed.

Do you know how facts can be revealed except by people who know something about those facts?

Dean: No, sir, I do not. I think that the theory that was developing was that to take the very hard line initially and back down to written interrogatories. But that would be the bottom line. I believe that was as far as the President was willing to go because he felt that written statements could be handled and quite obviously it is much easier to prepare a written brief of a situation than it is to submit yourself to cross-examination.

Ervin: And a written statement can be written to conceal as well as to reveal facts, can't it?

Dean: That is absolutely correct and I think—

Ervin: I believe you discussed at that time the assertion that I made I was not willing to accept written statements because you cannot cross-examine a written statement.

Dean: Yes, and I had discussion with the President about that very statement.

Ervin: Just one other matter. Article II of the Constitution says, in defining the power of the President, Section 3 of Article II; "He that is the President "shall take care that the laws be faithfully executed."

Do you know anything that the President did or said at any time between

June 17 and the present moment to perform his duty to see that the laws are faithfully executed in respect to what is called the Watergate affair?

Dean: Mr. Chairman, I have given the facts as I know them and I don't—I would rather be excused from drawing my own conclusion on that at this point in time.

Ervin: Now, there has been—you have been asked several questions about the credibility—about your credibility. I will ask you as a lawyer if the experience of the English-speaking race, both in its legislative bodies and in its courts, has not demonstrated that the only reliable way in which the credibility of a witness can be tested is for that witness to be interrogated upon oath and have his credibility determined not only by what he says but by his conduct and demeanor while he is saying it and also by whether his testimony is corroborated or not corroborated by other witnesses?

Dean: That is correct.

Ervin: Is there any way whatsoever to test the credibility of anybody when the credibility has to be judged merely upon the basis of a written statement?

Dean: No, sir.

Ervin: Thank you very much.

Sen. Daniel K. Inouye (D-Hawaii) opened yesterday's hearing by reading to Dean a series of questions prepared by the office of White House counsel Fred J. Buzhardt for use by the Senate committee. The following excerpts include some of those questions, as read by Inouye, and the answers Dean gave to them yesterday:

Question: You have indicated in your testimony that you were certain after the Sept. 15, 1972 meeting that the President was fully aware of the cover-up, did you not?

Dean: Yes, sir.

Question: If that was the case, why did you feel it necessary on Feb. 27, 1973 to tell the President that you had been participating in a cover-up and, therefore, might be chargeable with obstruction of justice?

Dean: Because on the pre-

ceding day, he had indicated to me that Mr. H.R. Haldeman and Mr. John D. Ehrlichman were principals and I was wrestling with what he meant by that. I wanted him to know that I felt also that I was principal. SO I wanted him to be able to assess whether I could be objective in reporting directly to him on the matter.

Question: If you were not clear as to whether the President clearly understood, are you suggesting that on Sept. 15, he did not clearly understand what was happening?

Dean: I have testified that one of the reasons I sought the meeting on the 21st is because I did not think the President fully understood the implications of the cover-up, the fact that people had been involved in obstruction of justice and I wanted to make it very clear to him that this was my interpretation of the situation. At that time, I did have access to the President. When he did call me the night before, I did raise it and felt that I should go in and tell him the implications of this entire matter . . .

I might also add that I was unused to going into the President's office. I was extremely nervous when I was before him. This was the first time I had ever really had a sort of one-to-one session with him. The other meetings I have been in, there have been many other members of the staff. I have not done most of the talking; rather, I was the man who was in there taking notes or taking other people in to the meetings. So I would answer his questions and listen and do the best I could to report.

Question: Didn't your strategy include deliberate leaks of information to the media on what you had told investigators and what you might be prepared to testify about in the future?

Dean: Senator, in any testimonial areas, I dealt directly with the appropriate investigative forum. I conceived of no strategy to leak my testimony or anything of that nature. In fact, any comments I have had with the press, I believe, were a matter of public record and I think that most of the press know that I have ref-

fused on countless occasions to give what I consider testimonial areas.

Question: How were these contacts with the media handled?

Dean: Well, I did have a number of inquiries that came, not directly to me, because I made myself as inaccessible to the press as possible. As I believe the Senator is aware, there were a number of attacks about my character. They have been on on-going and continuous. My counsel would call and ask me questions about these and I would give them what my assessment of the given attack was.

