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Text of Legal Argument that Accompanied

WASHINGTON, April 30—Following is the text of a legal argument prepared by James D. St. Clair, special counsel to President Nixon, that accompanied edited transcripts of Watergate conversations submitted to the House Judiciary Committee today:

On April 11, 1974, the Committee on the Judiciary of the House of Representatives of the Congress caused a subpoena to be issued to the President of the United States, returnable on April 25, 1974. The subpoena called for the production of tapes and other materials relating to 42 Presidential conversations. With respect to all but three of these conversations, the subpoena called for the production of the tapes and related materials without regard to the subject matters, dealt with in these conversations. In the President's view, such a broad scale subpoena is unwarranted. As the U. S. Court of Appeals in *Nixon v. Sirica* has stated, "wholesale public access to Executive deliberations and documents would cripple the Executive as a co-equal branch," and as the President has repeatedly stated, he will not participate in the destruction of the office of the Presidency of the United States by permitting unlimited access to Presidential conversations and documents. The President, on the other hand, does recognize that the House Committee on the Judiciary has constitutional responsibilities to examine fully into his conduct and therefore the President has provided the annexed transcripts of all or portions of the subpoenaed conversations that were recorded and of a number of additional non-subpoenaed conversations 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 believes that these are the matters that primarily concern the Congress and the American people.

In order that the Committee may be satisfied that he has in fact disclosed this pertinent material to the Committee, the President has invited the Chairman and the ranking minority member to review the subpoenaed tapes to satisfy themselves that a full and complete disclosure of the pertinent contents of these tapes has, indeed, been made. If, after such review they have any questions regarding his conduct, the President has stated that he stands ready to respond under oath to written interrogatories and to meet with the Chairman and ranking minority member of the Committee at the White House to discuss these matters if they so desire.

The President is making this response, which exceeds the material called for in the subpoena, in order that the Committee will be able to carry out its responsibilities and bring this matter to an expeditious conclusion.

The attached transcripts represent the best efforts accurately to transcribe the material contained on the recording tapes. Expletives have been omitted in the interest of good taste, except where necessary to depict accurately the context of the conversation. Characterization of third persons, in fairness to them, and other material not relating to the President's conduct has been omitted, except where inclusion is relevant and material as bearing on the President's conduct.

In order that the material submitted in this response to the Committee's subpoena can be viewed in the context of the events surrounding the Watergate incident and thereafter, the following summary is provided.

The Break-in at the Watergate June 17, 1972

When the break-in at Watergate

occurred and the participants were arrested, the President was in Florida. As he has stated many times, he had no prior knowledge of this activity and had nothing whatsoever to do with it. No one has stated otherwise, not even Mr. Dean, former Counsel to the President, who is the only one who has made any charges against the President. During the course of Dean's conversation with the President on February 28, 1973, the President stated to Dean:

P. Of course I am not dumb and I will never forget when I heard about this—forced entry and bugging. I thought "what is this? What is the matter with these people, are they crazy?" I thought they were nuts.

During the conversation between the President and Dean on the morning of March 21, 1973, the tape of which has also previously been provided the Committee, Dean strongly disclaimed to the President that anyone at the White House knew of the break-in in advance.

D. I honestly believe that no one over here knew that. I know that as God is my maker I had no knowledge that they were going to do this.

In the conversation of the President with Mr. Haldeman and Mr. Ehrlichman on the 27th of March, 1973, the following exchange, which conclusively demonstrates the President's lack of foreknowledge, took place:

H. O'Brien raised the question whether Dean actually had no knowl-

edge of what was going on in the intelligence area between the time of the meetings in Mitchell's office, when he said don't do anything, and the time of the Watergate discovery. And I put that very question to Dean, and he said, "Absolutely nothing."

P. I would—the reason I would totally agree—that I would believe Dean there [unintelligible] he would be lying to us about that. But I would believe for another reason—that he thought it was a stupid damn idea.

E. There just isn't a scintilla of hint that Dean knew about this. Dean was pretty good all through that period of time in sharing things, and he was tracking with a number of us on—

P. Well, you know the thing the reason that [unintelligible] thought—and this incidentally covers Colson—and I don't know whether—. I know that most everybody except Bob, and perhaps you, think Colson knew all about it. But I was talking to Colson, remember exclusively about — and maybe that was the point—exclusively about issues . . .

* * *

P. Right. That was what it is. But in all those talks he had plenty of opportunity. He was always coming to me with ideas, but Colson in that entire period, John, didn't mention it. I think he would have said, "Look we've gotten some information," but he never said they were. Haldeman, in this whole period. Haldeman I am sure—Bob and you, he talked to both of you about the campaign. Never a word. I mean maybe all of you knew but didn't tell me, but I can't believe that Colson—well—

Of all the witnesses who have testified publicly with respect to allegations of an illegal cover-up of the Watergate break-in prior to March 21, 1973, only Mr. Dean has accused the President of participation in such a cover-up. In his testimony before the Senate Select Committee Dean stated (Bk. 4, p. 1435) that he was "certain after the Sept 15 meeting that the President was fully aware of the cover-up". However, in answering questions of Senator Baker, he modified this by stating it "is an inference of mine." (Bk. 4, p. 1475) Later he admitted

he had no personal knowledge that the President knew on Sept. 15 about a cover-up of Watergate. (Bk. 4, p. 1482)

The tape of the conversation between the President and Dean on Sept. 15, 1972, does not in any way support Dean's testimony that the President was "fully aware of the cover-up." The tape of Sept. 15, 1972, does indeed contain a passage in which the President does congratulate Dean for doing a good job:

P. Oh well, this is a can of worms as you know a lot of this stuff went on. And the people who worked this way are awfully embarrassed.

But the way you have handled all this seems to me has been very skillful putting your fingers in the leaks that have sprung here and sprung there.

