St. Clair's Defense of the President

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Nixon

Following are excerpts from a brief presented to the Judiciary Committee by James D. St. Clair, special counsel to the President:

Introduction

This brief is submitted in response to the areas of inquiry reviewed in depth by the Committee on the Judiciary. The brief neither reflects our belief as to the significance of the areas highlighted nor concedes the relevancy of any areas not addressed. It is offered to provide the Committee on the Judiciary with the most complete record possible under the available time frame. Should the committee desire any additional submissions, the special counsel to the President would welcome the opportunity to respond to any particular request.

Watergate

No Evidence Has Been Presented To Show The President Had Prior Knowledge Of The Plans to Burglarize The Democratic National Committee

On May 22, 1973, the President in a national radio and television address said:

> The burglary and bugging of the Democratic National Committee headquarters came as a complete surprise to me. I had no inkling that any such illegal activities had been planned by persons associated with my campaign . . .

The special staff of the House Committee on the Judiciary has not produced a single shred of evidence showing that the President's statement is untrue. In fact, all of the evidence corroborates the President's statement . . .

The special staff has failed to produce any evidence to demonstrate that the President had foreknowledge of the burglary plans.

The evidence clearly establishes that after the second meeting in Mitchell's office on February 4, 1972, the modified Liddy plan ($250,000) was turned down and Dean concluded that the plan was at an end . . . Dean later met with Haldeman and described the meetings in which the Liddy plans were considered. Dean advised Haldeman that the White House should have nothing to do with any such activity. Haldeman agreed . . .

Subsequently, Magruder reported by telephone to Strachan that a "sophisticated political intelligence gathering system" had been approved, as one of approximately thirty items under consideration. Magruder did not elaborate and Strachan dutifully repeated this information, practically verbatim, in a three line paragraph in his Political Matters Memo 3/18 Directed to Haldeman. Attached to this memo under Tab H were reports identified by the code name "Sedan Chair" as examples of the type of information being developed. These reports did not disclose the character of the source of the information . . .

There is no reason to believe that Haldeman knew the "intelligence gathering" system referred to in Strachan's memo was, in fact, illegal. Magruder testified that the original concept of intelligence gathering was "simply one of gathering . . . information through sources in the opposition's committee."

Dean in discussing this matter with the President on the morning of March 21, 1973, stated that:" . . . Bob (Haldeman) was assuming, that they (CRP) had something that was proper over there, some intelligence gathering operation that Liddy was operating." . . .In referring to a Sedan Chair-type operation, Dean told the President that there is "nothing illegal about that." . . .

There Is No Evidence Thaat The President Had Knowledge Prior To March 21, 1973, Of An Alleged Plot To Obstruct Justice With Respect To The Break-In At The Democratic National Committee

An objective analysis of the evidence before this committee will reaffirm the fact that the President had no prior knowledge of an alleged plot to obstruct justice by such means as the attempted use of the CIA to thwart the FBI's Watergate investigation, the destruction of evidence, the subornation of perjury, and the payment of "hush money."

The allegation that John Dean informed the President of an illegal cover-up on September 15, 1972, is based exclusively on the testimony of Dean. In his testimony before the Senate select committee Dean stated that he was certain after the September 15 meeting that the President was fully aware of the cover-up . . . However, in answering questions of Senator Baker, he modifed this by stating it "is an inference of mine." . . . Later he admitted he had no personal knowledge that the President knew on September 15th about a cover-up of Watergate . . .

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

This was said in the context not of a criminal plot to obstruct justice as Dean alleges, but rather in the context of the politics of the matter, such as civil suits, counter-suits, Democratic efforts to exploit Watergate as a political issue and the like . . .

The Evidence Establishes That The President Carried Out His Constitutional Responsibility To See That The Laws Were Enforced

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

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

The President, on the afternoon of April 15, 1973, had every reason to believe that the Department of Justice was moving rapidly to complete the case. He continued to attempt to assist. He had four telephone conversations with Petersen after their meeting. In the afternoon, having been told that Liddy would not talk unless authorized by "higher authority," who all assumed was Mitchell, the President directed Petersen to pass the word to Liddy through his counsel that the President wanted him to cooperate. Subsquently, the President told Petersen that Dean doubted Liddy would accept the word of Petersen, so Petersen was directed to tell Liddy's counsel that the President personally would confirm his urging of Liddy to cooperate . . .

The President continued to seek additional facts and details about the whole matter. However, while the President wanted Petersen to report directly to him about the unfolding developments in this case the President did not want Petersen to inform him about the grand jury proceedings even though Petersen believed the President was entitled to this information, because the President believed this would be improper.

