
March 22: Nixon Asked Dean to Go to Camp

WEDNESDAY, MAY 1, 1974

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David and Draft Report on Watergate

to give him guidance. I get it, he wanted everybody to come back in public session.

Yeah.

Yeah. No way, etc.

Well, we will keep in touch with you, Dick—basically [inaudible] that would be the best way—in terms of what [inaudible] and in our guidelines but then I think you really have to be our Baker hand-holder too. That's a hell of a tough job—you have to have him move in with you to do it, huh? Yeah, yeah—the way, yeah, yeah, I understand. Postponed—right, right, yeah.

Yeah, yeah.

Right.

Yeah.

[Inaudible.]

Yeah, some of these open—I understand you were as shocked as I was that some of the raw files had already been made available to the committee.

Did he?

Oh, he said so, huh?

Yeah.

Well do what you can.

Letter From Weicker

Incidentally, with Weicker did you work that thing out with him? He said he had written a letter you know—yeah. Why don't you talk to him? Yeah, I expected that. Yeah, yeah. Right. You don't—you never have done that before. No—that is for the birds, right, you were doing it to try to get him cleared. All right, let's leave it this way—you will handle Baker now—you will baby-sit him starting like in about 10 minutes? All right.

[End of telephone conversation.]

P. He says he has called Baker a dozen times—he is either busy or out of town—but he says he will try. He talked with Weicker for an hour on the phone. Well, anyway, he says he has the picture now. I thought Kleindienst—H. I would guess.

P. Oh, yes, he said he talked with him for an hour—I talked to Kleindienst—maybe it's not Kleindienst, maybe it's Baker.

H. I would guess that is right. I have always said—they are always down here bitching about nobody calling them—nobody giving them anything and all that.

P. Yet his Administration Assistant called Colson—or that is what Colson informed me. H. That is a casual pitch.

D. They were looking for some—Baker was looking for some such room—sort of link with the White House.

P. It's got to be Kleindienst. Go ahead on executive privilege. How would you handle it? M. All I have worked out was—in the form—what we discussed —

P. Well, I guess under the situation with the statement that we have, we are in a position to negotiate with the Committee on the how, but we are not in a position to cross the bridge and just to say Hunt and Liddy will go down—say this one will go down and testify in open—in a public session—and to say the White House staff will not. But you've got a lot of other things? M. Oh, no.

P. Incidentally, that is what I told Baker too. We begin with that proposition and see what is there and what we can get by with.

M. On executive privilege, Mr. President, they already have something waived. [Inaudible] The point being is that this seems to be the only way to be involved. I would lay out the formula with Sam Ervin or negotiate it through Baker—or however else we can do it. And I would also put together a damn good PR team thing. The facts can be produced—what about this—what about the President's team? The team is important.

Going to Talk to Baker

E. O.K., I have written it. I can see that Chapin, for instance, could figure, without in any way bringing in the name of the President; so I am going to discuss right now with Baker that —

P. Not Baker. E. Who else would you talk to? I've got a report here and I think I see where the danger points are and where they aren't. I would want to observe obviously any questions that may be asked. I can pinpoint some people now that really wouldn't make any difference.

H. John, you admit you are seeing danger points. If you send any one member of the White House up to testify it is no danger point for him but if some other one can't because it is a danger point then what you are saying is that the President was involved.

E. I didn't say danger from the sense of their being provocative —

M. Well, gentlemen for the sake of discussion [inaudible] the normal procedure for the Segretti matter and the like based on the evaluation of the FBI made [inaudible] or whether it is based on the Grand Jury and the trial transcript or whatever the record could have been available to me—investigation of the past memorandum would indict him. [inaudible] [two memorandums that the courts have public records].

P. We tried that move, John—M. Well, I did too—before, Mr. President. But now that the indictment has come out [inaudible] has the feeling that they have the documentation back of it. Now that the bag has come out.