This was said in the context not of a criminal plot to obstruct justice as Dean alleges, but rather in the context of the politics of the matter, such as civil suits, counter-suits, Democratic efforts to exploit Watergate as a political issue and the like. The reference to "putting your fingers in the leaks" was clearly related to the handling of the political and public relations aspect of the matter. At no point was the word "contained" used as Dean insisted had been the case in his testimony. (Bk. 4, pp. 1476, 1477)

This is an example of the possible ambiguities that the President says exists in these tapes that someone with a motive to discredit the President could take out of context and distort to suit his own purposes.

Credibility Challenged

If Dean did in fact believe that the President was aware of efforts illegally to conceal the break-in prior to March 21, 1973, it is strange that Dean on that date felt compelled to disclose to the President for the first time what he later testified the President already knew.

Further questions of Dean's credibility concerning the President's conduct are raised by his testimony before the Senate Select Committee that it was on March 13, 1973, that he told the President about money demands and threats of blackmail (Bk. 3, pp. 99', 996). He said he was "very clear" about this date. (Bk. 4, p. 1567.) It now develops that the conversation with the President, on the date of which Dean was so clear, did not in fact take place until the morning of March 21, 1973, as the President has always contended. At no point in the tape of the March 13, 1973, conference between the President and Dean is there any reference to threats of blackmail or raising a million dollars. These references are contained in the tape of the March 21, 1973, A.M. meeting between the President and Dean.

This discrepancy in Dean's testimony

(1) References to testimony before the Senate Select Committee are indicated "(Bk. _____, p. _____)."

from the tapes of these two meetings is surprising in the light of Dean's self-professed excellent memory (Bk. 4, p. 1433) and the certainty with which he fixed the date of the blackmail disclosure as March 13, 1973, rather than March 21, 1973. Curiously, on April 16, 1973, as evidenced by the recording of his meeting on that morning with the President, Dean recalled very specifically that his revelation to the President was on the Wednesday preceding the Friday (March 23) that the Watergate defendants were sentenced.

Date of Payment

Dean's testimony to the Senate may have been simply an error, of course, or it may have been an effort to have his disclosures to the President predate what was then at least thought to be the date of the last payment to Hunt's attorney for his fees, namely March 20, 1973, (Bk. 9, p. 3799). As far as the President is concerned, however, it makes no difference when this payment was made; he not only opposed the payment, but never even knew that it had been made until mid-April when the facts were finally disclosed to him.

In this connection it is interesting to note that Dean testified that on March 30, 1973, he told his attorneys "everything I could remember." (Bk. 3, p. 1009) Yet Dean's list of April 14 of persons whom he believed were indictable did not include the President. (Ex. 34-37) Attorney General Kleindienst testified that Mr. Silbert, who had been interviewing Mr. Dean and "conferring at length with his counsel, reported on the night of April 14, 1973, that "Nothing was said to me that night that would implicate the President of the United States." (Bk. 9, p. 3586) This same thing was confirmed by Mr. Petersen, who testified that as of April 27 they had no information implicating the President. (Bk. 9, pp. 3635, 3636) In fact it was not until after April 30, 1973, when Dean was discharged that he for the first time charged the President with knowledge of a cover-up as early as Sept. 15, 1972.

The Meeting of March 21, 1973, A.M. Between the President and Dean and later Haldeman

On or about Feb. 27, 1973, Dean had been instructed to report directly to the President regarding the Executive Privilege issues raised in the context of the Gray nomination hearings and the prospective Ervin Committee hearings, rather than to Ehrlichman as it was taking up too much of Mr. Ehrlichman's time from his regular duties. (Bk. 7, p. 2739) Previous to this Dean had been keeping himself informed as to the progress of the FBI and Department of Justice investigation on Watergate so that he could keep Ehrlichman and Haldeman informed. Both Attorney General Kleindienst and Mr. Petersen confirmed that Dean had represented to them that he was "responsible to keep the President informed." (Bk. 9, p. 3618); that he "had been delegated by the President to be posted and kept informed throughout the course of the investigation." (Bk. 9, pp. 3575, 3576, 3652) It is equally clear from the recorded conversations between Dean and the President that he did not keep the President fully informed until March 21, 1973. Indeed, on April 16, 1973, Dean so acknowledged that fact to the President, when he said:

D. I have tried all along to make sure that anything I passed to you didn't cause you any personal problem.

An analysis of the March 21, 1973, A.M. conversation thus becomes important in assessing the conduct of the President. On the previous evening the President and Dean talked by telephone and Dean requested a meeting

with the President. They met the next morning, alone, at first, and later Mr. Haldeman joined them about half way through the meeting, rather than for only the last few minutes, as Dean testified. (Bk. 4, p. 1383) After some preliminary remarks concerning the Gray's confirmation hearings, Dean stated the real purpose for the meeting:

D. The reason that I thought we ought to talk this morning is because our conversations I have the impres-

(2) Apparently Dean even on March 21, 1973, concealed other matters from the President as well. In *U.S. v. Stans, et al*, he testified that despite the fact that he had made calls to the SEC, he told the President "no one at the White House has done anything for Vesco." Of course the statement to the President was not true if Dean did make such calls for he certainly was at the White House.

Among the other significant matters which Dean did not report to the President, even on March 21, 1973, were (1) that Dean had assisted Magruder in preparing his perjured Grand Jury testimony; (2) that Dean had authorized promises of executive clemency to be made to Watergate defendants; (3) that he had personally handled money which went to the Watergate defendants; (4) that he had delivered documents from Hunt's safe to F.B.I. Director Gray; (5) that Dean had personally destroyed documents from Hunt's safe; or (6) that Dean had ordered Hunt out of the country, and then retracted the order.

sion that you don't know everything I know and it makes it very difficult for you to make judgments that only you can make on some of these things and I thought that—(Emphasis supplied)

He then proceeded to detail for the President what he believed the President should be made aware of, first in the "overall."

