Texts of House Panel Memorandums on Subpoena to Nixon on Watergate Data

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WASHINGTON, April 11—Following is the text of a memorandum presented today to the House Judiciary committee by counsel outlining the legal and historical precedents for the subpoena to President Nixon for documents in the Watergate case:

I. INTRODUCTION

The Constitution vests in the House of Representatives the sole power of impeachment(1). Implicit in the power to impeach are the power to inquire and the power to compel the giving of evidence. The full investigative power of the House has been delegated to the Committee on the Judiciary by H. Res. 803, adopted Feb. 6, 1974.

Because the impeachment power of the House is "the most undebatable express power from which to deduce an implied investigatory power," the House's authority to make impeachment inquiries "has been asserted from the first, and . . . has never been judicially questioned"(2). Indeed, the Supreme Court has contrasted the broad scope of the inquiry power of the House in impeachment proceedings with its more confined scope in legislative investigations(3). From the beginning of the Federal Government, Presidents have stated that in an impeachment inquiry the Executive Branch could be required to produce papers that it might withhold in a legislative investigation(4).

The power to inquire necessarily implies the further power to compel the production of testimonial and other evidence, to enforce compliance with a subpoena, and to punish noncompliance.(5) This memorandum discusses the alternative methods that are available to the House for this purpose.

Each of these methods presents problems, especially in the case of a subpoena duces tecum directed to the President. If the President refuses to comply, the practical difficulties of enforcing the subpoena may well be insurmountable, and for this reason this memorandum also raises the possibility that factual inferences may be drawn from presidential noncompliance with a subpoena or that noncompliance may itself be a ground for impeachment.

At the outset, it should be noted that the question of whether a subpoena duces tecum should issue to the President is separate from the question of the method of enforcement or the effect of noncompliance. The principle was stated early in our history, and reaffirmed only recently, that the lack of physical power to enforce process against a President is no reason why the process should not issue.(6)

It should not be presumed that rejection of a request for the production of evidence will be followed by disobedience of a subpoena, should one be issued. The President's legal position would be altered by service of a subpoena. Although the committee's request letters to the President's counsel specifically identified the materials to be produced and clearly expressed the will of the House acting through the committee, they do not have the legal effect of a subpoena. There is every reason to assume that the President would comply with a subpoena, lawfully issued by the committee for the purpose of its inquiry.(7)

From the outset the goal of the committee and its staff has been to obtain the materials it has requested. If the President complies with a subpoena and produces the materials the committee seeks, the committee and the House will be in a better position to evaluate fully and on the merits whether or not grounds for impeachment exist. Such an evaluation is preferable to one based on incomplete evidence or partly on the President's refusal to produce further evidence the committee considers necessary for its inquiry.

I. INTRODUCTION

(1) U.S. Const., Art. 1, 2, cl. 5.

(2) Dimock, "Congressional Investigating Committees" 98, 120 (1929).

(3) Kilbourn v. Thompson, 103 U.S. 168, 193 (1883). "If, indeed, any purpose had been avowed to impeach the Secretary" of the Navy, the Court said, "the whole aspect of the case would have been changed." See also Barry v. U.S. ex rel Cunningham, 279 U.S. 587, 616 (existence of broad inquiry power applicable "a fortiori" when House or Senate exercising special functions, as in impeaching, judging qualifications of Members, etc.).

In Senate Select Committee on Presidential Campaign Activities v. Nixon, ... F.Supp. .... (D.D.C., 1974), the District Court for the District of Columbia declined to order President Nixon to produce materials in response to a Congressional subpoena in aid of a legislative investigation, but stated that "Congressional demands, if they be forthcoming, for tapes in furtherance of the more juridical constitutional process of impeachment would present wholly different considerations." (Slip Opinion, Feb. 8, 1974, at 5).

(4) To cite a few examples of Presidential statements, in 1796 the House requested President Washington to furnish his secret instructions to John Jay concerning the negotiations of a treaty with England, apparently basing its request on the theory that it would be necessary for the House to appropriate funds to implement the treaty. Although he gave the Senate the papers because of its constitutional duty to ratify or reject treaties, Washington refused the House request on the ground that "the inspection of the papers asked for" could not "be relative to any purpose under the cognizance of the House . . . except that of impeachment, which [purpose] the resolution [of the House] has not expressed." The plain implication was that if the House request had been made pursuant to an impeachment inquiry, Washington would have honored it. I. J. Richradson, "Messages and Papers of the Presidents" 187 (1897).