D. I think the proof is in the pudding, so to speak—it is how this document is written and until I sit down and write that document. I have done part of it, so to speak. I have done the Segretti thing and I am relatively satisfied that we don't have any major problems there. As I go to part A—to the Watergate—I haven't written—I haven't gone through the exercise yet in a real effort to write such a report, and I really can't say until I do it where we are and I certainly think it is something that should be done though.

P. What do you say on the Watergate [inaudible] D. We can't be complete if we don't know, all we know is what, is what—

P. It is a negative in setting forth general information involving questions. Your consideration—your analysis, et cetera. You found this, that. Rather than going into every news story and every charge, et cetera, et cetera. This, this, this—put it down—I don't know but

D. I don't think I can do it until I sit down this evening and start drafting. H. I think you ought to hold up for

the weekend and do that and get it done. P. Sure. H. Give it your full attention and get it done.

Sent to Camp David

P. I think you need—why don't you do this? Why don't you go up to Camp David? D. I might do it, I might do it.

P. Completely away from the phone. Just go up there and [inaudible] I want a written report.

E. That would be my scenario. He presents it to you at your request. You then publish—[inaudible]. E. I know that but I don't care.

H. You are not dealing with the defendants on trial. You are only dealing with White House involvement. You are not dealing with the campaign. D. That's where I personally . . .

P. You could write it in a way that you say this report was not comment on et cetera, et cetera, but "I have reviewed the record, Mr. President, and without at all compromising the right of defendants and so forth, some of whom are on appeal, here are the facts with regard to members of the White House staff et cetera, et cetera, that you have asked me about. I have checked the F.B.I. records; I have read the Grand Jury transcripts—et cetera, et cetera.

E. As a matter of fact, you could say, "I will not summarize some of the F.B.I. reports on this stuff because it is my understanding that you may wish to publish this." Or you may allude to it in that way without saying that fact. Just say that I do not summarize all the F.B.I. documents and so forth.

D. It is my understanding that all the F.B.I. reports have been turned over to the Ervin Committee.

H. Not everything. He has only seen half of them.

D. Another vehicle might be, take the report I write and give it to Ervin and Baker under the same terms that they got the F.B.I. reports. You could say, "Now, this has innuendo in it—and from this the press might assume things, that shouldn't be assumed, but I want you to know everything we know." And publicly state that, "I have turned over a Dean Report to your Committee." Then begin to say that, "You see that various people have various ingredients which may be of assistance in testifying. But it is not worth their coming up here to be able to repeat to the Committee what is here in this report in some forum where they are going to be treated like they are in a circus. But I am also willing, based on this document, to set some ground rules for how we can have these people appear before the Committee."

H. In case of that the Committee would issue a warrant on our phone calls. Bully!

P. That's right. H. That is all I know about the damn thing is that the Secret Service at some point has been bugged.

D. And that could go on forever with you on that tack. I could draw these things like this Staff into this report and have Kleindienst come get it and give it to Ervin in confidence—I am not talking about documents you see, I am talking about something we can spread as facts. You see you could even write a novel with the facts.

P. [Inaudible] D. [Inaudible] P. [Inaudible].

E. My thought is—

'Not Fighting Committee'

P. In other words, rather than fighting it, we are not fighting the Committee, of course—we are fighting the situation thing.

E. And I am looking to the future, assuming that some corner of this thing comes unstuck, you are then in a position to say, "Look, that document I published is the document I relied on, that is, the report I relied on."

P. This is all we knew. H. That is all the stuff we could find out—

E. And now this new development is a surprise to me—I am going to fire A, B, C and D, now.

D. John, let me just raise this. If you make the document public the first thing that happens is the press starts asking Ziegler about it, expecting the document every day. "Well, why did Ehrlichman receive the call? How did they happen to pick out Ehrlichman? What did he do with the information, after he got it?" Keep in mind every item, there will be a full day of quizzing. It will keep up day after day, after day.