Dean stated, "We have a cancer within, close to the Presidency, that is growing," and that "people are going to start perjuring themselves. . . ." He described the genesis of the DNC break-in; the employment of Liddy; the formulation of a series of plans by Liddy which Dean disavowed, as did Mr. Haldeman; the belief that the CREP had a lawful intelligence gathering operation and the receipt of information from this source; and the arrest at the DNC on June 11, 1972. He then informed the President of a call to Liddy shortly thereafter inquiring " . . . whether anybody in the White House was involved in this" and the response, "No, they weren't."

Dean then advised the President of the allegation that Magruder and Porter had committed perjury before the grand jury in denying knowledge that the DNC was to be bugged. He did not tell the President he had helped "prepare" Magruder's testimony as he later admitted before the Senate Committee. (Bk. 3, p. 1206) Dean said he did not know what Mitchell had testified to before the grand jury.

Dean next laid out for the President what happened after June 17. He informed the President "I was under pretty clear instructions not to investigate this . . . I work on a theory of containment — to try to hold it right where it was," and he admitted that he was "totally aware" of what the FBI and grand jury was doing. Throughout these disclosures the President asked Dean a number of questions such as:

P. Tell me this: did Mitchell go along?

P. Did Colson know what they [Liddy and Hunt] were talking about?

P. Did he [Colson] talk with Haldeman?

P. Did he [Haldeman] know where it [the information] was coming from?

All together, the President asked Dean more than 150 questions in the course of this meeting.

Den then described to the President the commencement of what he alleges was a cover-up involving himself and others. Implicit in these revelations, of course, is that the President was not involved but rather he was learning of

these allegations for the first time. In fact, later in the conversation, Dean said:

D. I know, sir, I can just tell from our conversation that these are things you have no knowledge of (Emphasis supplied)

Dean next recited receiving a demand "from Hunt to me" through an intermediary for "\$120,000 for personal expenses and attorney's fees."

D. " . . . he wanted it as of the close of business yesterday: [March 20]. Dean told how he rejected the demand

D. "If you want money, you came to the wrong man, fellow. I am not involved in the money. I don't know a thing about it. I can't help you. You better scramble about elsewhere."

Dean also claimed that Hunt had threatened Ehrlichman if he wasn't paid the money he demanded. Dean analyzed the situation as he saw it, pointing out that a number of people know about these events, including Mrs. Hunt who had died in a plane crash. At the mention of Mrs. Hunt, the President interjected that this was a "great sadness" and that he "recalled a conversation with someone about Hunt's problem on account of his wife and the President said that "of course commutation could be considered on the basis of his wife's death, and that was the only conversation I ever had in that light." During their conversations, the President repeatedly and categorically rejected the idea of clemency.

Following this lengthy description of what had transpired, the conversation dealt with what should be done about the situation presented by Hunt's demands. A number of alternatives were considered. Dean pointed out that the blackmail would continue, that it would cost a million dollars and it would be difficult to handle.

D. What really bothers me is this growing situation. As I say, it is growing because of the continued need to provide support for the Watergate people who are going to hold us up for everything we've got, and the need for some people to perjure themselves as they go down the road here. If this thing ever blows, then we are in a cover-up situation. I think it would be extremely damaging to you and the —

P. Sure. The whole concept of administration [of] justice which we cannot have.

Dean then made a recommendation: Dean was unsure of the best course to follow, but stated the approach he preferred.

D. That's right. I am coming down to what I really think, is that Bob and John and John Mitchell and I can

sit down and spend a day, or however long, to figure out, one, how this can be carved away from you, so that it does not damage you or the Presidency. It just can't. You are not involved in it and it is something you shouldn't.

P. That is true!

The President then began to press Dean for his advice as to what should be done.

P. So what you really come to is what we do. . . . Complete disclosure, isn't that the best way to do it? D.—Well, one way to do it is—P.—That That would be my view.

Dean then suggested that another grand jury be convened but Dean points out that "some people are going to have to go to jail. That is the long and the short of it also."

Among the alternatives considered were the payment of the money generally and the payment of the amount demanded by Hunt, specifically. The mechanics of these alternatives, such as how the money could be raised and delivered, were explored.

The President expressed the belief that the money could be raised, and perhaps, even, a way could be found to deliver it. However, he recognized and pointed out that blackmail would continue endlessly, and in the final analysis would not be successful unless the Watergate defendants were given executive clemency, which he said adamantly, could not be done. The President stated:

P. No, it is wrong that's for sure.

After the alternatives were explored, the President's conclusion regarding the demands for money were clearly stated:

P. . . . But in the end, we are going to be bled to death. And in the end, it is all going to come out anyway. Then you get the worst of both worlds. We are going to lose and the people are going to—H. And look like dopes. P. And in effect look like a cover-up. So that we can't do . . .

Restating it, the President said:

P. But my point is, do you ever have any choice on Hunt? That is the point. No matter what we do here now, John, whatever he wants if he doesn't get it—immunity, etc.—he is going to blow the whistle.

Finally the discussion as to what should be done was concluded by the President, at least tentatively deciding to have another grand jury investigation at which members of the White House staff would appear and testify:

P. I hate to leave with differences in view of all this stripped land. I could understand this, but I think I want another grand jury proceeding and we will have the White House appear before them. Is that right, John? D. Uh huh.

Further discussion ensued concerning the benefits of calling for a grand jury investigation—political as well as a substantive—and the meeting ended with an agreement to have Dean, Mitchell, Haldeman and Ehrlichman meet the next day to consider what they would recommend. The conclusion of the meeting, however, was not ambiguous:

H. We should change that a little bit. John's point is exactly right. The erosion here now is going to you, and that is the thing that we have to turn off at whatever cost. We have to turn it off at the lowest cost we can, but at whatever cost it takes. D. That's what we have to do. P. Well, the erosion is inevitably going to come here, apart from anything and all the people saying well the Watergate isn't a major issue. It isn't. But it will be. It's bound to. (Unintelligible) has to go out. Delaying is the great danger to the White House area. We don't, I say that the White House can't do it. Right? D. Yes, Sir.

