The Texts of Letters and Statements Pertaining to

757 5 WASHINGTON, July 23— 7 Following are the texts of a 9 Letter from the special Water-7 gate prosecutor gate prosecutor, Archibald Cox, to J. Fred Buzhardt, Presidential counsel dealing with Watergate; a letter from the President to Senator Sam q. 3 J' the President to Senator Sam J. Ervin Jr., chairman of the U Senate Select Committee; a U letter from Charles Alan Wright, a special White House (consultant, to Mr. Cox; a statement by Mr. Cox, and) remarks of Senators Ervin Cand Howard H. Baker Jr. fol-vlowing the President's refusal to make the tapes available:

 \rightarrow Cox Letter to Buzhardt

Dear Mr. Buzhardt: I am writing to request ac-cers to the recordings of certain conversations be-tween the President and various members of the White House staff and oth-ers whose conduct is under investigation in connection investigation in connection with the alleged cover-up of the break-in at the Demo-cratic National Committee offices. The conversations are listed below:

May I emphasize three essential aspects of this request:

First, the request is part of investigation into serious criminal misconduct — the obstruction of justice. The tapes are material and im-portant evidence — quite apart from anything they show about the involvement or noninvolvement of the or noninvolvement of the President—because the con-versations recorded in all probability deal with the ac-tivities of other persons un-der investigation. Indeed, it is not implausible to suppose that the reports to the Presi-dent on these occasions may dent on these occasions may themselves have been made pursuant to a conspiracy and as part of a cover-up.

as part of a cover-up. Second, furnishing the tapes in aid of an investiga-tion into charges of criminal conspiracy plainly raises none of the separation-of-powers issues you believe to be involved in furnishing so-called "Presidential papers" to the select committee. The select committee is seeking select committee is seeking information—as I understand the position—solely in order the position—solely in order to recommend legislation. Whatever fears you may en-tertain that furnishing the tapes in aid of the select committee's legislation func-tion would set a precedent for furnishing Presidential papers to other legislative committees are plainly ir-relevant to my request. For my request involves only a my request involves only a grand jury investigation regrand jury. investigation re-sulting from highly extraor-dinary circumstances. No question of precedent arises because the circumstances almost surely will never be repeated repeated.

No Restrictions Urged

Third, I would urge that the tapes be furnished for the tapes be furnished for use in my investigation with-out restriction. This pro-cedure strikes me as the method of establishing the truth which is most fair to everyone concerned includ truth which is most fair to everyone concerned, includ-ing the President. It is prop-er to point out, however, that if you thought it essen-tial to furnish the papers only to the grand jury under the rules pertaining to grand jury documents, an appropriate procedure could be devised. This is an additional circumstance distinguishing the present investigation from the situation before the select committee select committee.

The particular conversations to which my present request pertains have been carefully selected as those which other evidence in our possession identifies as most material to the investigation, wit

- Meeting of June 20, 1972, in the President's E.O.B. Office between the President
- Office between the President and Messrs. Ehrlichman and Haldeman from 10:30 A.M. to 1:00 P.M. (time approximate).
 2. Telephone conversation of June 20, 1972, between the President and Mr. Mitchell from 6:08 to 6:12 P.M.
 3. Meeting of June 30, 1972, in the President's E.O.B. Office between the President Messrs. Haldeman and Mitchell from 12:55 to 2:10 P.M.
- Meeting of Sept. 15, 1972, In the President's Oval Of-fice between the President and Mr. Dean from 5:15 to 6:17 P.M. Mr. Haldeman joined this meeting at at 5:27 P.M.
- 5. Meeting of March 13, 1973, In the President's Oval Office between the President and Mr. Dean from 12:42 to 2:00 P.M. Mr. Haldeman was present from 12:43 to 12:55 P.M.
- 6. Meeting of March 21, 1973, In the President's Oval Office between the President and Messrs. Dean and Haldeman from 10:12 to 11:55 A.M.
- Meeting of March 22, 1973, in the President's E.O.B. Office between the Presi-dent and Mr. Dean from 1:57 to 3:43 P.M. Mr. Ehr-lichman joined this meet-ing at 2:00 P.M., and Messrs. Haldeman and Mitchell joined et 2:01 P.M. Mitchell joined at 2:01 P.M. Meeting of April 15, 1973, in the President's E.O.B. Office between the Presi-dent and Mr. Dean from 9:17 to 10:12 P.M. (You will recall that this is the conversation the recording of which I requested as early as June 11 and which you declined to furnish under the misapprehension that there was only a sub-