M. [Inaudible] I think there should be a concerted judgment about when and under what circumstances that is put out.

P. Another thing, let me say, that while Ziegler should be in on this stuff, I think Ziegler [inaudible]

D. Well, you have said you are going to cooperate with the proper investigation.

P. But I am not going to comment on it while it is improper.

D. Well, why not put ourselves in a framework where you are way out above it? You are cooperating with the Committee, turn over the report, and no further comment.

P. I think you could get off of having Ziegler have to comment—I was trying to pull Ziegler off that for my own sake, too. We will give the Committee full cooperation, but we are not going to comment while the matter is being considered by the Committee—unless the Committee does this and that—

H. As John says for that reason don't publish the complete report. Only hand it over to the proper legislative committees.

P. Well, then we just turn it over to them. Can we get anything else out to the public? Putting out a statement to Republicans—we got a report from the White House?

E. I just got a report which bears out the— H. Ron can make the statement.

E. Another way to do this would for you to have a meeting with Ervin and Baker.

P. Yeah. We have thought of that and decided against it.

E. Well we would have a reason for the meeting. This meeting would be for the purpose of turning over the document and discussing ground rules and before you did that you would have to have it all agreed in advance as to what the ground rules would be—namely, you've got quid pro quo here because you could come to Baker or to the Committee directly and say, "look, I will

turn over the Dean report to you, providing we can agree on how witnesses will be treated up there." You could even screw executive privilege.

P. John—for example, if you were talking about executive privilege this really gets down to specifics. What you do about executive privilege. What about Colson—does he go or not?

Colson Has to Go

D. I think Colson has to go.

P. He has to go? D. Oh, yes.

H. Everybody goes under John's plan including Ehrlichman and me—everybody except John Dean, who doesn't go because he's got the client/lawyer privilege.

M. I think you and John could be negotiated out.

P. Should we negotiate it now? M. I think the Court would show that a very simple thought, involvement with the [inaudible]

D. Well the trouble is—one of our arguments—

H. Let us go John—I don't see any argument against our going if you are going to let anybody go. D. That's right.

H. You've got less to hurdle with us than you have with some of the others. Sure if you get the big fish out there in front of the television cameras I think you fellows would be tough. I think Strachan wouldn't get them nearly as excited as John and me going out there.

P. Strachan and Chapin. H. Well, Chapin wouldn't have to go before them.

H. If you could do it in Executive Session,

D. Then we would have no reason not to go—H. Then why hold us back?

P. These Executive Session things always appeal to me—Now of course you could always say [inaudible]

D. Maybe we could invite the Committee down to the Roosevelt Room or Blair House. H. Maintain informality. H. I don't know what Hunt will do—

P. Would Executive Session help?

E. Well, Executive Session I suspect would at this point—[inaudible] I really think these guys are concerned about this Mexican standoff and I think they will all—I do think that Ervin's crack on television about arresting people who cross the line about [inaudible] crossing the line—litigation

M. In addition to that you have a long—really lengthy

P. This thing could go on for a hell of a long time. H. Sure it is going to be a long time.

D. Better take it on the counsel thing. H. That's what he doesn't want.

Questions of Chapin

D. I know, but—H. Someone like Dwight Chapin—that's the easy one—you did that with someone who had no contact

P. As bright as he is [inaudible] As long as Dean—they didn't test it. We asked them to. They didn't bite that one very fast did they John?

H. Chapin is the guy to ask on. You try to go to a federal judge on Chapin and that will be a good Court opinion. He is a former employee. He had no policy role, he had no major contact with the President. M. [inaudible]

P. Chapin? M. He is no longer employed.

H. He is the object of a subpoena. He's been called to testify at the Gray hearings, and what not. But he knows he's done nothing.

M. They could get him up there and—E. Well, the precedent on this frightens me.

P. We have a precedent problem. In the case of a present White House employee there will not be a precedent problem.

M. In the case of a present one it does not—

P. Then they would have to go in front of the cameras and show how it would not become an important first.

E. Of course we have the anomaly of Clark Mollenhoff running up and trying to give testimony in a civil service ceremony here now—saying, "ask me a question—ask me a question, This is a Kangaroo Court." The guy running the hearing is telling him to sit down and shut up, and what is happening here is that the government is asserting the executive privilege.