As the President has stated, the transcript of the meeting on the morning of March 21, 1973, contains certain ambiguities and statements which taken out of context could be construed to have a variety of meanings. The conversation was wide ranging, consideration was given to a number of different possibilities, but several things clearly stand out:

1. The President had not previously been aware of any payments made allegedly to purchase silence on the part of the Watergate defendants.

2. The President rejected the payment of \$120,000 or any other sum to Hunt or other Watergate defendants.

3. The President determined that the best way to proceed was to have White House people appear before a grand jury even though it meant that some people might have to go to jail.

Tapes of recorded conversations following the meeting in the morning of March 21, 1973, further establish that the President not only did not approve of any payment to Hunt, but he did not know a payment had been made to Hunt's lawyer in the amount of \$75,000.

In the afternoon of the same day, March 21, 1973, the President met again with Dean, Haldeman and now Ehrlichman. This conversation makes it even

more clear that the President did not suggest that blackmail should be paid to Hunt. Ehrlichman pointed out:

E. The problem of the Hunt thing or some of these other people, there is just no sign off on them. That problem goes on and on.

The President again reiterated his view:

P. Maybe we face the situation. We can't do a thing about the participants. If it is going to be that way eventually why not now? That is what you are sort of resigned to, isn't it? And later near the end of the meeting:

P. You see, if we go your route of cutting the cancer out—if we cut it out now. Take a Hunt, well wouldn't that knock the hell out from under him? D. That's right.

Shortly after this the President terminated the meeting, apparently rather abruptly, inquiring as to the time for the meeting the next day among Mitchell, Dean, Haldeman and Ehrlichman.

Again the recorded conversation clearly discloses that not only did the President not approve or even know of a payment made or to be made to Hunt. It is a fact quite clear that, subject to some other solution being suggested at a meeting scheduled for the next day, at which Mr. Mitchell would attend, he favored "cutting the cancer out. . . now."

The President next met with his principal aides and now Mitchell on the afternoon of March 22, 1973. This was the first meeting of the President with John Mitchell following the disclosures of March 21, 1973. Mitchell and the others had met that morning as the President had requested. If the allegations of the grand jury as stated in pending indictments are correct as to when the arrangements for the payment of Hunt's legal fees were made, they would have had to have been made prior to this meeting on the afternoon of March 22nd. The tape recording of this meeting establishes that no one at the meeting disclosed to the President that such an arrangement had been made. In fact, the President was not informed about these arrangements until mid-April when Ehrlichman was reporting the results of his investigations to the President. In attempting to pin down what had happened, the President was given two versions, one by Ehrlichman and Haldeman on April 14 and another by John Dean on April 16.

Ehrlichman and Haldeman explained to the President what had transpired:

P. What happened? E. And he just said, "It's taken care of." H. Mitchell raised the problem to Dean and said, "What have you done about that other problem?" Dean said, he kind of looked at us, and then said, "Well, you know, I don't know." And Mitchell said, "Oh, I guess that's been taken care of." Apparently through LaRue.

P. Apparently who? H. LaRue. Dean told us, LaRue.

On April 16 Dean described how it happened that Hunt's legal fees were paid. After repeating Hunt's threat against Ehrlichman he said:

D. . . . Alright I took that to John Ehrlichman. Ehrlichman said, "Have you talked to Mitchell about it?" I said, "No I have not." He said, "Well, will you talk to Mitchell?" I said, "Yes I will." I talked to Mitchell. I just passed it along to him. And then we were meeting down here a few days later in Bob's office with Bob, and Ehrlichman and Mitchell and myself, and Ehrlichman said at that time. "Well is that problem with Hunt straightened out?" He said it to me and I said, "Well, ask the man who may know; Mitchell." Mitchell said, "I think that problem is solved."

If Dean's disclosure to the President on April 16, 1973, about the payment of

Hunt's legal fees is to be believed, then it is clear that this fact was concealed from the President when he met with Mitchell and the others on the afternoon of March 22nd. The explanation for this concealment perhaps is contained in a significant statement made by Dean to the President at their meeting on the morning of April 16, 1973:

D. I have tried all along to make sure that anything I passed to you myself didn't cause you any personal problems.

This explanation for not making a full disclosure to the President may have been well intentioned at the time but in the last analysis only served to prolong the investigation.

The Conduct of the President Following the Disclosures Made on March 21, 1973

Dean disclosed for the first time on March 21, 1973, that he had been engaged in conduct that might have amounted to obstruction of justice and allegations that other high officials and former officials were also involved. These matters were thoroughly probed by the President in his talk with Dean, with the President often taking the role

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of devil's advocate; sometimes merely thinking out loud.

Having received this information of possible obstruction of justice having taken place following the break-in at the DNC the President promptly undertook an investigation into the facts. The record discloses that the President started his investigation the night of his meeting with Dean on March 21, as confirmed by Dean in his conversation with the President on April 16, 1973.

P. Then it was that night that I started my investigation. D. That's right. . . .

P. . . . That is when I frankly became interested in the case and when I said, "Now I want to find out the score" and set in motion Ehrlichman, Mitchell and—not Mitchell but a few others.

At the meeting with Mitchell and the others on the afternoon of March 22nd, the President instructed Dean to prepare a written report of his earlier oral disclosures:

H. I think you [Dean] ought to hole up for the weekend and do that and get it done. P. Sure.

H. Give it your full attention and get it done. P. I think you need—why don't you do this? Why don't you go up to Camp David?