ou will realize that as the investigation proceeds it may be necessary to re-quest additional record-ings

uucc ings. Sincerely, ARCHABALD Cox, Cocial prosecutor

Nixon Letter to Ervin Dear Mr. Chairman:

Dear Mr. Chairman: I have considered your re-quest that I permit the com-mittee to have access to tapes of my private conver-sations with a number of my closest aides. I have con-cluded that the principles stated in my letter to you of July 6th preclude me from complying with that request, and I shall not do so. Indeed the special nature of tape recordings of private conver-sations is such that these principles apply with even greater force to tapes of pri-vate Presidential conversa-tions than to Presidential papers. papers.

If release of 'the tapes

would settle the central questions at issue in the Watergate inquiries, then their disclosure might serve a substantial public interest that would have to be weighed very heavily against the negatives of disclosure. The fact is that the tapes

would not finally settle the central issues before your central issues before your committee. Before their exist-ence became publicly known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth Wavarar equip the truth. However, as in any verbatim recording of informal conversations, they informal conversations, they contain comments that per-sons with different perspec-tives and motivations would inevitably interpret in differ-ent ways. Furthermore, there are inseparably interspersed in them a great many very frank and very private com-ments, on a wide range of issues and individuals, wholly extraneous to the commit-tee's inquiry tee's inquiry.

Even more important, the tapes could be accurately understood or interpreted only by reference to an enormous number of other documents and tapes, so that to open them at all would begin an endless process of dis-closure and explanation of private Presidential records totally unrelated to Water-gate, and highly confidential in nature. They are the gate, and inghry confidential in nature. They are the clearest possible example of why Presidential documents must be kept confidential. Accordingly, the tapes, which have been under my cole personal control will

which have been under my sole personal control, will remain so. None has been transcribed or made public and none will be. On May 22d I described my knowledge of the Water-gate matter and its after-math in categorical and unambiguous terms that I know to be true. In my letunambiguous terms that I know to be true. In my let-ter of July 6th, I informed you that at an appropriate time during the hearings I intend to address publicly the subjects you are consider-ing. I still intend to do so and in a way that precerve and in a way that preserves the constitutional principle the constitutional principle of separation of powers, and thus serves the interest not just of the Congress or of the President, but of the people.

Sincerely, Richard Nixon.

Wright Letter to Cox

Dear Mr. Cox: 23 Jun Mr. Buzhardt has asked Mr. Buzhardt has asked that I respond to your letters to him of June 20th, July 18th and July 20th in which you made certain requests with regard to tape record-ing of or about conversations between the Descident and between the President and various members of the various members of the White House staff and others.

The President is today re-fusing to make available to the Senate committee ma-terial of a similar nature. Enclosed is a copy of his letter of this date to Senator Enclosed is a copy of his letter-of this date to Senator Ervin stating his position about the tapes. I am in-structed by the President to inform you that it will not be possible to make available to you the recordings that you have requested.

