

Transcript of Ford's Testimony

Following is a transcript of the proceedings before the House Judiciary Committee's Subcommittee on Criminal Justice in Washington yesterday, at which President Ford testified, as recorded by The New York Times.

Rep. William L. Hungate

The Subcommittee on Criminal Justice of the House Committee on the Judiciary today welcomes the President of the United States, Gerald R. Ford.

We appreciate your willingness voluntarily to appear to respond to the questions posed in two privileged resolutions in inquiry and to accept inquiries from the subcommittee as it carries out the responsibilities assigned it by the House of Representatives. This is, perhaps, the first documented appearance of a President of the United States before a committee or subcommittee of the United States Congress.

Now the chair understands, Mr. President, that you have a commitment at noon and the House convenes at 11:30 A.M. today. With these constraints of time in mind we shall proceed as quickly as possible to accomplish as much as we can in the available time.

The questioning will be done by subcommittee members only and under the five-minute rule.

President Ford's appearance demonstrates his commitment to be open and candid with the American people. It is absolutely vital for the restoration of the public trust and their governing institutions and elected officials that frankness be the hallmark of this and future administrations.

The newspaper Le Monde in Paris recently wrote, "No European republic invests its President with the right of pardon as sweeping and irrevocable as that which Gerald Ford exercised in favor of Richard Nixon. In a sense, the royal pardon take over from executive privilege behind which the former President took refuge so long as a way of preventing Congress and the law courts from investigating his conduct."

Since Sept. 8 when President Ford issued a full, free and absolute pardon to former President Nixon for all crimes he committed or may have committed while serving as President of the United States, several questions have been raised relating to the circumstances and surrounding the pardon and whether as a result of the pardon and subsequent agreements entered into by the former President and officials of the executive branch whether the full and complete story of Watergate and related activities will ever be known.

Bills and Resolutions

In an attempt to resolve these questions, more than 70 members of the House of Representatives, Republicans and Democrats alike, have sponsored bills and resolutions seeking to uncover the full story of the pardon and Watergate. These several bills and resolutions are currently pending before the subcommittee. Included among the 23 bills and resolutions pending before the subcommittee are the two privileged resolutions of inquiry considered today. One, House Resolution 1367, introduced by Representative Abzug of New York, and the second, House Resolution 1370, introduced by Representative Conyers of Michigan. The rules of the House of Representatives require prompt committee action on privileged resolutions of inquiry.

Copies of the privileged resolutions

FRIDAY, OCTOBER 18, 1974

to Panel of House

on Pardon

Rep. Edward Hutchinson

Thank you, Mr. Chairman.

Mr. President, the chairman of the Judiciary Committee, Mr. Rodino, and I, as ranking minority member, are ex officio members of this subcommittee. But we appear here this morning only in that capacity, sitting at the foot of the subcommittee on our respective sides rather than in our familiar places at its head.

In this arrangement, Mr. Rodino does not displace the chairman of the subcommittee, Mr. Hungate, nor do I displace Mr. Smith of New York as

ranking minority member of that subcommittee.

Chairman Rodino and I early agreed that we will not participate in questioning our distinguished visitor this morning, leaving that function to the members of the subcommittee regularly appointed.

Our participation will be limited to our opening statements. Other members of the Judiciary Committee, the full Judiciary Committee, who are not members of this subcommittee, some of whom are present here today, will not participate at all, but are interested in the event, in the fact, in the event that the matter under discussion reaches the full committee.

The same committee has before it a couple of resolutions of inquiry which were introduced in the House of Representatives, referred by the Speaker to the Judiciary Committee, and Chairman Rodino designated this subcommittee to consider them.

By a resolution of inquiry, the House of Representatives requests the President, or directs the head of one of the departments of Government, to furnish certain factual information, presumably to assist the House in its legislative function.

Since the pardon power is not subject to legislative control, I suppose that a question can be raised as to whether a resolution of inquiry might legitimately lie on this question since the question itself cannot resolve—be resolved by the legislative branch.

Duty Not Imposed

In any event, the mere introduction of a resolution does not impose a duty

were forwarded to the President, requesting a response and, following exchange of correspondence, the President offered to appear here as he voluntarily does today.

The task we undertake is made easier by the personal friendship and common background we share in the Congress. But to faithfully perform our respective tasks we must, insofar as possible, lay aside personal relationships and considerations.

We are not here because of friendship but because of responsibility our governmental system of checks and balances and separation of powers places upon us to seek and reveal the truth to the American people about the working of their Government by cooperation if possible, by confrontation when necessary.

I hope the American people as well as the Congress appreciate the importance of President Ford's appearance, as well as the need to do all we can to resolve the questions relating to the pardon of former President Nixon.

I am convinced the issue of the pardon will not be behind us until that record is complete.

The chair recognizes Chairman Rodino from New Jersey.

Rep. Peter W. Rodino Jr.

Mr. President, as chairman of the Committee on the Judiciary, I want to welcome you here, not only as the Chief Executive of this great country but as a friend and one who served with all of us for many years.

This historic occasion and your voluntary appearance here only demonstrates once more the great institution that we are both proud to be part of. And I know that your effort in coming before this committee voluntarily will assist this subcommittee, and this Committee on the Judiciary, in meeting its important responsibilities.

Now with that, Mr. President, I'm going to relinquish the responsibility to the chairman of this subcommittee and to the members of the subcommittee who will direct inquiries to you. Thank you for coming here.

HUNGATE: The chair recognizes the gentleman from Michigan, Mr. Hutchinson.

upon the executive to respond, neither does committee consideration. Indeed, a resolution would be expected only if the House of Representatives itself adopted such a resolution, and even then written communication transmitting the factual information called for would ordinarily be sufficient.

The personal appearance of the President of the United States before this subcommittee does not humble his high office, nor does it violate the separation of powers between the executive and legislative branches of Government.

It is essential if our Government is to operate that the executive and the legislature work together. Your meeting with this subcommittee, Mr. President, here on Capitol Hill is symbolic of that working together in the national interest.

But you do not come, Mr. President, in response to any command of the subcommittee, nor even in response to its request. For it made no demand upon you or even a request for your presence. Your appearance is entirely voluntary on your part.

Your personal appearance here today must not be construed to mean that you will personally appear before this or any other committee of Congress in the future, and Presidents of the United States in the future will be expected to respond to resolutions of inquiry in the future as they have in the past, by written communication.

But Mr. President, I can not adequately express to you my personal feelings of warm friendship and welcome, and my sense of the high honor that you do this subcommittee, the full Judiciary Committee and the House of Representatives in meeting with us here today. Thank you, Mr. President.

Rep. Henry P. Smith 3d

Mr. President, I, too, join in welcoming you here in your voluntary appearance before this subcommittee of the House Committee on the Judiciary.

You have come to answer questions in regard to your pardon of Richard M. Nixon on Sept. 8, 1974. These questions have been propounded by certain members of Congress and, generally speaking, the members of Congress and the people of the United States of America have a right to know the answers as far as this may be possible.

Your appearance here has been voluntary and on your own motion, and I commend you for taking this initiative. I do not think it establishes any precedent; but, on the other hand, it is an example of a splendid cooperation between the executive and the legislative branches of our Government, which I trust may be followed many times in the future by those who may come after you as President of the United States of America—the world's toughest job.

Mr. President, I have known you for almost 10 years and in that time I have always found you to be a man of frankness and candor, a man in whose word one could have implicit trust, a man of the utmost integrity. It is in this spirit that I know you will answer the questions that have been raised about your pardon of Mr. Nixon. And it is in this spirit that I know this committee will

Members of Panel

Special to The New York Times

WASHINGTON, Oct. 17—Following are the nine members of the Subcommittee on Criminal Justice of the House Judiciary Committee, which heard President Ford's testimony today:

DEMOCRATS—William L. Hungate, Missouri, chairman; Robert W. Kastenmeier, Wisconsin; Don Edwards, California; James R. Mann, South Carolina; Elizabeth Holtzman, Brooklyn.

REPUBLICANS—Henry P. Smith 3d, upstate New York; David W. Dennis, Indiana; Wiley Mayne, Iowa; Lawrence J. Hogan, Maryland.



President Ford at the House Judiciary subcommittee hearing yesterday

Associated Press

receive your answers and will interrogate you.

Thank you, Mr. Chairman.

HUNGATE: Mr. President, you have an opening statement. Without objection it will be made part of the record and you may proceed as you see fit. We welcome you here today.

President Ford

Thank you very much, Mr. Chairman, and members of the subcommittee.

We meet here today to review the facts and the circumstances that were the basis for my pardon of former President Nixon on Sept. 8, 1974. I want very much to have those facts and those circumstances known.

The American people want to know them and members of Congress also want to know them.