D. I might do it, I might do it. P. Completely away from the phone. Just go up there and [inaudible]. I want a written report. (Emphasis supplied)

Later during this same conversation the President said:

P. I feel that at a very minimum we've got to have this statement. Let's look at it, I don't know what it—where is it—If it opens up doors, it opens up doors—you know.

The recording of this conversation in which the President instructed Dean to go to Camp David to write a report should be compared with Dean's testimony in which he stated:

"He [the President] never at any time asked me to write a report, and it wasn't until after I had arrived at Camp David that I received a call from Haldeman asking me to write the report up." (Bk 4, p. 1385) (Emphasis supplied)

Dean in fact did go to Camp David and apparently did some work on such a report but he never completed the task. The President then assigned Ehrlichman to investigate these allegations.

By as early as March 27, the President met with Ehrlichman and Haldeman to discuss the evidence thus far developed and how it would be best to proceed.

Again the President stated his resolve that White House officials should appear before the grand jury:

P. . . Actually if called, we are not going to refuse for anybody called before the grand jury to go, are we John?

The President then reviewed with Haldeman and Ehrlichman the evidence developed to that time. They stated that they had not yet talked to Mitchell and indicated this would have to be done. They reviewed what they had been advised was Magruder's current position as to what had happened and compared that with what Dean had told them. They reported that Hunt was before the grand jury that same day. It is interesting to note that neither the President, Haldeman nor Ehrlichman say anything that indicate surprise in Hunt's testifying before the grand jury. If in fact he had been paid to keep quiet, it might have been expected that someone would have expressed at least disappointment that he was testifying before the grand jury less than a week later.

They confirmed to the President, as Dean had, that no one at the White House had prior knowledge of the

Watergate break-in. Ehrlichman said, "There just isn't a scintilla of a hint that Dean knew about this." The President asked about the possibility of Colson having prior knowledge and Ehrlichman said, "His response was one of total surprise. . . He was totally non-plussed, as the rest of us." Ehrlichman then reviewed with the President the earlier concern that they had for national security leaks and the steps taken to find out about how they occurred.

It was decided to ask Mitchell to come to Washington to receive a report of the facts developed so far and a call was placed to him for that purpose. It was also decided that Ehrlichman should also call the Attorney General and review the information on hand with him. It was during this meeting that the possibility of having a commission or a special prosecutor appointed in order to avoid the appearance of the Administration investigating itself and a call was placed to former Attorney General Rogers to ask him to meet with the President to discuss the situation.

The next day Ehrlichman, pursuant to the President's direction given the previous day, called Attorney General Kleindienst and among other things advised him that he was to report directly to the President if any evidence turns up of any wrongdoing on the part of anyone in the White House or about Mitchell. Kleindienst raised the question of a possibility of a conflict of interest and suggests that thought be given to appointing a special prosecutor.

On March 30, 1973, consideration was given to the content of a press briefing with respect to White House officials appearing before the grand jury. As a result thereof, Mr. Ziegler stated at the press briefing that day:

"With regard to the grand jury, the President reiterates his instructions that any member of the White House staff who is called by the grand jury will appear before the grand jury to answer questions regarding that individual's alleged knowledge or possible involvement in the Watergate matter." (3)

Even prior to the completion of Ehrlichman's investigation, the President was taking steps to get the additional facts before the grand jury. On April 8, 1973, on the airplane returning to Washington from California, the President met with Haldeman and Ehrlichman and directed they meet with Dean that day and urge him to go to the grand jury—"I am not going

to wait, he is going to go." (Bk. 7, p. 2757) Haldeman and Ehrlichman met with Dean that afternoon from 5 to 7:33 Ehrlichman reported the results

of that meeting to the President by telephone:

P. Oh, John, Hi.

E. I just wanted to post you on the Dean meeting. It went fine. He is going to wait until after he'd had a chance to talk with Mitchell and to pass the word to Magruder through his lawyers that he is going to appear at the grand jury. His feeling is that Liddy has pulled the plug on Magruder and that (unintelligible) he thinks he knows now. And he says there's no love lost there, and that that was Liddy's motive in communicating informally.

Indeed, Dean did, in fact, communicate his intentions to Mitchell and Magruder not to support Magruder's previous testimony to the grand jury. (Bk. 6, p. 1006) This no doubt was the push, initially stimulated by the President, which got Magruder to go to the U.S. Attorneys on the following Saturday, April 14, and change his testimony.

On the morning of April 14, 1973, the President met again with Haldeman and Ehrlichman to discuss the Watergate matter.

This was an in-depth discussion lasting more than two-and-one-half hours. The obvious purpose was to review the results of three week's investigation on the part of Ehrlichman and Haldeman and determine what course of action they would recommend.

Several conclusions were reached at that meeting by the President. From Ehrlichman's report on what Ehrlichman called "hearsay" facts, the President concluded, with regard to Mitchell:

P. I'm not convinced he's guilty but I am convinced that he ought to go before a grand jury.

There was a discussion as to who would be the appropriate person to talk to Mitchell and tell him that continued silence did not well serve the President. Ultimately, it was decided that Haldeman should call Mitchell to come to Washington and that Ehrlichman should talk to him.

With respect to Magruder, the President said:

P. We've come full circle on the Mitchell thing. The Mitchell thing must come first. That is something today. We've got to make this move today. If it fails, just to get back our position I think you ought to talk to Magruder. H. I agree.

P. And you tell Magruder, now Jeb, this evidence is coming in, you ought to go to the grand jury. Purge yourself if you're perjured and tell this whole story. H. I think we have to.

P. Then, well Bob, you don't agree with that? H. No, I do.

The President instructed Ehrlichman to see Magruder, also, and tell him that he did not serve the President by remaining silent.