Question: Mr. Dean, were any of the stories or quotes attributed to you or sources close to you inaccurate?

Dean: Yes, they were.

Question: Mr. Dean, the number of "source" stories containing allegations against the President attributed directly or indirectly to you over the last four or five weeks have been most numerous. Do you deny that these stories were planted in a calculated attempt to influence Federal prosecutors to believe you had such important testimony that they should give you transactional immunity from the crimes which you have committed in return for your testimony against others?

Dean: I gave my testimony directly to the prosecutors. I planted no stories at all to do that and the prosecutors certainly would not make any decision based on what they are reading in the newspaper. They would want to hear it directly from me and I was dealing directly with the prosecutors. As likewise with Mr. Dash when he began to interview me to find out what the scope of my knowledge was, to make a decision for this Committee as to whether they wished to grant me immunity.

Question: Mr. Dean, if I recall correctly, you testified to this Committee that it was not your idea for Magruder's diary to be altered nor were you aware before Mr. Magruder testified before the Grand Jury last September that Mr. Magruder would testify that the first meeting appearing in his diary had been cancelled, and the second meeting had been to discuss election laws.

On both of these points,

your testimony is in direct conflict with the sworn testimony of Mr. Magruder.

Are we to believe that Mr. Magruder lied as to these details concerning your and, if that is your position, what could be Mr. Magruder's motive for lying about the details of the manner in which Mr. Magruder's perjury was conceived.

Dean: Well, Senator, I will stand on my testimony and not on the conclusions drawn in the question that has been propounded by you at the request of the White House.

Question: Mr. Dean, Mr. Magruder testified under oath that prior to his Aug. 16 grand jury appearance at a meeting in your office you told him that if the worst happened "everything would be taken care of, even executive clemency."

Did you make such a promise of executive clemency to Mr. Magruder as he testified and, if so, did you have authority from anyone else to make such an offer or was it on your own initiative...

Dean: Well, I can recall on numerous occasions that Mr. Magruder was very worried, he was very shaky at some stages. As I alluded earlier, or discussed earlier, the fact that the strategy that had been developed, that Mr. Haldeman, Mr. Ehrlichman were quite aware of was that stop the case with Liddy...

That is why apparently they made the decision to keep Mr. Magruder on at the Re-election Committee, contrary to my recommendation that he be removed. There were a number of occasions that they asked me how was he doing and the like, and I would say, you know, he is either calm today or upset today or the like.

I do recall his having a conversation with me. "What happens if this whole thing comes tumbling down, will I get executive clemency and will my family be taken care of?" And in a manner of not serious import or serious discussion I

gave something to the effect, "I am sure you will."

But I wouldn't call that what I would consider a firm offer of executive clemency and it was not in that context at all. He didn't specifically ask "Will I get executive clemency"—he was just saying he wanted assurances.

Question: Then your testimony, your answer to the question, did you have authority from anyone else to make such an offer is, no.

Dean: That is correct.

Question: and was, it on your own initiative, the answer is yes?

Dean: Yes.

Question: Mr. Dean, you have depicted all others in the White House as excessively preoccupied with political intelligence, use of covert methods and security, and yourself as a restraining influence on these preoccupations. Yet, your background of responsibilities at the Justice Department seems to suggest that your experience in these very types of activities might have contributed to your being invited to join the White House staff. What, precisely, were your duties in connection with demonstrations while you were at the Justice Department?

Dean: Well, I would like to address myself to the first part of the question before I answer the second part of the question regarding being a restraining influence.

I do believe I was a restraining influence at the White House to many wild and crazy schemes. I have testified to some of them; some of them I have not testified to. Many of the memorandums that came into my office became a joke, in fact, some of the things that were being suggested. I think if you talk to some of the other members of my staff or if your investigators would like to talk to them, they would tell you some of the things that we would automatically just file—Just like the political enemies project.

Many of these just went right into the file and never anything further, until extreme pressure was put on me to do something, did I ever do anything. So I do feel I had some restraining influence. I did not have a disposition or a like for this type of activity...