M. No, they are not. That is not executive privilege. E. It is the closest thing to it. The point is, who's privilege is it to assert? What do you do with a Chapin? I think—I don't know what you to think this is the reason I called you—to figure out a scenario but I assume that immediately a subpoena issued, that on behalf of the President you would immediately go over to the committee saying that the Executive asserts privilege.

P. Let me ask this. This question is for John Ehrlichman and Dean. You were the two that felt the strongest on executive privilege thing. If I am not mistaken, you thought we ought to draw a line here. Have you changed your mind now? D. No, I think it is a terrific statement. It put you just where you should be. There is enough flexibility in it.

P. Well, all John Mitchell is arguing then, is that now we use flexibility in order to get off the cover-up line. E. And as I told him, I am so convinced that we are right on the statement that I have never gone beyond that. He argues that we are being hurt badly by the way it is being handled. And I told him, let's see—H. I think that is a valid evaluation on the individual point, but that is where you look like you are covering up right there. That is the only active step that you have taken to cover up the Watergate all along was that.

Offer to Cooperate

P. Even though we have offered to cooperate? H. On legal grounds & precedence, tradition, Constitutional grounds and all that stuff you are just fine, but to the guy who is sitting at home who watches John Chancellor say that the President is covering this up by this historic review blanket of the widest exercise of executive privilege in American history and all that — he says "What the hell's he covering up, if he's got no problem why doesn't he let them go talk." M. And it relates to the Watergate — it doesn't relate to Henry Kissinger — foreign affairs or anything. The President and all that business they don't know what the hell you are talking about.

P. Maybe we shouldn't have made

the statement. H. We should have because it puts you in a much better position. They were over here. That is what Ervin wanted. He wanted all of us up there with unlimited, total, wide open. The statement in a sense puts us over here. Now you move back to about here and you probably can get away with that.

E. You can get away with it in the Watergate context. You said executive privilege and then you applied it in the first instance to Gray. I wouldn't change that, and that is exactly right. At the same time you are in a position to say, "Oh, now there is this other case and what I regarded there consistent with my statement is so, and so, and so."

H. It is very clear—that the questions once properly asked don't have any bearing on these people's relation to the President. Which they don't. The President had nothing to do with it. M. I don't know.

E. There again, it would be had to get proof. You are right and we are going to need some of that for our campaign. The argument will be that the President has backed off his rock solid position on executive privilege and is now letting Chapin, Colson, Haldeman and everybody testify. P. [inaudible] E. They are saying that there are PR problems. P. People don't think so—Several—That's right.

H. They don't think—they think you clamped down an iron curtain and won't let anybody out of here ever. It was my understanding—I talked to you or maybe someone else—that the Committee's operating rules do not permit witnesses to have Counsel.

D. That is Grand Jury. I have never heard that about the Committee. H. About the Committee? D. No—not the Committee.

P. On the contrary the committees—ever since the days I was there they have always allowed counsel.

D. I can't imagine their not allowing counsel. P. No sir, committees allow counsel.

Importance of Counsel

H. It seems to me if we are going to do this that it becomes important to any White House staff members who testify that they should not only have private counsel, personal counsel, but that the President's Counsel should be there because you are under oath, as his waiver of executive privilege and the President's Counsel should be there to enforce the limitation and the witness should not have to be in the position of saying, "That is one I can't answer because it is outside the grounds."

E. You are appealing that someone should do it then for us?

P. How would it be with the Executive Session thing?

H. They would probably have television at that. What do you do when something comes up that is top secret?

P. How do you handle that PR wise? M. You handle that only with the Executive Session. Otherwise you come up with another Roman holiday like we have had with Kleindienst and Gray. A fact-finding operation is there to get the facts and not to put on a political circus as they have in the past.

D. If there were no cameras up there, there would be no reason to have the executive session because — H. Well, then you come back to arguing for an open session with no television cameras.