In general the reasons for the President's decision are the same as those that under-

lay his response to the Senate committee. But in your letter of July 18 you state that furnishing the tapes in aid of an investigation into charges of criminal conspir-acy raises none of the sep-aration-of-powers issues that are raised by the request from the Senate committee. You indicated a similar position when we met on June 6th. At that time you sug-gested that questions of sep-aration of powers did not arise since you were within the Executive Branch, though, as I recall you then added the Executive Branch, though, as I recall, you then added that your position is a little hard to describe since, in your view, you are not subject to direction by the President or the Attorney General.

the Attorney General. I note that in your subse-quent letters, and particularly that of July 18 in which you argue that the separation-of-powers argument is inapplic-able, there is no suggestion that you are a part of the Executive Branch. Indeed, if you are an ordinary prosecu-tor and thus part of the Ex-ecutive Branch as well as an officer of the court you are officer of the court, you are subject to the instructions of subject to the instructions of your superiors, up to and in-cluding the President, and can have access to Presidential papers only as and if the President sees fit to make them available to you.

But quite aside from the consideration just stated, there is an even more fun-damental reason why sepa-ration-of-powers considera-tions are fully as applicable to a request from you as to one from the Senate committee. It is clear, and your letter of the 18th specifically states, that the reason you are seeking these tapes is to use some or all of them be-fore grand juries or in crimi-nal trial. Production of them nal trials. Production of them to you would lead to their use in the courts, and ques-tions of separation of powers are in the forefront when the most confidential documents of the Presidency are sought for use in the Judicial Branch. Indeed most of the limited

case law on executive" privi-lege has arisen in the contest of attempts to obtain execu-tive documents for use in the courts

Other National Interests

The successful prosecution of those who have broken the laws is a very important national interest, but it has long been recognized that there are other national inlong been recognized unat there are other national in-terests that, in specific cases, may override this. When Congress provided in the Jencks Act, 18 U.S.C., Sec-tion 3500 (d), that the United States may choose to refuse 5 to disclose material that the court has ordered produced, even though in some in-stances this will lead to a a mistrial and to termination of the prosecution, it was mere-ly recognizing that, as the courts had repeatedly held, there are circumstances in a which other legitimate na-tional interests requiring that documents be kept confiden-tial outweigh the interest in a punishing a particular malepunishing a particular malefactor.

factor. Similiarly in civil litigation to the United States may feel to obliged to withhold relevant information, because of more compelling governmental in-terests, even though this

the President's Refusal to Release Electronic Tapes

may cause it to lose a suit it might otherwise have won. The power of the President to withhold confidential docto withhold confidential doc-uments that would otherwise be material in the courts comes from "an inherent executive power which is protected in the constitu-tional system of separation of power." United States v. Reynolds, 345 U.S. 1, 6n.9 (1953)

(1953). In your letter to Mr. Buz-hardt of July 10th you guoted Mr. Richardson's statement to the Senate Judiciary Committee in which he concluded that it was the President's intention "that whatever should be made public in terms of the public public in terms of the public interest in these investiga-tions should be disclosed ..." That is, of course, the President's view, but it is for the President, and only for the President, to weigh whether the incremental ad-vantage that these tapes would give you in criminal proceedings justifies the seri-ous and lasting hurt that disclosure of them would do to the confidentiality that is imperative to the effective functioning of the Presi-dency. In this instance the President has concluded that it would not serve the public interest to make the tapes available.

Sincerely,

CHARLES ALAN WRIGHT.

Cox Statement This afternoon 1 received This afternoon I received from the White House a letter declining to furnish tapes of conversations on the Presi-dent's telephone or in his office. Eight specific tapes were requested by me in a letter dated July 18, 1973, a copy of which is attached.

Careful study before requesting the tapes convinced me that any blanket claim of me that any blanket claim of privilege to withhold this evi-dence from a grand jury is without legal foundation. It therefore becomes my duty promptly to seek subpoenas and other available legal procedures for obtaining the evi-dence for the grand jury. We will initiate such legal meas-ures to secure the eight tapes and certain other evidence as soon as proper papers can be prepared.