The two Congressional resolutions of inquiry now before this subcommittee serve these purposes. That's why I have volunteered to appear before you this morning and I welcome and thank you for this opportunity to speak to the questions raised by the resolutions.

My appearance at this hearing of your distinguished subcommittee of the House Committee on the Judiciary has been looked upon as an unusual historic event, one that has no firm precedent in the whole history of Presidential relations with the Congress.

Yet I am here not to make history but to report history.

The history you are interested in covers so recent a period that it is not well-understood. If, with your assistance I can make for a better understanding of the pardon of former Presi-

dent Nixon then we can help to achieve the purpose I had for granting the pardon when I did.

The purpose was to change our national focus. I wanted to do all I could to shift our attention from the pursuit to a fallen President to the pursuit of the urgent needs of a rising nation.

Our nation is under the severest of challenges now to employ its full energy and effort in the pursuit of a sound and growing economy at home and a stable and peaceful world around us.

We would needlessly be diverted from meeting those challenges if we, as a people were to remain sharply divided over whether to indict, bring to trial and punish a former President who is already condemned to suffer long and deeply in the shame and disgrace brought upon the office that he held.

'A Record of Forgiving'

Surely we are not a revengeful people. We have often demonstrated a readiness to feel compassion and to act out of mercy. As a people we have a long record of forgiving even those who have been our country's most destructive foes.

Yet to forgive is not to forget the lessons of evil in whatever way evil has operated against us.

And certainly the pardon granted the former President will not cause us to forget the evils of the Watergate-type offenses or to forget the lessons we have learned that a Government which deceives its supporters and treats its opponents as enemies must never, never be tolerated.

The pardon power entrusted to the President under the Constitution of the United States has a long history and rests on precedents going back centuries before our Constitution was drafted and adopted.

The power has been used sometimes, as Alexander Hamilton saw its purposes, "in seasons of insurrection, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the Commonwealth and which, if served to pass unimproved, it may never be possible afterwards to recall."

Other times it has been applied to one person as an act of grace, which exempts the individual on whom it was bestowed from the punishment the law inflicts for a crime he has committed.

When a pardon is granted it also represents

the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed.

However, the Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders.

Thus, I am firm in my conviction that as President I did have the authority to proclaim a pardon for the former President when I did.

Yet I can also understand why people are moved to question my action. Some may still question my authority. But I find much of the disagreement turns on whether I should have acted when I did. Even then, many people have concluded, as I did, that the pardon was in the best interests of the country because it came at a time when it would best serve the purpose I have stated.

A Pledge to Cooperate

I came to this hearing, Mr. Chairman, in the spirit of cooperation, to respond to your inquiries. I do so with the understanding that the subjects to be covered are defined and limited by the questions as they appear in the resolution before you.

But even then, we may not mutually agree on what information falls within

the proper scope of inquiry by the Congress.

I feel a responsibility, as you do, that each separate branch of our Government must preserve a degree of confidentiality for its internal communication.

Congress, for its part, has seen the wisdom of assuring that members be permitted to work under conditions of confidentiality. Indeed, earlier this year, the United States Senate passed a resolution which reads in part as follows:

"No evidence under the control and in the possession of the Senate of the United States can by the mandate of process of the ordinary courts of justice be taken from such control or possession but by its permission."

In the United States versus Nixon the Supreme Court unanimously recognized a rightful sphere of confidentiality within the executive branch of the government which the court determined could only be invaded for overriding reasons of the Fifth and Sixth Amendments to the Constitution.

As I have stated before, Mr. Chairman, my own view is that the right of executive privilege is to be exercised with caution and with restraint.

When I was a member of Congress I did not hesitate to question the right of the executive branch to claim a privilege against supplying information to the Congress even if I thought the claim of privilege was being abused.

Yet I did then, and I do now, respect the right of executive privilege when it protects advice given to a President in the expectation that it will not be disclosed.

Provision for Frankness

Otherwise, Mr. Chairman, no President could any longer count on receiving free and frank views from the people designated to help him reach his official decision.

Also, it is certainly not my intention or even within my authority to detract on this occasion or in any other instance from the generally-recognized right of the President to preserve the confidentiality of internal discussions or communications whenever it is properly within his constitutional responsibility to do so.

These rights are within the authority of any President while he is in office, and I believe may be exercised as well by a past President if the information sought pertains to his official functions when he was serving in office.

I bring up, Mr. Chairman, these important points before going into the balance of my statement so there can be no doubt that I remain mindful of the rights of confidentiality which a President may and ought to exercise in appropriate circumstances.

However, I do not regard my answers as I have prepared them for the purposes of this inquiry to be prejudicial to those rights in the present circumstances or to constitute a precedent for responding to Congressional inquiries different in nature or scope or under different circumstances.

Accordingly, Mr. Chairman, I shall proceed to explain as fully as I can in my present answers the facts and the circumstances covered by the present resolutions of inquiry. I shall start with an explanation of these events which were the first to occur in the period covered by the inquiry before I became President.

Then I will respond to the separate questions as they are numbered in House Resolution 1367 and as they specifically relate to the period after I became President.

House Resolution 1367 before this subcommittee asked for information about certain conversations that may have occurred over a period that includes when I was a member of Congress or the Vice President.

In that entire period no references or discussions on a possible pardon to then-

President Nixon occurred until Aug 1 and 2, 1974.

Spoke for the President

You will recall, Mr. Chairman, that since the beginning of the Watergate investigation I had consistently made statements and speeches about President Nixon's innocence of either planning the break-in or of participating in the cover-up. I sincerely believed he was innocent.

Even in the closing months before the President resigned I made public statements that in my opinion the adverse revelations so far did not constitute an impeachment offense.

I was coming under increasing criticism for such public statements, but I still believed—I believed them to be true based on the facts as I knew them.

In the early morning of Thursday, Aug. 1, 1974, I had a meeting in my Vice-Presidential office with Alexander M. Haig Jr., chief of staff for President Nixon. At this meeting I was told in a general way about fears arising because of additional tape evidence scheduled for delivery to Judge Sirica on Monday, Aug. 5, 1974.

I was told that there would—could be evidence which when disclosed to the House of Representatives would likely tip the vote in favor of impeachment.

However, I was given no indication that this development would lead to any change in President Nixon's plans to oppose the impeachment vote.

Then, shortly after noon, General Haig requested another appointment as promptly as possible. He came to my office about 3:30 P. M. for a meeting that was to last for approximately three-quarters of an hour.

Only then did I learn of the damaging nature of a conversation on June 23, 1972, in one of the tapes which was due to go to Judge Sirica the following Monday.

I describe this meeting, Mr. Chairman, because at one point it did include references to a possible pardon for Mr. Nixon to which the third and fourth questions in the House resolution are directed.

However, nearly the entire meeting covered other subjects, all dealing with the totally new situation resulting from the critical evidence on the tape of June 23, 1972.

Evidence Called Devastating

General Haig told me he had been told of the new and damaging evidence by lawyers on the White House staff who had first-hand knowledge of what was on the tape. The substance of this conversation was that the new disclosure would be devastating, even catastrophic, insofar as President Nixon was concerned. Based on what he had learned of the conversation on the tape, he wanted to know whether I was prepared to assume the Presidency within a very short period of time.

And whether I would be willing to make recommendations to the President as to what course he should now follow.

I cannot really express adequately in words how shocked and how stunned I was by this unbelievable revelation. First was the sudden awareness that I was likely to become President under the most troubled circumstances.

And secondly, the realization that these new revelations, or disclosures, ran completely counter to the position that I had taken for months in that I believed the President was not guilty of any impeachable offense.

General Haig, in his conversation at my office, went on to tell me of discussions in the White House among those who knew of this evidence. General Haig asked for my assessment of the whole situation. He wanted my thoughts about the timing of the resignation, if that decision were to be made.

And about how to do it, and accomplish an orderly change of the Administration.

We discussed what scheduling problems there might be and what the early

organizational problems would be. General Haig outlined for me President Nixon's situation as he saw it. And the different views in the White House as to the courses of action that might be available, and which were being advanced by various people around him on the White House staff.

As I recall, there were different courses being considered. No. 1, some suggested riding it out by letting the impeachment take its course through the House and the Senate trial, fighting all the way against the conviction.

Two. Others were urging resignation sooner or later. I was told some people backed the first course and other people a resignation. But not with the same views as to how and when it should take place.

Options Were Reviewed

On the resignation issue, there were put forth a number of options which General Haig reviewed with me. As I recall his conversation, various possible options being considered included:

1. The President temporarily step aside under the 25th Amendment.
2. Delaying the resignation until further along the impeachment process.
3. Trying first to settle for a censure vote as a means of avoiding either impeachment or a need to resign.
4. The question of whether the President could pardon himself.
5. Pardoning various Watergate defendants, then himself followed by resignation. A pardon to the President should he resign.