Similarly, President Polk, while resisting disclosure of certain information, said that in an impeachment inquiry "all the archives and papers of the Executive Department, public or private, would be subject to inspection and control of a committee of [the House] and every facility in the power of the Executive be afforded to enable them to prosecute the investigation." He "cheerfully admitted" that the House, in an impeachment proceeding, could "investigate the conduct of all public officers under the government" and that

> the power of the House in the pursuit of this object would penetrate into the most secret recesses of the Executive Departments. It could command the attendance of any and every agent of the government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to tell all facts within their knowledge. [4 Id., 434-435]

John Quincy Adams, while a member of the House after his term as President, was of the opinion that the House's inquiry power was broader in an impeachment investigation than otherwise. See Landis, "Constitutional Limitations on the Congressional Power of Investigation," 40 Harv. L. Rev. 155, 180 (1926).

(5) McCrain v. Daugherty, 273 U.S. 135, 167 (1927); Jurney v. MacCracken, 294 U.S. 125, 151 (1935).

(6) See United States v. Burr, 25 Fed. Cas. 30 and 190 (1807) (Chief Justice Marshall sitting on circuit); Nixon v. Sirica, 487 F.2d 700, (D.C. Cir. 1973); NTEU v. Nixon, ... F.2d .... (D.C. Cir. Jan. 1974); ef. Youngstown Sheet and Tube v. Sawyer, 343 U.S. 579 (1952); Kendall v. United States, 37 U.S. (12 Pet.) 524 (1838). In Nixon v. Sirica the Court of Appeals stated that "[i]t is clear that the want of physical power to enforce its judgments does not prevent a court from deciding an otherwise justiciable case."

(7) The President's ultimate response to the subpoena issued by the District Court for the District of Columbia on behalf of the "Watergate" grand jury would lead to the conclusion that the President will obey

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Benjamin Marshall, right, taking Judiciary Committee's subpoena to James D. St. Clair, the President's special counsel. Mr. Marshall is the committee's security chief. With him is Joseph Woods, a senior staff counsel.

II. DIRECT ENFORCEMENT THROUGH THE PROCESSES OF THE HOUSE

The House has the power to hold in contempt a person who has disobeyed its subpoena. (1) The usual practice is for the committee that issued the subpoena to report the disobedience to the House, setting forth the circumstances of the refusal and recommending the adoption of a contempt resolution or order. (2) The full House votes to require the arraignment of the contumacious witness before the bar of the House. If he does not satisfy the House that his refusal to testify or to produce papers was justified, or that by compliance he has purged himself of his contempt, he may be adjudged in contempt of the House, and by order or resolution of the House he may be incarcerated for a period not lasting beyond the term of the House of Representatives that imprisoned him. (3) Alternatively, it would appear that the House may merely reprimand or censure him without directing his further imprisonment. (4)

In the exceptional circumstances of a President's failure to comply with a subpoena, the House may prefer to request the President to appear in person or through counsel at the bar of the House to show cause why he should not be found in contempt, rather than pursuing the more usual arrest and arraignment procedure.

The House has a considerable degree of discretion in the procedures by which it chooses to conduct a contempt proceeding. Not all the procedures used in a court trial are required, (5) although fundamental fairness is, and the courts will presume the regularity of Congressional proceedings unless there is a manifest abuse of discretion. (6)

The courts have been reluctant to intervene to quash a Congressional investigative subpoena at the insistence of the subpoenaed party. (7) A fortiori, that should be true respecting a subpoena issued in an impeachment inquiry. (8) However, an arrested witness may file a petition for a writ of habeas corpus in the appropriate Federal court. The function of a court in such a case is limited to determining whether the action of the House of Congress was within its jurisdiction, and does not extend to adjudicating the guilt or innocence of the contemnor. (9)

III. ENFORCEMENT THROUGH THE JUDICIAL PROCESS

Because the powers of impeaching and removing Federal officers are vested by the Constitution exclusively in the Congress, it may be thought inappropriate to seek the aid of the judicial branch in exercising these powers.(1) Moreover, as a practical matter, the courts have no means to enforce compliance with process in a Presidential impeachment inquiry that are not also available to the House itself through its own procedures.

The usual mode of enforcement of Congressional subpoenas is for Congress to refer contempts to the appropriate U.S. Attorney for criminal prosecution under 2 U.S.C. §§ 192 and 194. Those statutes provide for a fine of from $100 to $1000 and imprisonment of from 1 to 12 months upon conviction.