The effort to obtain these tapes and other documentary evidence is the impartial pur-suit of justice according to suit of justice according to law. None of us should make assumptions about what the tapes will show. They may tend to show that there was criminal activity — or that there was none. They may tend to show the guilt of particular individuals — or their inocence. The one clear particular individuals — or their innocence. The one clear point is that the tapes are evidence bearing directly up-on whether there were criminal conspiracies, including a conspiracy to obstruct justice, among high Government officials.

Happily, our is a system of government in which no man is above the law. Since Chief Justice Marshall's decision in Marbury V. Madison in 1803, the judicial branch has ruled the judicial branch has ruled upon the legal duties as well as the constitutional privi-leges of the chief executive. I dispute the constitutionality of the President's claim of privilege as applied to the ad-ministration of the criminal

laws, but I do not question its bona fides. In seeking and obeying a constitutional rul-ing with respect to these papers and records, we would promote the rule of ,law essential to both liberty and order.

Comments by Ervin

In the interest of time, I in the interest of time, 1 think perhaps I should read into the record the communi-cations which I have had from the committee. The first is a letter from the White House, Washington, July 23, addressed to me addressed to me. "Dear Senator,

"Dear Senator, "In view of the interven-ing events since our tele-phone conversation on July 12, I know of no useful purpose that would be served by our having a meeting at this time. If you feel otherwise, please have Mr. Edmisten contact Mr. Timmons, and he will arrange a time for a meating.

will arrange a time for a meeting. "Sincerely, Richard Nixon." Well, at long last, I have got something I agree with the President on in connec-tion with this matter. If the Devident does not this there tion with this matter. If the President does not think there is any useful purpose that be obtained by our meeting to-gether, I will not dissent from that view, so I will not ask for the privilege of visit-ing the White House. [At this point Senator Er-vin read into the record the text of the letter from Presi-dent Nixon refusing to turn the tapes over to the com-mittee.]

mittee.]

Upon the receipt of this communication from the White House, the select com-mittee held, a meeting and unanimously voted to authorize and direct the chairman to issue two subpoenas, one requiring the President to produce the tapes which will be described in the subpoena, and the other one requiring the President to make avail able to the committee - I should have said requiring the President to make available to the committee the tapes which will be described the subpoena, and the in Presidential papers—that is, the White House papers— that are to be described in the subpoena.

This is a rather remarkable letter about the tapes. If you will notice, the President says he has heard the tapes or some of them, and they sustain his position. But he says he's not going to let anybody else hear them for fear they might draw a dif-ferent conclusion.

In other words, the President says that they are sus-ceptible of, the way I con-strue it, two different inter-pretations, one favorable to his aides and one not favor-able to his aides.

I deeply regret this action of the committee of the committee. I have very different ideas of sep-aration of powers from those expressed by the President. expressed by the President. If such a thing as executive privilege is created by the doctrine of separation of powers, it has these attri-butes. First, if it exists at all, it only exists in connection with official duties.

Second, under no circum-stances can it be invoked on either alleged illegal activi-ties or political campaign ac-tivities tivities.

I am certain that the doc-trine of separation of powers does not impose upon any President either the duty or the power to undertake to separate a Congressional committee from access to the truth concerning alleged crim-

I was in hopes that the President would accede to the request of this committee for these tapes and these

for these tapes and these papers. I love my country. I vener-ate the office of the Presi-dent, and I have the best wishes for the success of the incumbent, present incum-bent of that office, because he is the only President this country has at this time.

country has at this time. A President not only has constitutional powers which require him to see to it or require him to see to it or to take care that the laws be faithfully executed, and I think it's his duty under those circumstances to pro-duce information which duce information which would either tend to prove or disprove that criminal activities have occurred. But beyond that, the President of the United States, by reason of the fact that he hold the highest office in the gift of the American people, owes an obligation to furnish a high standard of moral lead-ership to this pation and hig ership to this nation and his constitutional duties, in my opinion, and undoubtedly his duty of affording moral lead-ership to the country place upon him some obligation under these circumstances.