The President's decision to urge Mitchell and Magruder to go to the grand jury was based on his recognition of his duty to act on the body of information Ehrlichman had reported to him:

E. Here's the situation. Look again at the big picture. You now are possessed of a body of fact. P. That's right.

E. And you've got to—you can't just sit there. P. That's right.

E. You've got to act on it. You've got to make some decisions and the Dean thing is one of the decisions you have to make . . .

At another point in the discussion, the same point was reiterated:

E. Well, you see, that isn't that kind of knowledge that we had was not action knowledge like the kind of knowledge that I put together last night. I hadn't known really what had been bothering me this week.

P. Yeah.

E. But what's been bothering me

P. That with knowledge we're still not doing anything.

E. Right.

P. That exactly right. The law and order—That's the way I am. You know it's a pain for me to do it—the Mitchell thing is damn painful.

A decision was reached to speak to both Mitchell and Magruder before turning such information as they had developed over to the Department of Justice in order to afford them "an opportunity to come forward." The President told Ehrlichman that when he met with Mitchell to advise him that "the President has said let the chips fall where they may. He will not furnish cover for anybody."

The President summed up the situation by stating:

P. No, seriously, as I have told both of you, the boil had to be pricked. In a very different sense—that's what December 18th was about. We have to prick the boil and take the heat. Now that's what we're doing here. We're going to prick this boil and take the heat. I—am I overstating?

E. No, I think that's right. The idea is this will prick the boil. It may not. The history of this thing has to be though that you did not tuck this under the rug yesterday or today, and hope it would go away.

The decision was also made by the President that Ehrlichman should provide the information which he had collected to the Attorney General. Ehrlichman called the Attorney General, but did not reach him.

Mitchell came to Washington that afternoon and met with Ehrlichman. Immediately following that meeting, Ehrlichman reported to the President, stating Mitchell protested his innocence, stating:

"You know, these characters pulled this thing off without my knowledge . . . I never saw Liddy for months at a time . . . I didn't know what they were up to and nobody was more surprised than I was . . . I can't let people get away with this kind of thing . . . I am just going to have to defend myself every way I can."

Ehrlichman said he explained to Mitchell that the President did not want anyone to stand mute on his account; that everyone had a right to stand mute for his own reasons but that the "interests of the President . . . were not served by a person standing mute for that reason alone."

Ehrlichman said that he advised Mitchell that the information that had been

(3) Copy submitted with transcript of conversation.

collected would be turned over to the Attorney General and that Mitchell agreed this would be appropriate.

Even later on April 14, Ehrlichman finally was able to reach Magruder and met with Magruder and his lawyers for the purpose of informing him that he should not remain silent out of any misplaced loyalty to the President. Ehrlichman found, however, that Magruder had just come from a meeting with the U.S. Attorneys where he had told the full story as he knew it. He, Magruder, told Ehrlichman what he had told the U.S. Attorney, which Ehrlichman duly reported to the President.

During this meeting with the President, Ehrlichman's earlier call to the Attorney General was completed, and Ehrlichman spoke to the Attorney General from the President's office. Ehrlichman told the Attorney General that he had been conducting an investigation for about the past three weeks for the President as a substitute for Dean at White House, and broader involvement. He also told him that he had reported his findings to the President the day before and that he had advised people not to be reticent on the President's behalf about coming forward. He informed the

Attorney General that he had talked to Mitchell and had tried to reach Magruder, but that he had not been able to meet with Magruder until after Magruder had conferred with the U.S. Attorneys. He offered to make all of his information available if it would be in any way useful.

Following the telephone call Ehrlichman said that the Attorney General wanted him to meet with Henry Petersen the next day regarding the information he had obtained. During the course of the conversation relating to Magruder changing his testimony the President stated:

P. It's the right thing. We all have to do the right thing. Damn it! We just cannot have this kind of business, John. Just cannot be.

Lte on the evening of April 14th, after the Correspondent's dinner, the President spoke by telephone first with Haldeman and then with Ehrlichman. The President told each that he now thought all persons involved should testify in public before the Ervin Committee.

On the morning of Sunday, April 15th, the President talked with Ehrlichman and told him that he had received a call from the Attorney General who had advised him that he had been up most of the night with the U.S. Attorney, and with Assistant Attorney General Petersen. The Attorney General had requested to see the President, personally, the President told Ehrlichman, and the President had agreed to see him after Church. The President and Ehrlichman again reviewed the available evidence developed during Ehrlichman's investigation and the status of relations with the media.

In the early afternoon of April 15, the President met with Attorney General Kleindienst. Kleindienst confirmed to the President that the U.S. Attorneys had broken his case and know largely the whole story as a result of Magruder's discussions with them and from disclosures made by Dean's attorneys, who were also talking to the U. S. Attorney. The Attorney General anticipated indictments of Mitchell, Dean and Magruder and others, possibly including Haldeman and Ehrlichman. Kleindienst indicated that he felt that he could not have anything to do with these cases especially because of his association with Mitchell, Mardian and LaRue. The President expressed reservations about having a special prosecutor:

P. First it's a reflection—it's sort of an admitting mea culpa for our whole system of justice. I don't want to do that . . .

The President then suggested that Kleindienst step aside and that the Deputy Attorney General, Dean Sneed, be placed in charge of the matter. The President expressed confidence in Silbert doing a thorough job.

Kleindienst pointed out that even if he were to withdraw, his deputy is still the President's appointee and that he would be, "in a tough situation . . ." Kleindienst recommended that a Special Prosecutor be appointed and a number of names were suggested. The President's reaction to the idea of a Special Prosecutor was negative.

P. " . . . I want to get some other judgments because I—I'm open on this. I lean against it and I think it's too much of a reflection on our system of justice and everything else."

Following a further review of the evidence, Kleindienst raised the question about what the President should do in the event charges are made against White House officials. The President resisted the suggestion that they be asked to step aside on the basis of charges alone.

P. . . . the question really is basically whether an individual, you know, can be totally, totally—I mean, the point is if a guy isn't guilty, you shouldn't let him go.