The advantages of this statutory procedure are that it does not require a contempt hearing on the floor of the House and that the penalty of imprisonment may extend beyond confinement during the term of the present House. Criminal proceedings, however, would pose a number of problems for this inquiry, including delay, the uncertainty of relying upon the executive branch to prosecute the Chief Executive, and doubt whether an incumbent President may be prosecuted for a criminal offense before his impeachment and removal from office.

A civil proceeding to compel compliance by the President might lie under 28 U.S.C. Sec. 1361, conferring jurisdiction on the Federal district courts to hear "any action in the nature of a mandamus to compel an officer or employe of the United States or any agency thereof to perform a duty owed to the plaintiff."(2) Under the mandamus statute, however, the concept of "duty" is quite limited and technical. It might be argued that the obligation to obey a subpoena does not fall within the statutory definition,(3) leading to delay while that threshold jurisdictional issue was litigated.

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a lawful subpoena. Following the decision of the Court of Appeals that the President had a legal duty to comply with the grand jury subpoena, he did so. The President's counsel at the time said in an interview following his appearance in court:

> Now, the President, I am certain, has never at any time had in mind any thought of defying the courts. . . . [A]s the President has always done, he obeys the law; he will abide by a definitive decision. . . . [I]f the thought were abroad in the land that the President was not complying with court orders, if a constitutional crisis persisted, then a wound that has hurt the American country deeply would have continued to drain. We wanted to cure that, and so the President this morning, about noon . . . authorized us to make the announcement that we did [that the subpoenaed materials would be delivered to the court].
>
> We will comply in every particular with the order of the District Court as it was modified by the Court of Appeals.

"Weekly Compilation of Presidential Documents," Oct. 29, 1973. Vol. 9, No. 43, at 1278. Only a few days ago the President announced he had complied with another subpoena issued at the request of the special prosecutor, without challenging it in court.

II. DIRECT ENFORCEMENT THROUGH THE PROCESSES OF THE HOUSE

(1) The House also presumably has the power, through its sergeant-at-arms, to seize the evidence requested by its subpoena for production at the bar of the House. See Barry v. United States ex rel Cunningham, 279 U.S. 597, 610 (1929). The practical difficulties of this procedure are obvious.

(2) See Rules of the House of Representatives, Rule XI(1); 3 Hinds, "Precedents of the House of Representatives" §§ 1667, 1669, 1670, 1671, 1695, 1696, 1701.

(3) In Kilbourn v. Thompson, 103 U.S. 168, 190 (1880), the Supreme Court intimated that the House might also impose other civil sanctions (such as a fine) to compel obedience to its subpoena.

(4) See 3 Hinds §§ 1606, 1625.

(5) Groppi v. Leslie, 404 U.S. 496, 500-502 (1972).

(6) Barry v. United States ex rel Cunningham, 279 U.S. 597, 611, 619-620 (1929); Marshall v. Gordon, 243 U.S. 521, 545 (1917).

(7) See Mins v. McCarthy, 209 F.2d 307 (D.C. Cir., 1953); Fischler v. McCarthy, 117 F. Supp. 643 (S.D. N.Y.). But see United States Servicemen's Fund v. Eastland, 488 F.2d 1252 (D.C. Cir. 1973).

(8) See Part I, note 3 supra.

While civil proceedings might be brought under other existing statutes, they may also raise jurisdictional issues.(4) Legislation was recently enacted expressly vesting jurisdiction in the district court to hear an action brought by the Senate Select Committee on Presidential Campaign Activities to compel compliance with its subpoenas.(5) Similarly, new legislation probably could resolve other litigation difficulties. Consideration should be given, however, to the time required for the passage of legislation, the possibility of a Presidential veto and consequent necessity for a vote to override,(6) as well as to potential delays encountered routinely in litigation and enforcement problems once a court order is obtained.

(9) Jurney v. McCracken, 294 U.S. 125, 152 (1935); Stewart v. Blaine, 1 MacArthur 457 (D.C. Sup. Ct., 1873), 3 Hinds § 1713.

III. ENFORCEMENT THROUGH THE JUDICIAL PROCESS

(1) Cf. Kilbourn v. Thompson, 103 U.S. 18, 190 (1880). The framers of the Constitution explicitly denied the judiciary a role in impeachment, vesting the totality of the impeachment power in the legislative branch alone. 2 The Records of the Federal Convention, 551-553 (M. Farrand ed. 1911). See also Ritter v. United States, 84 Ct. Cl. 293 (1936), cert. denied 300 U.S. 668 (1937) (conviction) by the Senate after impeachment not subject to judicial review).