The rush of events placed an urgency on what was to be done. It became even more critical in view of a prolonged impeachment trial which was expected to last possibly four months or longer.

The impact of the Senate trial on the country, the handling of possible international crisis, the economic situation here at home, and the marked slowdown in the decision-making process within the Federal Government were all factors to be considered, and were discussed.

General Haig wanted my views on the

Continued on Following Page

Continued from Preceding Page

various courses of action as well as my attitude on the options of resignation. However, he indicated he was not advocating any of the options.

I inquired as to what was the President's pardon power. And he answered that it was his understanding from a White House lawyer that a President did have the authority to grant a pardon, even before any criminal action had been taken against an individual. But, obviously, he was in no position to have any opinion on a matter of law.

As I saw it at this point, the question clearly before me was under the circumstances what course of action should I recommend that would be in the best interest of the country.

I told General Haig that I had to have some time to think. Further, that I wanted to talk to James St. Clair. I also said I wanted to talk to my wife before giving any response. I had consistently and firmly held the view previously that in no way whatsoever could I recommend either publicly or privately any step by the President that might cause a change in my status as Vice President.

Theory on Vice Presidency

As the person who would become President if a vacancy occurred for any reason in that office, a Vice President, I believed, should endeavor not to do or say anything which might affect his President's tenure in office.

Therefore, I certainly was not even ready under these circumstances to

make any recommendations about resignation without having adequate time to consider further what I should properly do.

Shortly after 8 o'clock the next morning, James St. Clair came to my office. Although he did not spell out in detail the new evidence, there was no question in my mind that he considered these revelations to be so damaging that impeachment in the House was a certainty and conviction in the Senate a high probability.

When I asked Mr. St. Clair if he knew of any other new and damaging evidence beside that on the June 23, 1972, tape, he said no.

When I pointed out to him the various options mentioned to me by General Haig, he told me he had not been the source of any opinion about Presidential pardon power.

After thought on the matter, I was determined not to make any recommendations to President Nixon on his resignation. I had not given any advice or recommendations in my conversations with his aides, but I also did not want anyone who might talk to the President to suggest that I had some intentions to do so.

For that reason, Mr. Chairman, I decided I should call General Haig the afternoon of Aug. 2. I did make the call late that afternoon and told him I wanted him to understand that I had no intention of recommending what President Nixon should do about resigning or not resigning; and that nothing we had talked about the previous afternoon should be given any consideration in whatever decision the President might make.

General Haig told me he was in full agreement with this position.

My travel schedule called for me to make appearances in Mississippi and Louisiana over Saturday, Sunday and part of Monday, Aug. 3, 4 and 5.

Concern Over Reaction

In the previous eight months I had repeatedly stated my opinion that the President would not be found guilty of any impeachable offense. Any change from my stated views or even refusal to comment further I feared would lead in the press to conclusions that I now wanted to see the President resign to avoid an impeachment vote in the House and probable conviction in the Senate.

For that reason I remained firm in my answers to press questions during that trip and repeated by belief in the President's innocence of an impeachable offense.

Not until I returned to Washington did I learn that President Nixon was to release the new evidence late on Monday, Aug. 5, 1974.

About the same time I was notified the President had called a Cabinet meeting for Tuesday morning, Aug. 6, 1974. At that meeting in the Cabinet room, I announced that I was making no recommendations to the President as to what he should do in light of the new evidence. I made no recommendations to him either at that meeting or at any time after that.

In summary, Mr. Chairman, I assure you that there was never at any time any agreement whatsoever concerning a pardon to Mr. Nixon if he were to resign and I were to become President.

Mr. Chairman, turning now to House Resolution 1367.

The first question of House Resolution 1367 asks whether I or my representative had specific knowledge of any formal criminal charges pending against Richard M. Nixon. The answer is no.

I had known, of course, Mr. Chairman, that the grand jury investigating the Watergate break-in and cover-up had wanted to name President Nixon as an

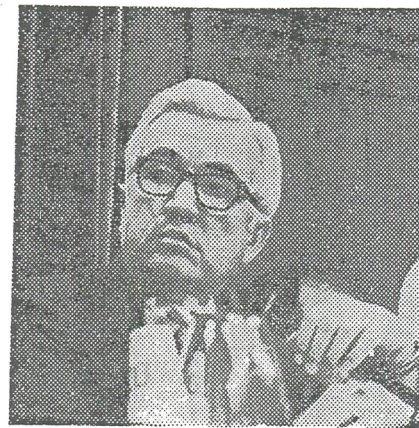
indicted co-conspirator in the cover-up. Also I knew that an extensive report had been prepared by the Watergate Special Prosecution Force for the grand jury and had been sent to the House Committee on Judiciary where I believe it served the staff and the members of the committee in the development of its report on the proposed Articles of Impeachment.

Memorandum From Prosecutor

Beyond what was disclosed in the publications of the Judiciary Committee on the subject, and additional evidence released by President Nixon on Aug. 5, 1974, I saw on or shortly after Sept. 4 a copy of a memorandum prepared for Special Prosecutor Jaworski by the Deputy Special Prosecutor, Henry Ruth; a copy of this memorandum has been furnished by Mr. Jaworski to my counsel and was later made public during a press briefing at the White House on Sept. 10, 1974.

I have supplied the subcommittee with a copy of this memorandum; the memorandum lists matters still under investigation which—and I quote—"may prove to have some direct connection to activities in which Mr. Nixon is personally

INVOLVED. [TEXT,
WXP 18 OCT 74]



The New York Times

Representative William L. Hungate presiding at the hearing yesterday.

The Watergate cover-up is not included in this list and the alleged cover-up is mentioned only as being the subject of a separate memorandum not furnished to me.

Of those matters which are listed in the memorandum, it is stated that none of them at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon.

This is all the information I had which related even to the possibility of formal criminal charges involving the former President while he had been in office.

The second question in the resolution asks whether Alexander Haig referred to or discussed a pardon with Richard Nixon or his representatives at any time during the week of Aug. 4, 1974, or any subsequent time.

My answer to that question is, "Not to my knowledge." If any such discussions did occur they could not have been a factor in my decision to grant the pardon when I did because I was not aware of them.*

Questions 3 and 4 of House Resolution 1367 deal with the first and all subsequent references to or discussions of a pardon for Richard M. Nixon with him or any of his representatives or aides.

I have already described in length what discussion took place on Aug. 1 and 2, 1974, and how these discussions brought no recommendations or commitments whatsoever on my part.

This appears to be an incomplete transcript of the questions and answers. See question by Hogan referred to in story by Shabecoff, p. 21, paragraph 6, which is not included in the transcript.

Abzug Resolution of Inquiry, 16 Sep 74,
Question 2:

"Did Alexander Haig refer to or discuss
a pardon for Richard M. Nixon with
Richard M. Nixon or representatives of
Mr. Nixon at any time during the week of
Aug. 4, 1974, or at any subsequent time?
.... "

NYTimes 18 Oct 74, p. 18

Answer by Ford, 17 Oct 74:

"The second question in the resolution
asks whether Alexander Haig referred to
or discussed a pardon with Richard Nixon
or his representatives at any time during
the week of Aug. 4, 1974, or any
subsequent time.

"My answer to that question is, 'Not
to my knowledge.' If any such
discussions did occur they could not have
been a factor in my decision to grant the
pardon when I did because I was not aware
of them."

NYTimes 18 Oct 74, p. 19, col. 2,
paragraphs 4, 5

Subject Was Not Praised

These were the only discussions related to questions 3 and 4 before I became President. But question 4 relates also to subsequent discussions. At no time after I became President on Aug. 9, 1974, was the subject of a pardon for Richard M. Nixon raised by the former President or by anyone representing him.

Also, no one on my staff brought up the subject until the day before my first press conference on Aug. 28, 1974. At that time I was advised that questions on the subject might be raised by media reporters at the press conference.

As the press conference preceded—or proceeded—the first question asked involved the subject, as did other later questions.

In my answers to those questions, I took a position that while I was the final authority on this matter, I expected to make no commitment one way or the other depending on what the special prosecutor and courts would do.

However, I also stated that I believed the general view of the American people was to spare the former President from a criminal trial.

Shortly afterward, I became greatly concerned that if Mr. Nixon's prosecution and trial was prolonged, the passions generated over a long period of time would seriously disrupt the healing of our country from the wounds of the past.

I could see that the new Administration could not be effective if it had to operate in the atmosphere of having a former President under prosecution in criminal trial. Each step along the way, I was deeply concerned, would become a public spectacle, and the topic of wide public debate and controversy.