K. That's right, you shouldn't.

P. It's like me—wait now—let's stand up for people if they're—even though they are under attack.

Further discussion on this subject included the suggestion that Assistant Attorney General Henry Petersen might be placed in charge rather than the Deputy Attorney General. Kleindienst pointed out, "He's the first career Assistant Attorney General I think in the history of the Department."

Shortly after this the tape at the President's office in the Executive Office Building ran out. It is clear, however, from a recorded telephone conversation between the President and Kleindienst that he and Henry Petersen met later in the afternoon with the President. This was verified by Mr. Petersen's testimony before the Senate Committee. It was during this meeting that the President assigned the responsibility for the on-going investigation to Mr. Petersen.

Summary of the Allegations

At his meeting with the President, Assistant Attorney General Petersen presented to the President a summary of the allegations which related to Haldeman, Ehrlichman and Strachan, and that the summary indicated no case of criminal conduct by Haldeman and Ehrlichman at that time. (B. 9, p. 3875).

The President, on the afternoon of Apr. 15, 1973, had every reason to

believe that the judicial process was moving rapidly to complete the case. He continued to attempt to assist. He had four telephone conversations with Petersen after their meeting. In the afternoon, having been told that Liddy would not talk unless authorized by "higher authority," who all assumed was Mitchell, the President directed Petersen to pass the word to Liddy through his counsel that the President wanted him to cooperate. Subsequently, the President told Petersen that Dean doubted Liddy would accept the word of Petersen, so Petersen was directed to tell Liddy's counsel that the President personally would confirm his urging of Liddy to cooperate. The President stated:

P. I just want him [Liddy] to be sure to understand that as far as the President is concerned, everybody in this case is to talk and to tell the truth. You are to tell everybody, and you don't even have to call me on that with anybody. You just say those are your orders.

The President continued to seek additional facts and details about the whole matter. Petersen could not reveal the details of the further disclosures by Dean's attorneys, so the President sought Petersen's advice about getting further information from Dean.

P. Right. Let me ask you this—why don't I get him in now if I can find him and have a talk with him? HP. I don't see any objection to that, Mr. President.

P. Is that all right with you? HP. Yes sir.

"P. All right—I am going to get him over because I am not going to screw around with this thing. As I told you. HP. All right.

P. But I want to be sure you understand, that you know we are going to get to the bottom of this thing. HP. I think the thing that—

P. What do you want me to say to him? Ask him to tell me the whole truth?

After talking with Dean and reviewing Dean's further information, the President raised the question about when Dean and perhaps Haldeman and Ehrlichman should resign and Petersen responded, "We would like to wait, Mr. President."

On the morning of April 16, the President began a long series of meetings on the entire subject. Being uncertain of when the case would become public, the President decided he wanted

resignations or requests for leave in hand from those against whom there were allegations. He had Ehrlichman draft such letters, and discussed them with Haldeman and Ehrlichman.

The President then met with Dean and discussed with him the manner in which his possible resignation would be handled. Dean resisted the idea of his resigning without Haldeman and Ehrlichman resigning as well. The President reviewed with Dean the disclosure Dean made to President on March 21st, and on the evening of April 15th.

The President had some more advice for John Dean on this occasion:

P. Thank God. Don't ever do it, John. Tell the truth. That is the thing I have told everybody around here—tell the truth! All they do, John, is compound it. That Hiss would be free today if he hadn't lied. If he had said, "Yes I knew Chambers and as a young man I was involved with some Communist activities but I broke it off a number of years ago." And Chambers would have dropped it. If you are going to lie, you go to jail for the lie rather than the crime. So believe me, don't ever lie."

As to the President's actions, he told Dean:

P. No, I don't want, understand

when I say don't lie. Don't lie about me either. D. No, I won't sir—you—

The President met with Haldeman at noon on April 16th to discuss at length how and when Haldeman should make a public disclosure of his actions in the Segretti and Watergate matters. Haldeman reported that Mr. Garment recommended that he and Ehrlichman resign. Garment had been assigned by the President on April 9 to work on the matter. The President stated that he would discuss that problem with William Rogers that afternoon and asked Haldeman to get with Ehrlichman and fill in Rogers on the facts.

The President met in the early afternoon alone with Henry Petersen for nearly two hours in the Executive Office Building. They discussed the effect the Senate Committee hearings would have on the trials in the event indictments are returned.

The President then asked Petersen what he should do about Dean's resignation.

H.P. Yes. As Prosecutor I would do something different but from your point of view I don't think you can sit on it. I think we have the information under control but that's a dangerous thing to say in this city. P. Ah.

H.P. And if this information comes out I think you should have his resignation and it should be effective. . . .

Petersen, however, urged the President not to announce the resignation if the information did not get out, as that would be "counter-productive" in their negotiations with Dean's counsel. Petersen reviewed the status of the evidence at length with the President with a view toward making a press release before an indictment or information was filed in open court.

During the course of the conversation Petersen informed the President that they were considering giving Dean immunity. As for Haldeman and Ehrlichman, Petersen recommended that they resign. The status of the situation was reviewed as follows:

P. Okay. All right come to the Haldeman/Ehrlichman thing. You see you said yesterday they should resign. Let me tell you they should resign in my view if they get splashed with this. Now the point is, is the timing. I think that it's, I want to get your advice on it, I think it would be really hanging the guy before something comes in if I say look, you guys resign because I understand that Mr. Dean in the one instance, and Magruder in another instance, made some charges against you. And I got their oral resignations last night and they volunteered it. They said, look, we want to go any time. So I just want your advice on it.

I don't know what to do, frankly. (Inaudible) so I guess there's nothing in a hurry about that is there? I mean I—Dean's resignation. I have talked to him about it this morning and told him to write it out. H.P. (Inaudible).