(2) In NTEU v. Nixon, F. 2d (1974), the Court of Appeals held that it had jurisdiction under the mandamus statute to order the President to put into effect a statutory civil service pay increase. It withheld issuance of the writ of mandamus, however, and directed the district court to issue a declaratory judgment instead, in the expectation the President would comply. The White House thereafter announced it would comply and would not seek furthher review.

(3) Compare Senate Select Committee v. Nixon, F. Supp. (D.D.C. 1973), remanded for reconsideration, F. 2d (D.C. Cir. 1973), with NTEU v. Nixon, F. 2d (D.C. Cir. 1974). It should be noted, however, that the Senate Select Committee decision respecting whether the President had a "duty" (as that term is used in the mandamus statute) to honor a Senate subpoena might well be inapplicable to a subpoena issued by this Committee in an impeachment proceeding.

(4) A suit to compel production of evidence might also be brought under the "Federal question" jurisdictional statute, 28 U.S.C. Sec. 1331. However, a serious problem might be encountered in satisfyingg the $10,000 minimum "amount in controversy" required under that section.

Other potential civil remedies include a petition for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and a proceeding under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. However, it is doubtful whether the Declaratory Judgment Act creates anything more than an additional remedy for a claim for relief derived from some other source, and it is clear that it does not expand the subject matter jurisdiction of the district courts. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950); Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240 (1937); compare Senate Select Committee v. Sirica, supra.

The same jurisdictional problem may be presented in an action based on the Administrative procedure Act, and there may be other questions as well concerning the substantive applicability of that Act to this situation. Compare Senate Select Committee v. Nixon, supra.

(5) P.L. 93-190.

IV. NONCOMPLIANCE AND THE IMPEACHMENT INQUIRY

Realistically, the President probably cannot be compelled to comply with a subpoena duces tecum by use of the processes of either the House or the courts. Rather than being considered solely in terms of the availability of coercive means of enforcement, however, noncompliance may also be addressed in terms of its effect in the impeachment proceeding itself. This question is one of first impression. There is no direct precedent, and what little material exists from past impeachment inquiries is of limited usefulness.(1)

In determining what effect should be given to noncompliance, the committee would have to consider the degree of noncompliance and any stated reasons for it, including any claims of privilege. Noncompliance by the President with a subpoena issued by the committee could be taken into account in the impeachment inquiry in two ways:

First, under some circumstances an inference negative to the President might be drawn from his refusal to produce materials sought by the committee. In litigation generally, an unjustified refusal to produce evidence within the control of a party "permits the inference that its tenor is unfavorable to the party's cause."(2) and the same principle might be deemed applicable in an impeachment proceeding.

Second, unjustified noncompliance might be considered independently in determining whether sufficient grounds exist for impeachment of the President. For example, contempt of the House arising from such noncompliance is prosecutable as a federal crime. And unjustified disobedience of a subpoena issued by a committee exercising the sole power of impeachment would be an action in derogation of the authority explicitly vested by the Constitution in the House of Representatives.

Conversations Memorandum

Following is the text of a memorandum by the House Judiciary Committee staff stating the relevance of the material subpoenaed for the impeachment inquiry:

Memorandum to Committee on the Judiciary Respecting Conversations Requested on Feb. 25, 1974

The following sets forth the facts and bases underlying the requests for the conversations specified in the letter of Feb. 25, 1974, from Mr. Doar to Mr. St. Clair:

[1]

Conversations between the President and Mr. Haldeman on or about Feb. 20, 1973, that concern the possible appointment of Mr. Magruder to a Government position.

Jeb Magruder was deputy director of the Committee to Re-elect the President and participated in meetings at which plans for the electronic surveillance of the President's political opponents were discussed (Magruder, 2 SSC p. 787-790). Mr. Magruder has testified that he committed perjury before the grand jury investigating the break-in at the Democratic National Committee Headquarters and at the trial of the seven defendants in United States v. Liddy, et al. (Magruder, 2 SSC p. 805). Mr. Magruder has testified that he informed Mr. Haldeman in mid-January, 1973, that he was going to commit perjury during the trial (Magruder, 2 SSC p. 832). Mr. Haldeman does not recollect this discussion but does state that he met with Mr. Magruder on Feb. 14, 1973, and on March 2, 1973, about Mr. Magruder's future. (Haldeman, 7 SSC p. 2886-87).