As I have before stated publicly, these concerns led me to ask, from my own legal counsel, what my full right of pardon was under the Constitution in this situation. And from the special prosecutor, what criminal actions, if any, were likely to be brought against the former President. How long his prosecution and trial would take.

As soon as I had been given this information, Mr. Chairman, I authorized my counsel, Philip Buchan, to tell Herbert J. Miller, as attorney for Richard M. Nixon, of my pending decision to grant a pardon for the former President. I was advised that the disclosure was made on Sept. 4, 1974, when Mr. Buchan, accompanied by Benton Becker, met with Mr. Miller.

Temporary Special Assignment

Mr. Becker had been asked, with my concurrence, to take on a temporary special assignment to assist Mr. Buchan, at a time when no one else of my selection had yet been appointed to the legal staff of the White House.

The fourth question, Mr. Chairman, in the resolution also asks about negotiations with Mr. Nixon or his representatives on the subject of a pardon for the former President.

The pardon under consideration was not, so far as I was concerned, a matter of negotiation. I realized that unless Mr. Nixon actually accepted the pardon I was preparing to grant, it probably would not be effective. So I certainly had no intention to proceed without knowing if it would be accepted. Otherwise, I put no conditions on my granting of a pardon which required any negotiations.

Although negotiations had been started earlier and were conducted through Sept. 6 concerning White House records of the prior Administration, I did not make any agreement on that subject a condition of the pardon.

The circumstances leading to an initial agreement on Presidential records are not covered by the resolutions before this subcommittee. Therefore, I have mentioned discussion on that sub-

ject with Mr. Nixon's attorney only to show that they were related in time to the pardon discussions but were not a basis for my decision to grant a pardon to the former President.

The fifth, sixth and seventh questions of House Resolution 1367 ask whether I consulted with certain persons before my decision. I did not

* SEE NOTE WITH
WXPOST 18 DEC 75,
WORLD WAR 2, BERNSTEIN

consult at all with Attorney General Saxbe on the subject of a pardon for Mr. Nixon. My only conversation on the subject with Vice-Presidential nominee Nelson Rockefeller was to report to him on Sept. 6, 1974, that I was planning to grant the pardon.

Special Prosecutor Jaworski was contacted on my instructions by my counsel, Philip Buchan. One purpose of their discussions was to seek the information I wanted on what possible criminal charges might be brought against Mr. Nixon.

Memorandum Resulted

The result of that inquiry was the copy of the memorandum I have already referred to and have furnished to this subcommittee.

The only other purpose was to find out the opinion of the special prosecutor as to how long a delay would follow in the event of Mr. Nixon's indictment before a trial could be started and concluded.

At a White House press briefing on Sept. 8, 1974, the principal portions of Mr. Jaworski's opinion were made public. In this opinion, Mr. Jaworski wrote that selection of a jury for the trial of the former President, if he were indicted, would require a delay—and I quote—"of a period from nine months to a year and perhaps even longer." End quote.

On the question of how long it would take to conduct such a trial he noted that the complexity of the jury selection made it difficult to estimate the time. Copy of the full text of his opinion, dated Sept. 4, 1974, I have now furnished to this subcommittee.

I did consult with my counsel, Philip Buchan, with Benton Becker and with my counselor John Marsh, who is also an attorney.

Outside of these men serving at the time on my immediate staff I consulted with no other attorneys or professors of law for facts or legal authorities bearing on my decision to grant a pardon to the former President.

Questions eight and nine of House Resolution 1367 deal with the circumstances of my—of any—statement requested or received from Mr. Nixon.

I asked for no confession or statement of guilt, only a statement in acceptance of the pardon when it was granted. No language was suggested or requested by anyone acting for me to my knowledge.

My council advised me that he had told the attorney for Mr. Nixon that he believed the statement should be one expressing contrition, and in this respect I was told Mr. Miller concurred.

Preliminary Draft Seen

Before I announced the pardon I saw a preliminary draft of a proposed statement from Mr. Nixon but I did not regard the language of the statement as subsequently issued to be subject to approval by me or my representatives.

The tenth question, Mr. Chairman, covers any report to me on Mr. Nixon's health by a physician or psychiatrist which led to my pardon decision.

I received no such reports.

Whatever information was generally known to me at the time of my pardon decision was based on my own observations of his condition at the time he resigned as President and observations reported to me after that from others who

had later seen or talked with him.

No such reports were by people qualified to evaluate medically the condition of Mr. Nixon's health and so they were not a controlling factor in my decision.

However, I believed and still believe that prosecution and trial of the former President would have proved a serious threat to his health, as I stated in my message on Sept. 8, 1974.

House Resolution 1370 is the other resolution of inquiry before this subcommittee. It presents no questions but asks for the full and complete facts upon which was based by decision to grant a pardon to Richard M. Nixon. I know of no such facts that are not covered by my answers to the questions in House Resolution 1367.

Also, sub paragraphs one and four: There were no representations made by me or for me and none by Mr. Nixon or for him on which my pardon was based.

Sub paragraph two: The health issue is dealt with by me in answer to question 10 of the previous resolution.

Sub paragraph three: Information available to me about possible offenses in which Mr. Nixon might have been involved is covered in my answer to the first question of the earlier resolution.

In addition, an unnumbered paragraph at the end of House Resolution 1370, seeks information on possible pardon for Watergate-related offenses which others may have committed.

Submission of Pardon Requests

I have decided that all persons requesting consideration of pardon requests should submit them through the Department of Justice.

Only when I receive information on any request duly filed and considered first by the pardon attorney at the Department of Justice would I consider the matter.

As yet no such information has been received. And if it does, I will act or decline to act, according to the particular circumstances presented—and not on the basis of the unique circumstance, as I saw them, of former President Nixon.

Mr. Chairman, by these responses to the resolution of inquiry I believe I have fully and fairly presented the facts and the circumstances preceding my pardon for former President Nixon.

In this way I hope I have contributed to a much better understanding by the American people of the action I took to grant the pardon when I did.

For having afforded me this opportunity I do express my appreciation to you, Mr. Chairman, and to Mr. Smith, and the other members of the subcommittee. And also to Chairman Rodino of the Committee on Judiciary, to Mr. Hutchinson, the ranking Minority member of the full committee, and to other distinguished members of the full committee who are present.

In closing, Mr. Chairman, I would like to reemphasize that I acted solely for the reasons I stated in my proclamation of Sept. 8, 1974 and my accompanying message. And that I acted out of my concern to serve the best interests of my country.

As I stated then, Mr. Chairman — and I quote — My concern is the immediate

R.P. 20, COL. 4, LAST PARA

future of this great country. My conscience tells me it is my duty not merely to proclaim domestic tranquility but to use every means that I have to ensure it. End quote.

Mr. Chairman, I thank you and the committee members for the opportunity to make these views known.

HUNGATE: Mr. President, on behalf of the subcommittee, we express our appreciation for your appearance here, in bringing facts that will be helpful to the American people and the Congress.

Now there will be some who will find

the answers fully satisfactory and forthright. There will be others who will not. But I would hope that all would appreciate your openness and willingness to come before the American public and the Congress to discuss this important matter.

The gentleman from Wisconsin, Mr. Kastenmeier

REPRESENTATIVE ROBERT W. KASTENMEIER, DEMOCRAT OF WISCONSIN: Thank you, Mr. Chairman. I, too, would like to join my colleagues in welcoming the President. I don't believe any of us could have anticipated a year ago, when the President then appeared as a nominee under the 25th Amendment for Vice President, that you'd once again appear before this committee as President of the United States.

And I would only comment, no matter how well motivated the desire to put Watergate behind us, I can only acknowledge today that several key issues in the news this morning—the President's appearance before this committee, the trial downtown, the Watergate trial itself, and even the nomination of Mr. Rockefeller to be the Vice President, occasioned by a vacancy due to Watergate—all of these still command the attention of the American people.

And I guess we'll just have to be patient.

Mr. President, you indicated that you wanted to spare Mr. Nixon a criminal trial. Did you specifically have any other end in view in terms of protecting Mr. Nixon in terms of a pardon? That is to say, whatever a pardon would spare the President other than a criminal trial, were there any other adversities which a pardon would help Mr. Nixon with as you saw it?

PRESIDENT: As I indicated in the proclamation that I issued, and as I indicated in the statement I made at the time, on Sept. 8, my prime reason was for the benefit of the country, not for any benefits that might be for Mr. Nixon.

I exercised my pardon authority under the Constitution, which relates only to those criminal matters during the period from Jan. 20, 1969, until Aug. 9, 1974.

KASTENMEIER: I appreciate that, Mr. President, but it must have been something you foresaw which could happen to Mr. Nixon which justified the pardon. If in fact you were advised—and perhaps you were not—that there is no proceeding that is going to be commensed against Mr. Nixon, that nothing would happen to him, really a pardon may have been an empty gesture in that event.