P. It's under way—I asked for it. How about Haldeman and Ehrlichman? I just wonder if you have them walk the plank before Magruder splashes and what have you or what not. I mean I have information, true, as to what Magruder's going to do. (Inaudible) nothing like this (inaudible).

H.P. Or for that matter, Mr. President. P. Yeah. H.P. Its confidence in the office of the Presidency. P. Right. You wouldn't want—do you think they ought to resign right now?

H.P. Mr. President, I am sorry to say it. I think that mindful of the need for confidence in your office—yes. P. (Inaudible) basis? H.P. That has nothing to do—that has nothing to do with guilt or innocence.

At the end of the meeting with Petersen, the President had every reason to believe that a public disclosure of the entire case in court would be made within forty-eight hours and perhaps sooner. The remaining questions for Presidential decision were: (1) What action he should take on the resignation, suspension or leave of Haldeman, Ehrlichman and Dean and whether it should be before or after they were formally charged; (2) what position he should take on immunity for Dean; and (3) what statement he should issue prior to the public disclosure in court.

On the afternoon of April 17, the President discussed the problem of granting immunity to White House officials with Henry Petersen. Petersen pointed out that he was opposed to immunity but he pointed out that they might need Dean's testimony in order to get Haldeman and Ehrlichman. The President agreed that under those circumstances he might have to move on Haldeman and Ehrlichman, provided Dean's testimony was corroborated. The President told Petersen:

P. That's the point. Well, I feel it strongly—I mean—just understand—I am not trying to protect anybody—I just want the damn facts if you can get the facts from Dean and I don't care whether—

HP. Mr. President, if I thought you were trying to protect somebody, I would have walked out.

As for Dean, the President told Petersen:

P. "... No I am not going to condemn Dean until he has a chance to present himself. No he is in exactly the same position they are in."

The President remained convinced, however, that a grant of immunity to a senior aide would appear as a cover-up.

P. What you say—Look we are having you here as a witness and we

want you to talk. HP. That is described as immunity by estoppel.

P. I see, I see—that's fair enough.

HP. That is really the prosecutor's bargain.

P. That is much better basically, than immunity—let me say I am not, I guess my point on Dean is a matter of principle—it is a question of the fact that I am not trying to do Dean in—I would like to see him save himself but I think find a way to do it without—if you go the immunity route I think we are going to catch holy hell for it. HP. Scares hell out of me.

The President went over the draft of his proposed statement with Petersen. Petersen further counseled the President that no discussion of the facts of the case could be made without prejudicing the case and the rights of the defendants.

Later on the afternoon of April 17, the President issued his statement, revealing that he had new facts and had begun his own investigation on March 21; that White House staff members who were indicted would be suspended, and if they were convicted, they would be discharged. He announced that all members of the White House staff would appear and testify before the Senate Committee. The President further stated that:

I have expressed to the appropriate authorities my view that no individual holding, in the past or present, a position

of major importance in the Administration should be given immunity from prosecution.

In addition he stated that all White House staff employees were expected fully to cooperate in this matter.

After making his public statement, the President met with Secretary of State Rogers, and they were joined later by Haldeman and Ehrlichman. Secretary Rogers reiterated his advice that the President could not permit any senior official to be given immunity. He also reiterated his advice that for the President to discharge his senior aides before they were formally charged with a crime would highly prejudice their legal rights and convict them without a trial.

Danger of Prejudice Cited

The President had concluded that he should treat Dean, Haldeman and Ehrlichman in the same manner. Petersen had advised the President that action on Dean would prejudice the negotiations of the U.S. attorneys with Dean's lawyers, and that Dean's testimony might be needed for the case.

On the evening of April 19, the President met with Messrs. Wilson and Strickler, counsel retained by Haldeman and Ehrlichman upon recommendation of Secretary Rogers. Wilson and Strickler made strong arguments that Haldeman and Ehrlichman had no criminal liability and should not be discharged.

The President continued to struggle with the question of administrative action against his aides.

On April 27, Petersen reported to the President that Dean's lawyer was threatening that unless Dean got immunity, "We will bring the President in—not in this case but in other things."

On the question of immunity in the face of these threats, the President told Petersen:

P. All right. We have got the immunity problem resolved. Do it, Dean if you need to, but boy I am telling you—there ain't going to be any blackmail.

On April 27, the President was also advised by Petersen that the negotiations with Dean's attorneys had bogged down, and action by the President against Dean, Haldeman and Ehrlichman would now be helpful to the U.S. Attorney.

Three days later, on April 30, the President gave a nationwide address. He announced that he accepted the resignations of Haldeman, Ehrlichman, Attorney General Kleindienst and Dean. The President then announced the nomination of Elliot Richardson as the new Attorney General.

Conclusion

Throughout the period of the Watergate affair the raw material of these recorded confidential conversations establishes that the President had no prior knowledge of the break-in and that he had no knowledge of any cover-up prior to March 21, 1973. In all of the thousands of words spoken, even though they often are unclear and ambiguous, not once does it appear that the President of the United States was engaged in a criminal plot to obstruct justice.

On March 21, 1973, when the President learned for the first time of allegations of such a plot and an alleged attempt to blackmail the White House, he sought to find out the facts first from John Dean then others. When it appeared as a result of these investigations that there was reason to believe that there may have been some wrongdoing he conferred with the Attorney General and with the Assistant in charge of the criminal division of the Department of Justice and cooperated fully to bring the matter expeditiously before the grand jury.

Ultimately Dean has pleaded guilty to a felony and seven former White House officials stand indicted. Their innocence or guilt will be determined in a court of law.

This is as it should be.

The recent acquittals of former Secretary Stans and former Attorney General Mitchell in the Vesco case demonstrated the wisdom of the President's actions in insisting that the orderly process of the judicial system be utilized to determine the guilt or innocence of individuals charged with crime, rather than participating in trials in the public media.