Mr. Dean testified that in January and February of 1973 there were discussions about a job for Mr. Magruder (Dean, 3 SSC p. 990). Hugh Sloan, the former treasurer of the President's Campaign Finance Committee, testified he told Mr. Dean that if Mr. Magruder (who Sloan testified made efforts to persuade him to commit perjury) (Sloan, 2 SSC p. 543, 581, 583) were given an appointment requiring Senate confirmation, Mr. Sloan would voluntarily seek out the Senate Committee and testify against Mr. Magruder (Sloan, 2 SSC p. 591). Mr. Dean has further testified that on or about Feb. 19, 1973, he was asked by Mr. Haldeman to prepare an agenda of topics which the President could use as a basis for a meeting with Mr. Haldeman (Dean, 3 SSC p. 987). That agenda raised as a topic the question of a White House position for Mr. Magruder. The agenda stated that Mr. Magruder "may be vulnerable (Sloan) until Senate Hearings are completed." (Exhibit 34-34, 3 SSC p. 1243) Mr. Dean has testified that on or about Feb. 20, 1973, Mr. Haldeman met with the President to discuss the topics covered by the memorandum (Dean, 3 SSC p. 988).

Mr. Haldeman testified that at the time he received the agenda he had already told Magruder that a White House job would not be possible "but I think the point here was to check that decision with the President to be sure he concurred." (Haldeman, 7 SSC p. 2891). In March, 1973, Mr. Magruder was appointed to a $36,000 a year government post which did not require Senate confirmation (Magruder, 2 SSC p. 831; Haldeman, 7 SSC p. 2887).

[2]

Conversations between the President, Mr. Haldeman and Mr. Ehrlichman on or about Feb. 27, 1973, that concern the assignment of Mr. Dean to work directly with the President on Watergate and Watergate-related matters.

Both Mr. Haldeman and Mr. Ehrlichman have testified that the President decided toward the end of February, 1973, that Mr. Dean would work directly with the President on Watergate-related matters and hat this decision was discussed with them (Ehrlichman, 7 SSC p. 2739; Haldeman, 7 SSC p. 2891). Mr. Dean has testified that when he met with the President on Feb. 27, 1973, the President told him that Watergate "was taking too much time from Haldeman's and Ehrlichman's normal duties and . . . they were principals in the matter, and I, therefore, could be more objective than they. (Dean, 3 SSC p. 991)

[3]

Conversations between the President and Mr. Dean on March 17, 1973, from 1:25 to 2:10 P.M. and March 20, 1973, from 7:29 to 7:43 P.M.

(a) March 17

The President has stated that he first learned at this meeting of the break-in of the office of Daniel Ellsberg's psychiatrist which the White House Special Investigation Unit committed in September, 1971 (President's Statement Aug. 15, 1973, Pres. Doc. p. 993).

(6) It should be noted, however, that the President permitted the Senate Select Committee bill to become law.

IV. NONCOMPLIANCE AND THE IMPEACHMENT INQUIRY

(1) Article X of the articles of impeachment voted by the House against Andrew Johnson alleged that, by making speeches highly critical of Congress, Johnson "did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States and the several branches thereof," charging this to be a high misdemeanor. Cong. Globe, 40th Cong., 2d Sess. 1638-39 (1868). It may be doubted, however, whether this charge (which was never voted upon by the Senate) involved a true contempt. See Marshall v. Gordon, 243 U.S. 521 (1917).

In 1879, the Committee on Expenditures in the State Department reported articles of impeachment against George Seward, former consul-general at Shanghai, including a charge that Seward had concealed and refused to deliver up certain records. H.R. Rep. No. 134, 45th Cong., 3d Sess., at 6 (1879). The House adjourned without voting on the Seward impeachment; the Judiciary Committee, to which was referred the question of whether Seward should be held in contempt for his refusal to produce books and papers, recommended against contempt primarily on the ground that Seward had validly claimed his Fifth Amendment privilege against self-incrimination. H.R. Rep. No. 141, 45th Cong., 3d Sess. (1879).

One policy issue suggested by these two cases—though not directly addressed by them—is whether the officer should be formally adjusted in contempt of the House before consideration of his conduct in the impeachment proceedings.

(2) 2 Wigmore, Evidence § 285 at 162. See also, e.g., McCormick, Evidence 416 n. 3; Hoffman v. Commissioner of Internal Revenue, 298 F.2d 784 (3d Cir. 1962).

The White House has also stated that Mr. Dean told the President on this date that no White House aides were involved in the Watergate burglary except possibly Mr. Strachan and that the President suggested that Mr. Dean, Mr. Haldeman and Mr. Ehrlichman testify before the Senate Select Committee (Exhibit 70-A, 4 SSC p. 1798—Memorandum of Substance of Dean's Calls and Meetings With the President).