PRESIDENT: As I indicated, Mr. Kastenmeier, after the press conference on Aug. 28, where three questions were raised about the pardon, or the possibility of a pardon, I asked my counsel to find out from the special prosecutor what, if any, charges were being considered by the special prosecutor's office.

And as I indicated in my prepared statement, I received from Mr. Jaworski certain information indicating that there were possible or potential criminal proceedings against Mr. Nixon.

KASTENMEIER: But you did not determine, as a matter of fact, that there was any intention to proceed to indictment with any of those matters, is that not correct?

PRESIDENT: In the memorandum, I believe of Sept. 4, from Mr. Jaworski, prepared by Mr. Ruth, there were 10 possibilities listed. On the other hand, there was, I think, well-known information that there was a distinct possibility of Mr. Nixon being indicted on the grounds of obstructing justice.

KASTENMEIER: The effect of the pardon in terms of the 10 possible areas of investigation, as you saw it at the time, was to terminate those investigations as well as end any possibility of indictment

on those grounds.

PRESIDENT: Well, the power of pardon does cover any criminal actions during a stipulated period. And as the pardon itself indicated, it went from the day that Mr. Nixon first took the oath of office until he actually resigned on Aug. 9.

KASTENMEIER: My question is, did you have reason to believe that other than the 10 areas of investigation and the cover-up, that the former President might need to be protected in any other area where a possibility lies of criminal prosecution.

PRESIDENT: I knew of no other—of any other potential or possible criminal charges. No.

KASTENMEIER: My time has expired, Mr. Chairman.

HUNGATE: The gentleman from New York, Mr. Smith.

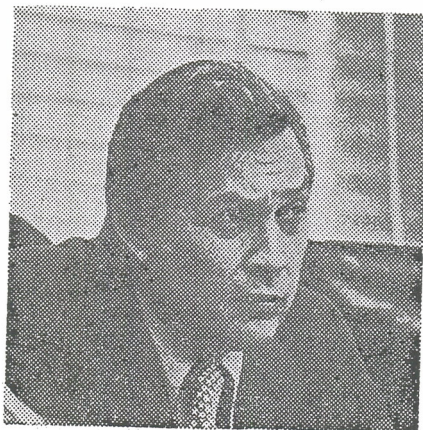
SMITH: Mr. President, in regard to your answer on Page 18 of your statement of whether you consulted with certain persons, and in that connection—and in connection with Question No. 6 of HR 1367, you stated in regard to the Vice-Presidential nominee, Nelson Rockefeller, that your only conversation on the subject with him was to report to him on Sept. 6, 1974 that "I was planning to grant the pardon."

Now the question asks whether he gave you any facts or legal authorities, and my question is: did he do so?

PRESIDENT: Nelson Rockefeller did not give me any facts or legal authorities. He was in my office to discuss with me the proceeding concerning his nomination. And at the conclusion of a discussion on that matter I felt that I should inform him of the possible or prospective action that I would be taking.

But he gave me no facts, he gave me no legal advice concerning the pardon.

SMITH: Mr. President, as you were minority leader of the Congress before you became Vice President of the United States, did you at any time



The New York Times

Representative Robert W. Kastenmeier of Wisconsin listens to testimony.

discuss the wisdom of advisability of a possible Presidential pardon for President Nixon with President Nixon or any of his representatives or any member of the White House staff? This was in the period before you became Vice President.

PRESIDENT: The answer is categorically no. Before I became Vice President, Mr. Smith, I on several occasions—I can't recall how many—indicated to President Nixon himself that I thought he should not resign. If my memory is accurate, Mr. Smith, before I became Vice President there were individuals—both in the Congress and otherwise—who were advocating that Mr. Nixon resign.

I do recall on one or more occasions telling Mr. Nixon in my judgement he should not because I thought that would be an admission of guilt, and on the information I had at that time I did not believe Mr. Nixon was guilty of any impeachable offense.

SMITH: Thank you, Mr. President. You touched upon your observations of President Nixon's health, and I wonder whether at any time before you became Vice President of the United States, did you learn any facts about his physical or mental health which later became relevant to your decision to pardon Mr. Nixon?

FORD: Before I was Vice President, I saw Mr. Nixon periodically, coming to the White House for leadership meetings or for other reasons, and during that period had the distinct impression that his health was good.

And I didn't see any discernible change in my own opinion until the last day or two of his Presidency. And I did notice the last time I saw him in the Oval Office on Aug. 9, I thought he was drawn and possibly a little thinner. But that's the only observation I made.*

SMITH: Thank you, Mr. President.

* P. 20, COL. 4, LAST PARA.

HUNGATE: The gentleman from California, Mr. Edwards.

REPRESENTATIVE DON EDWARDS: Mr. President, on pages 10 and 11 of your statement you indicate that there were some general discussions with General Haig and Mr. St. Clair before the resignation about the pardon powers in general. Did they have any reason to carry a message to then President Nixon that this pardon power could possibly be used on his behalf if he resigned?

PRESIDENT: None whatsoever. Categorically no.

EDWARDS: Then why, Mr. President, were those general discussions about pardon?

PRESIDENT: Well as I indicated in my prepared statement, General Haig came to me first to apprise me of the dramatic change in the situation and as I indicated in the prepared statement, told me that I should be prepared to assume the presidency very quickly and wanted to know whether I was ready to do that.

Secondly, he did indicate that in the White House, among the President's advisers, there were many options being discussed as to what course of action the President should take and in the course of my discussion on Aug. 1, with General Haig, he outlined, as I did in the prepared text, the many options that were being discussed.

He asked for any recommendations I would make and as I indicated, in the prepared text, I made none.

EDWARDS: Thank you, Mr. Buchanan said several times, and I believe you have mentioned, that the pardon did involve a certain aspect of mercy. Would not the same considerations of mercy apply to the Watergate defendants downtown who now are putting forth as their chief defense their allegation that they were merely acting under orders of Mr. Nixon, then President and their boss?

PRESIDENT: Mr. Edwards, in light of the fact that their trials are being carried out at the present time I think it inadvisable for me to comment on my of the proceedings in those trials.

EDWARDS: Mr. President, put yourself in the position of a high school teacher, shall we say, in Watts or the barrios of San Jose or Harlem, and if you were a teacher how would you explain to the young people the American concept of equal justice under law?

PRESIDENT: Mr. Edwards, Mr. Nixon was the 37th President of the United States. He had been preceded by 36 others. He is the only President in the history of this country who has resigned under shame and disgrace. I think that in and of itself can be understood, can be explained to students or to others. That was a major, major step and a matter of, I'm sure, grave, grave deliberations by the former President and it cer-

tainly, as I've said several times, constituted shame and disgrace.

EDWARDS: Thank you, Mr. President. Mr. President, do you think that it is wise to pardon a man before indictment or trial for offenses that are completely unknown to you and which might possibly be terribly serious?

PRESIDENT: As I indicated, Mr. Edwards, I did to the best of my ability check with probably the best authority in the country on what if any charges would be made against Mr. Nixon. Those were or potentially were serious charges. I think that in taking the action I did concerning those charges I was exercising in a proper way the pardon authority given a President under the Constitution.

EDWARDS: Thank you, Mr. President.

HUNGATE: The gentleman from Indiana, Mr. Dennis.

REPRESENTATIVE DAVID W. DENNIS, REPUBLICAN OF INDIANA: Thank you, Mr. Chairman, Mr. President. I would like to state that I, too, share with my colleagues deep appreciation for your appearance here before our subcommittee this morning.

Mr. President, on Page 7 of your statement where you were talking about your second interview with General Haig in the afternoon of Aug. 1, you state that, "I describe this meeting because at one point it did include references to a possible pardon for Mr. Nixon."

I take it that you have spelled out what those references were over on Pages 9, where the options are spelled out, and Page 10, where you state that you inquired as to what was the President's pardon power. Is that it?

PRESIDENT: Yes. It is spelled out in the items, instances 1 through 6—the various options involving the pardon.

DENNIS: And does that include everything that was said at that time on the subject of pardon, substantially?

PRESIDENT: Yes, sir.

DENNIS: Mr. President, I note that on Page 10 you state that you asked the General as to what the President's pardon power was, and he very properly replied that he had certain information but couldn't give legal opinion. When, where and from whom did you ultimately obtain the opinion that you were entitled under the doctrine of *ex parte Garland* and so on to issue a pardon when there had been no charge or no conviction?

PRESIDENT: When I came back to the Oval Office, Mr. Dennis, following a press conference on Aug. 28, where three questions were raised by the news media involving a pardon, I instructed my counsel—Mr. Buchan—to check in an authoritative way what pardon power a President had.