P. [Inaudible] I forgot about the formal session. It is a formal session. E. I think that is the least personal — D. That is correct; we have said—no debate and there shouldn't be.

M. Well that won't wash. E. Yeah, I probably think it would. P. We ought to see about it. D. I think it is arguable. They are interested in eliciting information and I think [inaudible] H. Is there an executive session of a Senate Committee where other Senators can come

in, where any Senator has the privilege of submitting questions? Senator Kennedy would want to sit there I am sure. P. He can't ask questions. H. He can't? D. Not unless [inaudible].

P. All the members [inaudible] but we shall see. But it is normal practice that no one can ask questions but members of the committee. H. But Teddy could still sit there in the audience and then go out to the TV camera and say [inaudible] look, this is what is being said, et cetera. P. Oh, well, we are going to have that.

D. I think if he did that he would be terribly criticized. H. I was just thinking in the membership of the committee. We are in reasonably good shape and that the people we have on the committee are not as bad as some Senators who would turn the use of TV afterwards for their own purposes.

'Concerned About P.R.'

P. Not as spectacular. M. [inaudible] Could I point out [inaudible] D. [inaudible] H. When do they start hearings now? D. [inaudible] P. The topic—here—we have plenty of time for those hearings, but what Bob's concerned about, the P.R. We don't have much time.

D. P.R. is going to start being better right away with the termination of the Gray hearings for ten weeks that will let some steam out of that — P. The P.R. What I meant is, and anyway that the main thing is to do the right thing. Don't rush too fast with the P.R. but it takes times to write, et cetera. John has to have time to write this report. Do we broach this whether we have a report or not? [inaudible voice and answer] P. Let me ask you this: On the broaching of that, should we get Kleindienst to be the broacher?

[Inaudible]

P. The point is, who else? I can't. D. That's right. Kleindienst in his conversations with Ervin and Baker—Ervin indicated that he would like to talk with Kleindienst about the executive privilege question. Maybe it is now time to get that channel re-opened again.

M. Let me make this suggestion. H. Write it out both chapter and verse—some exhibits. You are gonna—

M. Let me something first. I think one of you mentioned having a meeting with the committee. It might be well say you want to discuss the executive privilege point with the chairman. But don't discuss it with the chairman until you get up there. At least this advises them that the discussion of the matter is available. E. And then ask him not to take a committee move on the subject either until—H. Until he has talked to them, or the committee has talked about it.

P. Would this be the time [inaudible]

P. Who is going to talk to him?

E. Who is going to be there? M. Kleindienst talks to—

P. In other words to Baker and Ervin.

The conversation could occur like tomorrow. We have to move in this direction, regardless of the report. We have to move to start the negotiation. M. Well, I think there is too much lead time. It will get into the press before the committee meeting. What is Wally Johnson's status?

D. That's funny—because he is still here regardless of the fact that he has been announced apparently. I gather he will be in with the Attorney General. I was thinking maybe to preserve my counsel role with Ervin and Baker that I ought to be present with Kleindienst.

P. I agree, and the four of us sit down and talk about executive privilege—we won't get into any of the substance.

P. The thing about your being there with Kleindienst they might be skeptical—D. I must say they were pretty good when they were dealing with me as counsel—that is one of the reasons I am not one of the—[inaudible] M. I think it would be appropriate for your counsel to be present. D. That's right.

P. All right. Now that that is done let's get down to the questions—D. I think that possible Kleindienst ought to call today and let Ervin and Baker know that he would like to meet with them early next week to talk about executive privilege and indicate that I would be present to see if we can find—

P. A formula for them to get all the information that they desire. D. That's right.

H. This would be an unpublicized meeting. D. Unpublicized. P. That seems to me to be a sensible way.

H. I wouldn't say early in the week I think he better say Monday so you can get them before they change.

P. [Inaudible] What is your position on Dean having to testify? H. He might.

P. We would have to draw a line there, wouldn't we John?

M. I would agree wholeheartedly [inaudible] To have your Counsel testify would be a mistake.

H. Even if Dean would have to, it would be a mistake [inaudible]

P. Well, on the Dean thing—you simply say well that is out. Dean has made this report and here is everything Dean knows.

E. I think John on Monday you could say to Ervin if the question comes up, "I know the President's mind on this and he is adamant about my testifying as such. At the same time he has always indicated that the fruits of my investigation should be available to you." And just leave it at that for the time being.