(b) March 20

The White House has said that in the course of this phone call from the President to Mr. Dean, Mr. Dean stated that there was not a "scintilla of evidence of White House involvement" in Watergate (Exhibit 70-A, 4 SSC. p. 1798—Memorandum of Substance of Dean's Calls and Meetings with the President). President Nixon confirmed this statement (President's News Conference Aug. 22, 1972, Pres. Doc. p. 1019). Mr. Dean has testified that during this call he scheduled a meeting with the President to discuss the facts of Watergate and the obstruction of the Watergate investigation (Dean, 3 SSC p. 997-98).

[4]

Conversations between the President and Mr. Ehrlichman on March 27, 1973, from 11:10 A.M. to 1:30 P.M. and on March 30, 1973 from 12:02 to 12:18 P.M.

(a) March 27

Mr. Ehrlichman has testified that on March 27, 1973, he met with the President and discussed White House involvement in the break-in at the Democratic National Committee Headquarters (Ehrlichman, 7 SSC p. 2747), Mr. Ehrlichman has testified that the President instructed him to inform Attorney General Kleindienst that the President had no information that Mr. Ehrlichman, Mr. Colson, Mr. Dean, Mr. Haldeman or any other White House staff had any prior knowledge of the Watergate burglary (Ehrlichman, 7 SSC p. 2740-49; Exhibit 99 p. 2944-45). Mr. Ehrlichman has also testified that the President asked him to inquire of the Attorney General about the procedures for granting immunity (Ehrlichman, 7 SSC p. 2750).

(b) March 30

The President has said that after Mr. Dean's disclosures of March 21 he ordered new investigations. (President's Statements April 17, 1973, Pres. Doc.p. 387; President's Statement April 30, 1973, Pres. Doc.p. 434; President's Statement Aug. 15, 1973, Pres. Doc.p. 993). The President has stated that on this date the President asked Mr. Ehrlichman to take over that investigation from Mr. Dean (President's Statement Aug. 15, 1973, Pres. Doc.p. 993; Ehrlichman, 7 SSC p. 2747).

[5]

All conversations between the President and Mr. Haldeman and the President and Mr. Ehrlichman from April 14 through 17, 1973, inclusive.

[6]

All conversations between the President and Mr. Kleindienst and the President and Mr. Peterson from April 15 through 18, 1973, inclusive.

(a) April 14, 1973

The President's records indicate that the following meetings and telephone conversations took place between the President and Mr. Haldeman and the President and Mr. Ehrlichman on April 14, 1973:

8:55-11:31 A.M. Meeting between the President and Mr. Ehrlichman in the President's EOB office. (The President's daily diary shows that Mr. Haldeman was present from 9:00 to 11:30 A.M.)

1:55-2:13 P.M. Meeting between the President and Mr. Haldeman.

2:24-3:55 P.M. Meeting among the President, Mr. Ehrlichman and Mr. Haldeman in the Oval Office.

5:15-6:45 P.M. Meeting among the President, Mr. Ehrlichman and Mr. Haldeman in the President's EOB office.

11:02-11:15 P.M. Telephone conversation between the President and Mr. Haldeman.

11:22-11:53 P.M. Telephone conversation between the President and Mr. Ehrlichman.

The President has stated that it was on April 14 that Mr. Ehrlichman reported to him the results of the inquiry of the Watergate matter which the President, on March 30, 1973, ordered Mr. Ehrlichman to conduct (President's Statement Aug. 15, 1973, Pres. Doc. p. 993). Mr. Ehrlichman testified that he informed the President that Messrs. Dean, Magruder and Mitchell were involved in the planning of the Watergate break-in (Ehrlichman, 7 SSC p. 2755, 2757-58, 2737; SSC Ex. 98 at p. 2915-43). The President, according to Mr. Ehrlichman, ordered that the information be turned over to Mr. Kleindienst (Ehrlichman, 7 SSC p. 2758).

It was on April 14 that Mr. Magruder informed Mr. Ehrlichman that he was giving the prosecutors new information with respect to the Watergate break-in and its aftermath. (Magruder, 2 SSC p. 808; Ehrlichman, 7 SSC p. 2765-66). Mr. Ehrlichman and Mr. Haldeman knew that Mr. Dean already had been talking to the prosecutors and on April 14 Mr. Dean told them that Mr. Ehrlichman and Mr. Haldeman were targets of the grand jury investigation (Dean, 3 SSC p. 1014). Thus, when Mr. Ehrlichman telephoned Mr. Kleindienst on the evening of April 14 and was advised by the Attorney General to turn over all information to the Department of Justice to avoid being charged with obstruction of justice, Mr. Ehrlichman stated that "it doesn't really make any difference anymore" since Mr. Dean and Mr. Magruder were talking to the prosecutors (Kleindienst, 9 SSC p. 3577).