And he, several days later—I don't recall precisely—came back and briefed me on my pardon power as President of the United States.

DENNIS: Mr. President, the exercise of executive clemency is, of course, a well-recognized part of the legal system of this country—exercised by you and all your predecessors—is that not the fact?

PRESIDENT: That is correct, sir.

DENNIS: And you have given this committee, as I understand your testimony this morning, your complete statement as to your reasons for exercising that power in this particular case?

PRESIDENT: I have, sir.

DENNIS: And in answer to my friend, Mr. Edwards, you have stated the fact that you felt that for an ex-President of the United States to resign under these circumstances was sufficient strong punishment and that that should answer the problems of those who have raised

the question of equal justice under law?

PRESIDENT: That is correct sir.

DENNIS: And that you would consider other possible pardons on the facts of those particular cases when and if they were presented to you?

PRESIDENT: That is correct.

DENNIS: And that there was no condition attached to this pardon and no sort of agreement made in respect thereto before it was granted?

PRESIDENT: None whatsoever, sir.

DENNIS: Thank you, Mr. President. I have no further questions, Mr. Chairman.

REPRESENTATIVE JAMES R. MANN, DEMOCRAT OF SOUTH CAROLINA: Thank you Mr. Chairman, Mr. President, Mr. Kastenmeier asked you about the termination of the investigation by the special prosecutor's office. Was it your intention by the pardon to terminate the investigation by the Special Prosecutor's office in the 10 areas that you received a report from that office on?

PRESIDENT: I think the net result of the pardon was in effect just that, yes sir.

MANN: And is that part of the reason that you didn't consult with Mr. Jaworski with reference to the tape agreements as to how that might affect his further investigations?

PRESIDENT: Well as I pointed out, the tape agreement was initiated between my legal counsel and Mr. Mann sometime before the question of a pardon ever arose. The reason for that, Mr. Mann, is that I came into office and almost immediately there were demands and requests not only from the special prosecutor, as I recall, but from other sources as to those tapes and other documents.

And one of the first things I did when these problems came to my desk was to ask the Attorney General for his opinion as to the ownership of those tapes or any other documents.

And once we got that information then we felt that there ought to be some discussion as to where the tapes and other documents would be held and under what circumstances.

MANN: Well of course the mandate of the special prosecutor's office was not directed solely at President Nixon. But is it not so that the pardon in effect terminated that investigation insofar as other parties and other possible defendants in getting to the true facts of the matter that has disturbed our national political life during these past two years.

PRESIDENT: I do not believe that the action I took in pardoning President Nixon had any impact on any other mandate that that special prosecutor's office had.

MANN: What response would you have if the special prosecutor's office now requested access to certain of the tapes now in the custody of the Government?

PRESIDENT: The material that is still held by the Government, and my understanding of the Supreme Court's decision permits the special prosecutor to obtain any of the material for its responsibility. And I, of course, not in a personal way, would make certain that that information was made available to the special prosecutor's office.

MANN: According to press reports, Mr. Clement Stone visited President Nixon on Sept. 2 and, thereafter, met with you in Washington. Are you at liberty to tell us the gist of the communication involving President Nixon from Mr. Stone to you?

PRESIDENT: Mr. Stone came to see

Continued on Following Page

Continued from Preceding Page

me about a program that he's used very successfully in his business—a program which he's very proud of and he was urging me to institute it in the various bureaus and departments of the Federal Government. There was no other message conveyed by him from Mr. Nixon to me.

MANN: Did you ever discuss the pardon with former President Nixon after his resignation and prior to the granting of the pardon?

PRESIDENT: Will you repeat that again, please?

MANN: Did you have any personal conversations with former President Nixon concerning the pardon between his resignation and Sept. 8?

PRESIDENT: Absolutely not.

MANN: Now in response to Mr. Edwards' question about equal justice under the law, I know that you make a distinction that here we are talking about the office of President of the United States, but let's assume that we are talking about the president of a bank, the Governor of a state, or Chief Justice of the United States Supreme Court in whose mind those are very high political offices, do you think any of those persons who are collectively criminally culpable through resignation should be entitled to any treatment different from any other criminal?

PRESIDENT: Mr. Mann I don't think I should answer a hypothetical question of that kind. I was dealing with reality and I have given in my best judgment the reasons for the action that I took. And to pass judgment on any other person or individual holding any other office in public or private I think it would be inappropriate for me.

MANN: The — you have heard the maxim that the law is no respecter of persons. Do you agree with that?

PRESIDENT: Certainly it should be.

MANN: Thank you, Mr. President.

HUNGATE: The gentleman from Iowa, Mr. Mayne.

REPRESENTATIVE WILEY MAYNE, REPUBLICAN OF IOWA: Thank You, Mr. Chairman, Mr. President, I believe that the chairman and others in their questioning have established very clearly that your appearance here today is an entirely voluntary one on your part, that it was your idea, that you had not been requested by the committee to come in person, that we had indicated that it would be entirely satisfactory as far as we were concerned if some assistant appeared instead.

PRESIDENT: That is correct, sir.

MAYNE: I do not think, however, that it has yet been made clear in the record, and I think this should be, that it is also true that you were willing to come and to tell this full story, as you have done, before the committee and on television before the American people much earlier than today. Is that not true?

PRESIDENT: Yes. I think the original schedule was set for about a week ago, I've forgotten the exact date.

MAYNE: Well, my recollection — and you can correct me if I am wrong — is that as early as Sept. 30, you offered and volunteered to appear before the sub-committee at our next regular meeting, which would have been on Sept.—on Oct. 1. But it was indicated to you that that would be too early for the committee to be able to accommodate such an appearance.

PRESIDENT: I don't recall that detail, but when I indicated that I would voluntarily appear, a member of my staff met with, I think, Chairman Hungate, and between them they tried to work out what was an acceptable agreeable time as to when I should appear.

MAYNE: There was, of course, the

concern which developed in the subcommittee as to whether there would be any possible jeopardy to the impaneling of the jury in the Watergate cases. But I think this timetable should be established and I would ask the Chairman if that is not his recollection, that originally the President did say that he would be glad to appear on Oct. 1.

HUNGATE: Not being under oath, the chair is glad to reply. The gentleman's recollection is the same as mine.

MAYNE: Thank you, Mr. Chairman, I just think the point should be made that there has been no stalling at all, or delay, on the part of the President in making this appearance, but that he was not only willing to make the statement but to do it much earlier.

HUNGATE: If the gentleman would yield briefly.

MAYNE: I'm happy to yield

HUNGATE: That is precisely the fact. And it was consideration on behalf of many of us concerning the proper effect on any trials that held us till this day.

MAYNE: Now, Mr. President, I think there was perhaps one part of Mr. Kasstentmeier's questioning of you that was left unanswered, and I'm going to try to go into that again. Did you by granting this pardon have any intention of stopping the investigations of any other defendants or potential defendants?

PRESIDENT: None whatsoever.

MAYNE: Now, Mr. President, ever since I first heard of the Watergate break-in I have felt that this was a matter which should be fully investigated and prosecuted, and that anyone found to be criminally involved should be punished as provided by the law. And I've repeatedly stated I thought our American system of justice as administered in the courts was fully capable of handling the situation if permitted to proceed without interference.

I've been apprehensive that the activities of some of the legislative committees and the large amount of publicity attending upon these activities might make it impossible for our court system to function as it should. And I've also been fearful that the executive branch would intervene to limit or handicap the normal functioning of the courts.

Now Mr. President, I must say to you that I am deeply concerned that both the legislative and executive branches have indeed interfered with our courts, making it extremely difficult for the traditional American system of justice to proceed in the regular manner in this case. And I was very disturbed by

the granting of this pardon, particularly at such an early stage, even though certainly there is no question that under the law you had the right to act as you did.

Now I realize that hindsight is always better than foresight, but I'm wondering if after all that has happened and with further opportunity for reflection if you do not now feel that you perhaps acted too hastily in this case.

PRESIDENT: Mr. Mayne, I have thought about that a great deal, because there has been criticism of the timing. But as I reviewed my thoughts prior to the granting of the pardon, I had to look at this factual situation. If I granted the pardon when I did, it would as quickly as possible achieve the results that I wanted, which was to permit our Government, both the Congress and the President, to proceed to the solution of the problem.

Now, some people say in their criticism—and I understand it, and I'm not critical of the points they raise—I should have waited until Mr. Nixon was indicted, inferring that I should have then pardoned him if I was going to do so.

Well, other people say that I should have waited until he was convicted, if

he was convicted, and at that time I should have pardoned him.

Others have indicated that I should have waited for a conviction and a jail sentence, if that were the result.