D. One issue that may come up as the hearings go along is the fact that the focus on this book is that Dean knew—as you all know I was all over this thing like a wet blanket. I was everywhere—everywhere they look they are going to find Dean. P. Sure.

H. Well, I don't think that is bad. E. I don't either. You were supposed to be.

P. You were our investigator. You were directed by the President to get me all the facts. Second, as White House Counsel you were on it to assist people in the Executive Branch who were being questioned. Say you were there for the purpose of getting information. That was your job. D. That's right.

No Operational Position

P. But the main point certainly is that Dean had absolutely no operational activity. The wonderful thing about your position is that as far as they are concerned—your position has never, never been as operative.

H. That is true—that even in the private sessions then—you volunteered

to give them a statement on the whole question of your recommendation of Liddy, which is the only point of possible kind of substantive culpability that you could have and now you can satisfy all of those actions—that is if you want to.

P. At the President's direction you have never done anything operational, you have always acted as Counsel. We've got to keep our eye on the Dean thing—just give them some of it—not all of it. I don't suppose they say John—no—we won't take it. [inaudible] Just take the heat of being—on the other hand you've got Chapin going and you've got Colson going. H. No, he doesn't.

P. You've got [inaudible] and [inaudible] going.

M. You can't keep them out of all these sessions, Bob. I will get back to [inaudible] on the basis of Chapin's talk to Segretti last week.

D. They can subpoena any of us. There is not doubt about that. If they don't serve it here because they can't get in. They can serve you at home somewhere. They can always find you.

H. We move to Camp David and hide! They can't get in there.

P. Well, go ahead. D. The question is once you are served and you decline—

then you have a defense situation. Now I would say that it would get very difficult to believe that they will go to contempt on people who are present White House employees.

Q. They would on a Colson wouldn't they? D. That would be a good test case for them to go on. The other thing though is they could subpoena Colson to come up there and Colson could then say, "Well, I decline to testify on the grounds that I think it is privileged communication, or privileged activity." Again you get a little fuzzier.

M. If they ask some unusual questions—D. Yes, that's right.

D. Then it will get much fuzzier as to whether or not they would cite him for contempt or not.

Who Would Be Called

P. Suppose the Judge tomorrow orders the move when he opens up the Grand Jury and says I want them to call Haldeman-Ehrlichman and everybody else they didn't call before. D. They would send them all down.

P. Then do you still go on this with the Ervin Committee—the point is—if the Grand Jury decides to go into this thing, what do you think of that?

E. I think you say, "Based on what I know about this case, I can see no reason why I should be concerned about what the Grand Jury process is about." That's all.

P. Then they would have to do both—

appear before the Grand Jury and the Committee? D. Sure.

E. You have to bottom your defense, your position on the report. And the report says nobody was involved, and you have to stay consistent with that.

M. Theoretically, I think you will find the Grand Jury is not about to get mixed up with that sort of thing.

H. [Inaudible] Well, there is danger in a Grand Jury.

D. Well, there are no rules.

Q. Well, Grand Juries are not really very fair sometimes—D. That's right. M. [Inaudible]

H. What would happen? Would Silbert be the prosecutor on this?

D. Unless the court appointed a special prosecutor. H. Which he could do.

P. We better see tomorrow about that — but — if that is the case who is to move now on the first one? Who is to call Kleindienst?

D. I am to follow through with Kleindienst, Sir. I am going to call him and tell him to call Baker first and then Ervin and tell them that you would like to meet with them on Monday to discuss and to explore — a formula for providing the information they need that in a way that does not cause a conflict with general policies on executive privilege.