(b) April 15, 1973

The President's records indicate that the following meetings and telephone conversations took place among the President, Mr. Haldeman, Mr. Ehrlichman, Mr. Kleindienst and Mr. Petersen:

10:13-10:15 A.M. Telephone conversation between the President and Mr. Kleindienst.

10:35-11:15 A.M. Meeting between the President and Mr. Ehrlichman.

1:17-2:22 P.M. Meeting between the President and Mr. Kleindienst.

2:24-3:30 P.M. Meeting between the President and Mr. Ehrlichman.

3:27-3:44 P.M. Telephone conversation between the President and Mr. Haldeman.

3:48-3:49 P.M. Telephone conversation between the President and Mr. Kleindienst.

4:00-5:15 P.M. Meeting among the President, Mr. Kleindienst and Mr. Petersen.

7:50-9:15 P.M. Meeting among the President, Mr. Haldeman and Mr. Ehrlichman.

8:14-8:18 P.M. Telephone conversation between the President and Mr. Petersen.

8:25-8:26 P.M. Telephone conversation between the President and Mr. Petersen.

9:39-9:41 P.M. Telephone conversation between the President and Mr. Petersen.

10:16-11:15 P.M. Meeting among the President, Mr. Ehrlichman and Mr. Haldeman.

11:45-11:53 P.M. Telephone conversation between the President and Mr. Petersen.

It was on April 15 tht Mr. Kleindienst and Mr. Petersen directly brought to the attention of the President the new information which was being conveyed in the prosecution by Mr. Dean and Mr. Mugruder. (President's Statement Aug. 15, 1973. Pres. Doc. p. 993). April 15 was also the date on which the President, beginning at 9:17 P.M., had an important conversation with Mr. Dean that the President has stated was not recorded because the tape had run out (President's Statement Nov. 12, 1973, Pres. Doc. p. 1330; President's New oCnference Nov. 17, 1973, Pres. Doc. p. 1346-47). According to Mr. Dean the President stated at that conversation that he was joking when he said earlier that it would be no problem to raise $1,000,000 (Dean, 3EEC p. 1016). Following the conversation with Mr. Dean the President had a meeting with Mr. Ehrlichman and Mr. Haldeman at which Mrf. Ehrlichman called Mr. Gray with respect to what happened to documents from Mr. Hunt's safe which were givenu to Mr. Gray in June, 1972. Mr. Gray informed Mr. Ehrlichman that the documents were destroyed (Ehrlichman, 7 SSC p. 2675-76).

As the listing of conversations indicates, immediately following each of his various conversations with Mr. Kleindienst or Mr. Petersen, the President had conversations, some of which were quite lentghy, with Mr. Haldeman or Mr. Ehrlichman or both. It was on April 15 that Mr. Petersen suggested to the President that Mr. Haldeman and Mr. Ehrlichman be fired (Petersen, 9 SEC p. 1628-29). The President stated that he owed an obligation of fairness to Mr. Haldeman and Mr. Ehrlichman (Petersen, 9 SEC p. 3628).

(c) April 16, 1973

The President's records indicate that the following meetings and telephone conversations took place among the President, Mr. Haldeman, Mr. Ehrlichman, Mr. Kleindienst and Mr. Petersen:

12:08-12:23 A.M. Telephone conversa-

Continued on following page

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tion between the President and Mr. Haldeman

8:18-8:22 A.M. Telephone conversation between the President and Mr. Ehrlichman

9:50-9:59 A.M. Meeting among the President, Mr Haldeman and Mr. Ehrlichman

10:50-11:04 A.M. Meeting among the President, Mr Haldeman and Mr. Ehrlichman

12:00-12:31 P.M. Meeting among the President, Mr. Ehrlichman and Mr. Haldeman.

1:39-3:25 P.M. Meeting between the President and Mr. Petersen (Mr. Ziegler present from 2:25-2:52 P.M.)

3:27-4:02 P.M. Meeting between the President and Mr. Ehrlichman (Mr. Ziegler present from 3:35-4:04 P.M.)

8:58-9:14 P.M. Telephone conversation between the President and Mr. Petersen.

9:27-9:49 P.M. Telephone conversation between the President and Mr. Ehrlichman.