Now, all of that process, whether it's the indictment, the possible conviction, a conviction plus a jail sentence, would have taken, as I've tried to explain, at least a year and probably much longer. And during that whole period of time, Mr. Mayne, all of the things that I wanted to avoid, namely, the opportunity for our Government, the President and the Congress and others, to get to the problems we have, would have been, I think, deeply upset and roadblocked.

So I'm convinced, after reflection, as I was previously, that the timing of the pardon was done at the right time.

MAYNE: Thank you, Mr. President.

REPRESENTATIVE ELIZABETH HOLTZMAN, *DEMOCRAT OF NEW YORK: Thank you, Mr. Chairman. And, Mr. Ford, I, too, wish to applaud your historical appearance here today.

At the present time, however, I wish to express my dismay that the format of this hearing will not be able to provide to the American public the full truth and all the facts respecting your issuance of a pardon to Richard Nixon.

Unfortunately, each member of this committee will have only five minutes in which to ask questions about this most serious matter; and unfortunately, despite my urging of the committee to try and provide sufficient time for each committee member to ask the questions that were appropriate, the committee to prepare fully for your coming by calling other witnesses such as Alexander Haig, Mr. Buchan, Mr. Becker, and has failed to insist also on full production of documents by you respecting the issuance of this pardon.

And I must confess my own lack of easiness at participating in a proceeding that has raised such high expectations, and I unfortunately will not be able to respond to them.

I would like to point out, Mr. President, that the resolutions of inquiry which have prompted your appearance here today have resulted from very dark suspicions that have been created in the public's mind.

Perhaps these suspicions are totally unfounded, and I sincerely hope that they are. But, nonetheless, we must all confront the reality of these suspicions, and the suspicions that were created by the circumstances of the pardon which you issued, the secrecy with which it was issued, and the reasons for which it was issued, which made people question whether or not in fact there was a deal.

PRESIDENT: May I comment there? I want to assure you, the members of this subcommittee, members of the Congress and the American people there was no deal, period, under no circumstances.

HOLTZMAN: Well, Mr. President, I appreciate that statement and I'm sure many of the American people do as well. But they also are asking questions about the pardon, and I'd like to specify a few of them for you so that perhaps we can have some of these answered.

I think from the mail I've received from all over the country as well as my own district, I know that the people want to understand how you can explain having pardoned Richard Nixon without specifying any of the crimes for which he was pardoned? And how can you explain pardoning Richard Nixon without obtaining any acknowledgement of guilt from him.

How do you explain the failure to consult the Attorney General of the United States with respect to the issuance of the pardon, even though in your confirmation hearings you had indicated that the Attorney General's opinion would be critical in any decision to pardon the former President?

How can the extraordinary haste in

which the pardon was decided on, and the secrecy with which it was carried out, be explained?

And how can you explain the fact that the pardon of Richard Nixon was accompanied by an agreement with respect to the tapes which in essence, in the public mind, hampered the special prosecutor's access to these materials—and was done, also in the public's mind, in disregard of the public's right to know the full story about Richard Nixon's misconduct in office?

And in addition, the public, I think, wants an explanation of how Benton Becker was used to represent the interests of the United States in negotiating the tapes agreement when at that very time he was under investigation by the United States for possible criminal charges.

And how, also, can you explain not having consulted Leon Jaworski, the special prosecutor, before approving the tapes agreement?

And I think, Mr. President, that these are only a few of the questions that have existed in the public's mind before, and, unfortunately, still remain not resolved.

And since I have a very brief time, I would like to ask you in addition to these questions one further one. And

* ALSO COL. 6

that is, that suspicions have been raised that the reason for the pardon and the simultaneous tapes agreement was to ensure that the tape-recording between yourself and Richard Nixon never came out in public. (recordings - WXP)

To alleviate this suspicion once and for all, would you be willing to turn over to this subcommittee all tape-recordings of conversation between you and Richard Nixon?

PRESIDENT: Those tapes, under an opinion of the Attorney General, which I sought, according to the Attorney General—and I might add, according to past precedent—belong to President Nixon.

Those tapes are in our control. They are under an agreement which protects them totally, fully, for the special prosecutor's office or for any criminal proceeding. Those tapes will not be delivered to anybody until a satisfactory agreement is reached with the special prosecutor's office.

We have held them because his office did request that. And as long as we have them held in our possession for the special prosecutor's benefit, I see no way whatsoever that they can be destroyed, that they can be kept from proper utilization in criminal proceedings.

Now these tapes belong to Mr. Nixon, according to the Attorney General; but they're being held for the benefit of the special prosecutor. And I think that's the proper place for them to be kept.

HUNGATE: The gentleman from Maryland, Mr. Hogan.

REPRESENTATIVE LAWRENCE J. HOGAN, REPUBLICAN OF MARYLAND: Thank you, Mr. Chairman. I'm frankly amazed at my good friend,

the gentledady frm New York in her accusatory opening speech, because certainly the gentledady knows that it is the usual and ordinary and routine procedure of this subcommittee and this committee to operate under the five-minute rule. There is nothing extraordinary about us today allocating five minutes of time for questioning to each member of the committee. We always operate this way. Her other observation about not doing any preparatory work by calling other witnesses, was rejected, as far as I recall, by all other members of the subcommittee on the basis that this resolution of inquiry is directed to the President of the United States, and properly so. So it would be totally inappropriate for the resolution of inquiry to address itself to individuals other than the subject of

that resolution of inquiry.

Mr. President, I would like to join, too, in commending you for the statement and your openness and candor in coming in this very historic event.

And frankly I'm concerned that some of the questioning by my colleagues, asking questions—"if all men aren't equal under the law"—because, certainly, being the outstanding lawyers that they are they know that the pardoning power itself is inherently inequitable.

But for a larger purpose it grants to the chief executive of the Federal Government or the state in the case of state crimes to pardon individuals who may or have been indicted or convicted of crimes. So we should not expect this to apply as if there were a trial of these criminal offenses and furthermore we also know that in our system of criminal justice even the prosecutors themselves exercise prosecutor discretion.

There is no question whatsoever that the Constitution gives to the President of the United States broad and absolute power to pardon individuals of criminal offenses.

We also know from the debates of the framers of the Constitution that they specifically rejected including in the Constitution the words "after conviction." They also in their debate at that time indicated situations where it might be necessary or desirable to grant a pardon even before indictment, as was the case in this instance.

Now Mr. President, I know that you followed very carefully the deliberations of this committee during the impeachment inquiry. And I know you're also aware that this committee unanimously concluded that the President was guilty of an impeachable offense growing out of obstruction of justice. So in a sense couldn't we not say that this was at least the basis for a possible criminal charge which was already spread on the record with ample evidence to justify it?

So those who say you should have waited until there were formalized charges, really are overlooking the fact that there was a very formalized charge and indictment, if you will, by this committee.

PRESIDENT: Well, the unanimous vote of the House Committee on the Judiciary—all 358 members—certainly is very substantial evidence that the former President was guilty of an impeachable offense.

There's no doubt in my mind that that recommendation of this full committee would have carried in the House, which would have been even more formal as an indication of criminal activity or certainly, to be more specific, an impeachable offense.

And of course, the prospect in the Senate with such a formidable vote in the committee and in the House would have been even more persuasive.

HOGAN: Mr. President, referring to the memorandum from Mr. Ruth to Mr. Jaworski, enumerating the 10 possible criminal offenses, it's true that this committee addressed itself, if I'm not mistaken, to every single one of these charges and assessed evidence as to each one of them, and we found them wanting, that they were not sufficient justification for an impeachable offense. And the last paragraph of that memorandum says, and I quote, none of these matters at the moment rises to the level of our ability to prove even a probably criminal violation by Mr. Nixon.

Now this memorandum does not include the obstruction of justice, which I addressed myself to earlier. So I think we can logically assume that there would not have been any indictments resulting from Mr. Jaworski's activities other than in the area of obstruction of justice and with further corroboration of that point I allude to a story in The Wall Street Journal yesterday where Mr. Jaworski, who incidentally not only agrees with your pardon, but also the legality and the timeliness of it, and he says very specifically that there was going to be no additional disclosures resulting from

his activities that the public was not already aware of relating to Mr. Nixon.

So those who are saying we should wait until there's a formal charge I think are missing the point that there already has been a formal charge approved by this committee.

Now Mr. President, don't you feel that the very acceptance of the pardon by the former President is tantamount to an admission of guilt on his part?

PRESIDENT: I do, sir.

HOGAN: So those who say again that they would have preferred that the President admit his culpability before a pardon being issued again are overlooking that fact.

PRESIDENT: The acceptance of a pardon, according to the legal authorities, and we've checked them out very carefully, does indicate that by the acceptance the person who has accepted it does, in effect, admit guilt.