We have evidence here that during the time the President was running for re-election to the highest office in the gift of the people of this nation that some of his campaign funds were found in the pos-session of burglars in the headquarters of the opposiheadquarters of the opposi-tion political party. And I think that high moral leadership demands that the President make available to this committee any information in the form of tapes or records which will shed some light on that crucial question: How did it happen that burglars were caught in the headquarters of caught in the headquarters of the opposition party with the President's campaign funds in their pockets and in their hotel bedrooms at the time? And I don't think the people of the United States are in-terested so much in abtruse arguments about the separa-tion of powers or executive tion of powers or executive privilege as they are in finding the answer to that question. I deeply regret that this

I deeply regret that this situation has arisen, because I think that the Watergate tragedy is the greatest trag-edy this country has ever suffered. I used to think that the Civil War was our coun-try's greatest tragedy, but I do remember that there were some redeeming features in some redeeming features in the Civil War in that there was some spirit of sacrifice and heroism displayed on. both sides. I see no redeem-ing features in Watergate.

Comments by Baker

Mr. Chairman, it is diffi-cult for me to express my disappointment that we ar-rive at the place where at least the leading edge of a confrontation on the ques-tion of separation of powers between the Congress and the White House is before us You have pointed out, I Mr. Chairman, it is diffithe White House is before us. You have pointed out, I am sure, that this committee

has authorized by unanimous vote the issuance of a subpoena duces tecum for cer-tain documents and certain portions of the so-called But-terfield tapes relevant to the inquiry of this committee. As my colleagues on the com-mittee know, I have tried as hard as I know how to find a way around this confronta-tion. I have suggested various and several alternative possibilities. Even now, I don't despair of hope that we can find a way to reconcile our differences in the conflict, that impends between the Congress and the executive department. But I concur with my colleugues on the committee in the evaluation committee in the evaluation that there was no other practical course of action except to authorize the action which has now been described and I voted for it and I support it.

I voted for it and I support it. I think the material sought by the subpoena duces tecum, are essential, if not vital, to the full, thorough inquiry mandated and re-quired of this committee. I shall refrain from ex-pressing my evaluation of the

pressing my evaluation of the entire situation, that is, the totality of the testimony and totairty of the testimony and the inferences to be drawn from it, until we have heard all of the information, all of the witnesses, all of the testimony, and examined all of the documents that are made available to us On Feb of the documents that are made available to us. On Feb. 24, 1974, or prior thereto, if the committee files its re-port at an earlier date, I will express my conclusions, but not before.

It is my fond hope, how-ever, that when we do finally get to the business of writing a report, that we have all of the available information and at we can in fact write definitive statement on that a definitive statement on Watergate-not trying to indict or punish anyone; cer-tainly not trying to persecute anyone nor to protect anyone.

The committee has been criticized from time to time for its absence of rules of evidence, the right of con-frontation, of cross-examina-tion by counsel, a number of other legal conocepts that we do not have. But we do not. have defendants, either, and we are not trying to create defendants. We are trying to find fact, to establish circumstances, to divine the causes, to ascertain the re-lationships that make up in toto the so-called Watergate affair. I am unhappy that it is necessary for us to come to the brink of a constitutional, the brink of a constitutional confrontation, and although that is a hackneyed phrase, it is an accurate phrase, a con-stitutional confrontation be-tween the Congress and the White House, a confrontation that has never been resolved in its totality by the courts, a principle and doctrine that has never been fully elabor-ated and spelled out, in order to fully discharge our obli-gation as a committee. But I think that is precisely where we are. we are.

I have no criticism of any person. I will not sit in judg-ment of any person or the conduct of any person or the conduct of any person until-all of the evidence is taken, but I can do no less than try-to gain all of the information available on which to base such a conclusion later. Thank you cir