P. Yet meets their need for information. Right? D. Right.

P. They have requested that kind of a talk already, haven't they? D. Yes.

M. You will sit down with Dick, Mr. President?

P. Yes, yes. I don't want you to talk about this report with anyone.

D. Well, we are going out over the weekend [inaudible]

H. Also write out a thing for Kleindienst so that —

P. I think you can talk to Kleindienst. I think you can do most of the talking. You can do it.

D. I don't think we ought to read anything in this first session but I think we ought to let them know that we are thinking about reaching some sort of —

P. Saying, "What would you think here?" H. Stay loose.

About Informal Session

P. We want to see what can be worthwhile with regard to this — we will talk about informal sessions. Has Ervin's position been he insists on formal sessions? Is that his position?

D. Well, we don't know. We have never really discussed it.

H. His response to your position — naturally that is what you have now — that is Ervin's response — that written stuff isn't any good, "I want the body, we really can't ask a piece of paper questions." Now, what we are saying is that . . .

P. The written thing was in which? E. That was a Ziegler [inaudible] I believe, not a statement.

H. But it is a general thing. That was in your press conference. You, they will provide written — I think you said it —

P. I may have said it. H. I think you did in the press conference and Ervin's response is to that. Your statement could have been, "these people will be happy to provide written answers to appropriate questions."

P. Are you sure it wasn't in a statement? E. No, I am sure we used informal —

D. It came up the third time when I responded to Eastland's invitation to furnish information, and you said we would furnish written information and then it was repeated after that — that we would be happy to supply information in writing.

H. Then Ervin responded—he specifically rejected that on the grounds that you can't ask questions of a piece of paper. So we are giving him that opportunity. He hasn't said that the processes of the Senate require that those questions be answered in [inaudible].

P. What is the argument that you give John to people as to why Executive Session rather than an open session? D. Well, I—

P. You can't really give—you can't really attack the committee's guidance. What do you say? D. Well, I think what I would do is to talk a little about the position in our mind—with the position he took so vocally in the Gravell case.

P. That's right. D. Where he came out and said that a legislative aide could not be called to question for advice they give their Senator or Congressman. He just went on and at great length cited executive privilege, etc.

P. He will say this is not advice to the President. Go ahead. D. Then I will say that these are men who do advise the President and we have to draw the line.

P. And that's the principle involved and to have that principle discussed in open session forum is the kind of thing where you have to go off to the bench where the jury doesn't hear it. D. Well—

H. I don't think, John or Dick, if they're in a Monday meeting should tip their hand and offer to appear in Executive Session and get them on to the Executive Session wicket. D. No, no, I agree.

A Willingness to Listen

H. We should openly indicate a willingness to listen to ideas as to what would be done and an open-mindedness to try to work something out. If that is going to become the issue it seems to me that that is an issue we could win publicly where we may not be able to win it with the Senate. E. Where if we go in with the idea of expressing the President's concern about the protection of his people is expected.

P. I am also concerned about frankly having matters of seniority debated publicly. That is a matter that ought to be debated privately. D. That's right.

P. And the fact that it is raised does not indicate guilt. That is part of his argument for Gravell, too. That fact that it is raised does not indicate guilt. That is what we are really taking about here. But having it in public session, those—D. I will work out a complete negotiating scenario and have thought it through before I go up. H. Your objective in that meeting is simply for you to indicate to them a willingness to discuss. It is not to have a proposal for them to accept or reject.

D. I agree. The scenario is for myself and for Dick [inaudible]—it is a record for the future. P. It is the record for the

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future. Maybe you can tell Ervin on the mountaintop that this is a good way to set up a procedure for the future. You know what I mean, where future cases of this sort are involved. We are making a lot of history here, Senator. M. And the Senator can be a great part of it.

P. A lot of history. We are setting a stirring precedent. The President, after all, let's find out what the President did know, talk about the Hiss case. D. Ervin away from his staff is not very much and I think he might just give up the store himself right there and lock himself in. You know I have dealt with him for a number of years and have seen that happen. I have reached accord with him on legislation—H. If he holds out for anything you may get an answer from him—[inaudible]

P. Suppose now he just takes the adamant line—nothing? D. Doesn't sound like Richardson's information—sounds like him sitting and saying

something out here? H. Baker could in effect say—we want to work something out—what can you give us?