HOGAN: Thank you, Mr. President, and again I'd like to express my personal appreciation for your candor and your openness and your cooperation with the co-equal branch.

PRESIDENT: Thank you very much.

HUNGATE: Mr. President, as you can see, the peculiar strength of this subcommittee lies in the fact that the subcommittee members bring so much knowledge to it and the subcommittee chairman takes a little away. And I noticed in your Page 10 of your statement that when you were first hit with the possibility of this responsibility you indicated you wanted to talk to your wife before making decisions. Mr. President, did you do that?

PRESIDENT: I certainly did, Mr. Chairman, because the probability or possibility of my becoming President obviously would have had a significant impact on her life as well as our life.

HUNGATE: That restores my feelings that if you'd talked to her you'd have waited until indictment or Christmas Eve.

Let me ask if any attempt was made to you while you were a Representative to contact the Federal pardon attorney as to his opinion as to customary procedures followed in issuing a pardon?

PRESIDENT: I did not, sir.

HUNGATE: Now Mr. President, I go to page 20 of the statement and I'm addressing myself to the health question.

HUNGATE: In the first responses provided, the press releases—Page 3 refers to Sept. 16, now, as the date of this press conference after the pardon decision in which you are quoted: "I have asked Dr. Lukash, who is the head physician in the White House, to keep me posted in proper channels as to the former President's health. I have been informed on a routine day to day basis but I don't think I'm at liberty to give information."

And my question is, Mr. President, had he reported prior to the pardon date or only after?

PRESIDENT: Dr. Lukash gave me no information concerning President Nixon's health prior to the time that I issued the pardon.

He did, at my request, when I heard rumors about the former President's health, keep me posted in proper channels. But that all occurred after the pardon took place.

DENNIS: Mr. Chairman, I would just like to request that we make a part of the record the text of the opinion of the United States Supreme Court in *ex parte Garland* for Wallace 333, and also the opinion of the United States Supreme Court in verdict against the United States 236US79, which deals with the point that a pardon must be accepted.

HUNGATE: Without objection, it will be made part of the record.

DENNIS: And, Mr. Chairman, I would also like to make a part of the record, if I may, the article referred to by my colleague, Mr. Hogan, which appeared in The Wall Street Journal of Oct. 16,

1974, and is headed: "The Pardon of Nixon Was Timely, Legal Jaworski Believes."

HUNGATE: Without objection, it is so ordered.

PRESIDENT: Mr. Chairman, may I add to something I said just to make it correct?

HUNGATE: Yes, sir.

PRESIDENT: Somebody asked about

when I last saw the President. I said that I had seen him on the 9th. I did, as he departed. But I had also seen the President the morning of the 8th at the time I was asked to come and see him. And at that time we spent an hour and 20 minutes together, or thereabouts; when he told me that he was going to resign. So I saw him both the 8th and the 9th, just to make the record accurate.

DENNIS: I yield to the gentleman from Wisconsin for a question.

KASTENMEIER: Mr. Chairman, I would like to, for the record, indicate that the statement of the gentleman from Maryland, Mr. Hogan, to the effect that the proposal that this subcommittee try to contact certain staff members such as General Haig and others, was supported by me. I think it would have been excellent.

We have in the past done very well in terms of staff work preliminary to hearings that might have helped put some of the questions Miss Holtzman has to rest.

Mr. President, you indicated that, as far as Mr. Haig was concerned, that he had suggested certain options to you but did not in fact make a recommendation to you with respect to a pardon. Is that correct?

PRESIDENT: That is correct. I answered that, I think, as fully as I can in my prepared statement. He discussed the options, he made no recommendations.

KASTENMEIER: Which other persons, to you personally, made recommendations that the former President be pardoned from that time in early August to the day of Sept. 6, when you made your decision.

PRESIDENT: No other person to my knowledge made any recommendation to me from that time until the time that I made a decision about Sept. 6. Nobody made any recommendation to me for the pardon of the former President.

KASTENMEIER: With respect to discussions between General Haig and Mr. Nixon, or other matters in question too, you indicated you had no personal knowledge, both in writing and, I think, in your statement today. I take it you would have no objection if the subcommittee sought to question Mr. Haig or others on the subject before us this morning to supplement this hearing and this inquiry?

PRESIDENT: I don't think that's within my prerogative. I have come here to testify as to the specific facts as I know them, but the subcommittee does is a judgment for the subcommittee and not me.

HUNGATE: The chair is advised that the House is in recess, waiting for the conclusion of this hearing before reconvening. So, if I might, I would yield to Mr. Hogan for a question at this point, and then to Miss Holtzman for a question. And we will then conclude. Mr. Hogan.

HOGAN: Thank you, Mr. Chairman. Mr. President, on Page 20 of your statement you talk about the health issue and that you had not gotten any official reports from physicians about — that were controlling in your decision.

You state that observations were reported to you from others. Now there have been press reports that Dr. Kissinger is alleged to have said to you that he feared that former President Nixon would commit suicide. That appeared in

several news accounts.

Is there any truth to that?

PRESIDENT: There's no truth to it whatsoever. As far as I know.

HOGAN: Well, it appeared in The New York Times, The Washington Post on two occasions, and is alluded to in a research paper prepared for the subcommittee.

PRESIDENT: There was no discussion between Dr. Kissinger and myself that included any such comment.

HOGAN: I think, if I might add a gratuitous comment, Mr. Chairman, that much of the controversy has been generated by the press, by just such erroneous statements that have been given wide circulation. Thank you, Mr. President.

HUNGATE: I'll ask for one concise question, because we want to respect the time.

EDWARDS: Mr. President, what

* P. 19, COLS. 3 + 5
(ASTERISKS)

were the precise instructions given to Benton Becker by you when he went to San Clemente to negotiate the—Mr. Nixon's acceptance—of the pardon?

PRESIDENT: The precise instructions given to Mr. Becker were actually given by my counsel, Mr. Buchan. In general I knew what they were. They were instructions to negotiate the protection of those documents—including the tapes—for the benefit of the special prosecutor in whatever use he felt was essential. And at the same time to keep them inviolate during a period of time which we felt was a proper one.

EDWARDS: But not to offer to pardon unless that agreement had been

PRESIDENT: Mr. Edwards, these negotiations as to the custody or ownership of the documents, including tape, were undertaken prior to Aug. 27, because we were more or less besieged—when I say “we,” the White House—as to what to do with those documents, including tapes. And that negotiation had no relevance whatsoever to the decision on my part to pardon the President.

EDWARDS: Thank you, Mr. President.

HUNGATE: The Chair would remind all of the constraints of time, and call on Miss Holtzman for one final question.

HOLTZMAN: Thank you, Mr. Chairman. Mr. Ford, you stated that the theory on which you pardoned Richard Nixon was that he had suffered enough. And I'm interested in that theory, because the logical consequence of that is that somebody who resigns in the face of virtually certain impeachment or somebody who is impeached, should not be punished because the impeachment or the resignation in face of impeachment is punishment enough.

And I wondered whether anybody had brought to your attention the fact that the Constitution specifically states that even though somebody is impeached, that person shall, nonetheless, be liable to punishment according to law?

PRESIDENT: Mrs. Holtzman, I was fully cognizant of the fact that the President on resignation was accountable for any criminal charges. But I would like to say that the reason I gave the pardon was not as to Mr. Nixon himself. I repeat—and I repeat with emphasis—the purpose of the pardon was to try and get the United States, the Congress, the President and the American people focusing on the serious problems we have both at home and abroad.

And I was absolutely convinced then—as I am now—that if we had had this

series—an indictment, a trial, conviction, and anything else that transpired after that—that the attention of the President, the Congress and the American people would have been diverted from the problems that we have to solve.

And that was the principal reason for my granting of the pardon.

SMITH: Mr. Chairman, just before we adjourn this hearing I again would like to commend the President and thank him for coming. I think, Mr. President, that you have probably opened a new era between the executive and the legislative departments, and I am very happy for it.

PRESIDENT: Mr. Chairman, I want to express to you and to the other members of the committee, the subcommittee, my appreciation for the fine manner—and I think the fair way—in which this meeting was held this morning.

I felt that it was absolutely essential, because I'm the only one who could explain the background and the decision-making process. And I hope, as I said in my opening statement, Mr. Chairman, that I have at least cleared the air so that most Americans will understand what was done and why it was done. And, again, I trust that all of us can get back to the job of trying to solve our problems both at home and abroad. I thank you very, very, much.

HUNGATE: Mr. President, on behalf of the subcommittee, we express our appreciation for your appearance here today, and recognition of the responsibility we all have to complete this work and get on with the business.

The transcript will be furnished as quickly as possible to members of the subcommittee. The subcommittee will adjourn subject to the call of the chair.