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## Clearing the Way <sup>144</sup> 6/13/73

The latest developments affecting the testimony of John W. Dean 3d, former White House counsel, tend to dissipate the concern expressed by Vice President Agnew and others that the Senate Watergate hearings may seriously hamper the work of special prosecutor Archibald Cox.

Chief Judge John J. Sirica of the District of Columbia has granted the Senate committee's request for limited immunity for Mr. Dean. In a parallel action, however, Judge Sirica refused to cancel a subpoena ordering Mr. Dean to appear before a grand jury — without any grant of immunity against prosecution. Mr. Dean then exercised his constitutional right under the Fifth Amendment not to give incriminating evidence against himself before the grand jury.

Despite his refusal to provide information to the grand jurors, the prosecutors believe that this record of interrogation—taking place prior to his Senate appearance—will serve to demonstrate that their case against Mr. Dean is not based upon anything he divulges in his Senate testimony. At the same time the Senate's right to gather information for the purpose of eliciting all the facts needed to frame future legislation is not impeded. Having accepted the limited immunity which is the most the Senate could offer, Mr. Dean cannot now invoke his Fifth Amendment right in that proceeding. Were he to do so, he would be subject to imprisonment for contempt.

Other participants in the Watergate case have taken courses different from that of Mr. Dean. Jeb Stuart Magruder, who was deputy manager of the Nixon campaign, has reportedly accepted the prosecutors' offer to plead guilty to a single count in expectation of receiving a light sentence for his cooperation—the same deal that Mr. Dean rejected.

L. Patrick Gray 3d, former acting director of the Federal Bureau of Investigation; Herbert Kalmbach, formerly President Nixon's personal attorney, and John Caulfield, the former New York City policeman who performed undercover missions for the White House, have all chosen to cooperate with the prosecutors without obtaining immunity and without reaching a prior understanding about whether they may be indicted and, if so, on how many counts.

The so-called "transactional immunity" which Mr. Dean has been seeking from the prosecutors and which would give him total protection against possible indictment for any of his actions is usually forthcoming only when the testimony of a single participant is crucial to obtaining the conviction of other participants. In this instance the prosecutors have consistently maintained that Mr. Dean's cooperation in a future trial is not essential.

It is arguable that Mr. Dean is unfairly caught between the Senate committee's limited grant of immunity and the prosecutor's refusal to grant any immunity. But the legal situation as it has actually evolved renders implausible the assertion of Mr. Agnew that the Senate committee's hearings will frustrate the work of the grand juries and the courts and will produce "the spectacle of wrongdoers going scot-free."