On April 16, according to Mr. Dean's testimony, the President asked Mr. Dean to sign a letter of resignation, but Mr. Dean said he would not resign unless Mr. Ehrlichman and Mr. Haldeman also resigned (Dean, 3 SSC p. 1017-1018). The President had further discussions with Mr. Petersen about the prosecutor's evidenceof Mr. Haldeman and Mr. Ehrlichman's possible involvement in the Watergate matter and the possibility of granting immunity to Mr. Dean (Petersen, 9 SSC p. 3634; President's Statement April 17, 1973 Pres. Doc p. 387). Again, prior to and subsequent to his conversations with Mr. Dean and Mr. Petersen the President had a number of conversations with Mr. Ehrlichman and Mr. Haldeman.

(d) April 17, 1973

The President's records indicate that the following meetings and telephone conversations took place among the President, Mr. Haldeman, Mr. Ehrlichman, Mr. Kleindienst and Mr. Petersen:

9:47-9:59 A.M. Meeting between the President and Mr. Haldeman

12:35-2:30 P.M. Meeting among the

President, Mr. Haldeman and Mr. Ehrlichman (Mr. Ziegler present from 2:10 to 2:17 P.M.)

2:39-2:40 P.M. Telephone conversation between the President and Mr. Ehrlichman

2:46-3:49 P.M. Meeting between the President and Mr. Petersen

3:50-4:35 P.M. Meeting among the President, Mr. Haldeman and Mr. Ehrlichman

5:50-7:14 P.M. Meeting among the President, Mr. Haldeman and Mr. Ehrlichman (Mr. Rogers present from 5:20-6:19 P.M.)

On April 17 the President issued a statement that there were "major developments" in the Watergate case and that "real progress has been made on finding the truth." The President also stated that "no individual holding, in the past or at present, a position of major importance in the Administration should be given immunity from prosecution." (Pres. Doc. p. 387) Mr. Dean has testified that by the "no immunity" provision in the April 17 statement, the President was "quite obviously trying to affect any discussion I was having with the Government regarding my testimony." Mr. Dean has stated that Mr. Garment, another Presidential Assistant, believed that the "no immunity" provision was inserted into the President's statement by Mr. Ehrlichman (Dean, 3 SSC p. 1020).

Also, on April 17, the pattern of the previous few days is repeated in that prior to and subsequent to conversations between the President and Mr. Petersen there are numerous conversations between the President and Mr. Haldeman and the President and Mr. Ehrlichman.

(e) April 18, 1973

The President's records indicate that the following meetings and telephone conversations took place between the President and Mr. Pedersen:

2:50-2:56 P.M. Telephone conversation between the President and Mr. Pedersen.

6:20-6:37 P.M. Telephone conversation between the President and Mr. Pedersen.

On April 18, the President learned from Mr. Peterson that Mr. Dean had informed the prosecutors of the break-in by Messrs. Hupt and Liddy of the office of Dr. Fielding, Daniel Ellsberg's psychiatrist. (President's News Conference, Aug. 22, 1973, Pres. Doc. p. 1020; Petersen, 9 SSC p. 3631). There was also a continuation of the discussion respecting possible immunity for Mr. Dean during which the President said he had a tape to prove that Mr. Dean had told the President he had received immunity (Petersen, 9 SSC p. 3630. 3654-56). With respect to the Fielding break-in the President has stated that he first learned of it on March 17, 1973, and that on April 18 he instructed Mr. Petersen to stay out of the matter because it involved national security.

In calling for the above conversations the committee is seeking to determine:

Whether any of the conversations in any way bear upon the knowledge or lack of knowledge of, or action or inaction by the President and/or any of his senior Administration officials with respect to, the investigation of the Watergate break-in by the Department of Justice, the Senate Select Committee, or any other legislative, judicial, executive or administrative body, including members of the White House staff;

Whether any of the conversations in any way bear upon the President's knowledge or lack of knowledge of, or participation or lack of participation in, the acts of obstruction of justice and conspiracy charged or otherwise referred to in the indictments returned on March 1 in the District Court of Columbia in the case of U. S. v. Haldeman, et al.; and

Whether any of the conversations in any way bear upon the President's knowledge or lack of knowledge of, or participation or lack of participation in, the acts charged or otherwise referred to in the informations or indictments returned in the District Court for the District of Columbia in the cases of U. S. v. Magruder, U. S. v. Dean, U. S. v. Chapin and U. S. v. Ehrlichman, or other acts which may constitute illegal activities.