P. You can't be tough. Right now, Howard is just going for a lawsuit. H. Give us a hand and try to open this up. Baker could find that much there, to be positive this time around. D. Don't lock yourself in—we will have another session or so on it. P. Yeah, the other point is if they insist [inaudible] it becomes essential, then that this be forgotten and then have a lawsuit.

E. You say well than O.K., why don't we now discuss are we going to go legally and perhaps we can at least agree on what apparent legal issues there are, so instead of being three years it will only be a year and a half.

H. Get it settled before this Administration moves, or gets kicked out.

D. They know it is many months, who they are going after and under the circumstances that they know they have a tough law suit ahead of them. They have to hire counsel. It is going to cost

a limited hang out. It's not an absolute hang out.

P. But some of the questions look big hanging out publicly or privately.

D. What it is doing, Mr. President, is getting you up above and away from it. That is the most important thing.

P. Oh, I know. I suggested that the other day and they all came down negative on it. Now what has changed their minds?

D. Lack of candidate or a body. H. Laughter. M. [inaudible] We went down every alley.

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

H. John says he is sorry he sent those burglars in there—and that helps a lot. P. That's right. E. You are very welcome, sir. [Laughter] H. Just glad the others didn't get caught.

P. Yeah; the ones he sent to Muskie and all the rest; Jackson and Hubert, etc.

nothing. P. Well, if he just says, "We are going to have public sessions. It's got to be that or else." E. Then we say, "Maybe we have a law suit Senator and it is going to be a long while before legislative hearings and what not."

'Get Baker Enlisted'

P. If you want your hearings—then that is the other thing. The other point is would it not be helpful to get Baker enlisted in some way in advance. If that could be done not begging him. Could we put Kleindienst to that thing? M. On the second step—not on the opening step. P. Even on the opening step the problem that I have here is that if Baker sits there and just parrots Ervin's adamant statement—"Hell no, there can't be anything except public session," you have nothing to do.

M. You know how these Senators act—Baker will lay the whole thing out on the table. P. Yes, I guess you are right. Baker, on the other hand, Kleindienst should at least call and say look Howard, "Why don't you try to work

money to freeze it on their side; they don't have money. They don't have Department of Justice to handle their case; they have to bring in special counsel who probably know nothing about executive privilege, will have to be educated. Get the Library of Congress clanking away getting all the precedence out and the like. H. We've got all that.

D. It is a major operation for them to bring in. They have to get a resolution of the Senate to do it—

E. Of course, Ervin is a constitutional expert himself. Any constitutional expert might want to do that.

P. Yeah. Have you considered any other possibilities? John, you are the one who is supposed to know the bodies.

D. That's right. I think we have had a good go-round on the things now.

Determining Strategy

P. Do you think we want to go this route now? Let us hang out so to speak? D. Well, it isn't really that—

H. It's a limited hang out. D. It is

E. I get a little chill sitting over there now thinking of those people.

P. Yeah, I would hate to be those fellows at the moment.

P. Incidentally, we don't plan to have a press briefing today do we? E. We hadn't planned it — it wouldn't hurt. H. Well, I have a meeting upstairs with John at 3:30—with [inaudible] E. All right, he is going to top our press tomorrow.

P. Let's let it go. E. O.K.

P. O.K. Suppose you take care of it now and I won't come over there. If you get any more soundings, let me hear Friday. It would be my thought then that I would tend to break it off at 4:30 or 5:00 P.M. M. 4:00 P.M. will be the minimum—I have to get to New York.

P. Yeah, then it's done. Yeah, I understand. Bob—what time is my take-off scheduled for Friday? Are you ready? H. Yes, sir.

P. Well we won't rush. E. It is 3:16—how about 15 or 20 minutes from now?