Thus, any suggestion that the President was using Petersen as an information source in order to perpetuate a cover-up is ridiculous in light of the fact that the President told Petersen not to proivde him with what would be the most important information if continuing the cover-up was the President's purpose. Moreover, Petersen never gave the President any grand jury information.

The President continued to struggle with the question of administrative action against his aides. On April 27, Petersen reported to the President that Dean's lawyer was threatening that unless Dean got immunity, "We will bring the President in—not this case but in other things." . . . On the question of immunity in the face of these threats, the President told Petersen:

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

Later in that same meeting the President was advised by Petersen that the negotiations with Dean's attorneys had

bogged down, and action by the President against Dean, Haldeman and Ehrlichman would now be helpful to the U.S. attorney . . .

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

In summary, after the March 21 disclosure the President conducted a personal investigation and, based on the results of this investigation and in coordination with the Department of Justice, took presidential action and removed several key White House staff members from office. The President's action was a function of his constitutionally-directed power to see that the laws are "faithfully executed" and was well within the wide discretion afforded him under the executive power doctrine. The investigation the President conducted was proper and fulfilled his constitutional duty in every respect. As a consequence every White House official against whom charges were made was removed from office.

National Security Matters

The Special Investigations Unit Was Created By The President In Response To A Threat To The National Security And Was Never Authorized to Commit Illegal Acts

The record before this committee establishes beyond any doubt that President Nixon ordered the formation of the Special Investigations Unit, because of a threat to the national security and that, with one notable exception, the unit performed a legitimate and critical service to the nation. Moreover, the record also conclusively establishes that the President never explicitly or implicitly authorized anyone associated with this unit to commit illegal acts and that he never ordered the entry at Dr. Lewis Fielding's office.

The Special Investigations Unit was created by President Nixon to combat the serious danger of unauthorized disclosures of classified information affecting the national security that had reached a critical point on June 13, 1971, with the New York Times publication of the Pentagon Papers . . .

This threat was acutely compounded by the involvement of Daniel Ellsberg, a former staff member of the National Security Council, and the prospect that Ellsberg might divulge additional information, and the realization that the Soviet Embassy had received a copy of the Pentagon Papers on June 17, 1971 and might be the recipient of additional classified information . . . The President therefore appropriately considered the disclosure of the Pentagon Papers and the implications of that disclosure as a matter of paramount importance and he accordingly reacted in a number of ways.

The President's immediate reaction to this threat was to turn to the court in an attempt to prevent further disclosures of this material that had been taken from the most sensitive files of the Department of State and Defense and the CIA, and to have the FBI investigate this breach of national security . . . The President also ordered a security clearance review by each department and agency of the government having authority and responsibility for the classification of information affecting the national defense and security . . . Colson was also assigned the responsibility of working with Congress in an effort to have a Congressional hearing on the problem of security leaks . . . Moreover, the President devoted a great deal of his time discussing with Haldeman, Ehrlichman, Kissinger, and Colson the deleterious effect the publication of the Pentagon Papers had upon the national security and the effective conduct of our foreign policy . . .

The President was also concerned that others might follow Ellsberg's example of making unauthorized disclosures of classified information . . .

While the President wanted to negate these possibilities, the President, however, never asked Colson to disseminate any information that was not true . . .

In light of this danger to the national security which served to highlight the continuing problems of security leaks the President's decision, however, to take additional action to prevent further leaks was clearly necessary and his failure to act would have been a dereliction of duty. The creation of the Special Investigations Unit was therefore the result of the President's assessment of the significance of the problem confronting the nation and the determination the most efficacious means to eradicate this problem was to begin an extraordinary national security operation and there is not one iota of evidence in the record to indicate this was anything but a proper and legitimate decision by the President . . .

ITT

The President Did Not Cause A Settlement Of The ITT Antitrust Cases In Consideration Of Any Commitment Which ITT Made Toward The Financing Of The 1972 Republican National Convention By The San Diego Business Community

Two events, separated by over four years, define the beginning and the end of the International Telegraph and Telephone Company (ITT) controversy. In late December, 1968, Richard W. McLaren received from Richard G. Kleindienst and John N. Mitchell a commitment that he would not be interfered with politically, with respect to a vigorous enforcement of antitrust laws, i.e. all cases would be decided on the merits, if he accepted the position of assistant attorney general, Antitrust Division, Department of Justice . . . On March 2, 1972, Judge McLaren, after describing that commitment, in response to a question from Senator Eastland told the Senate select committee that the commitment had been kept . . . The second event . . . was the disclosure of Leon Jaworski, the special prosecutor, that:

> except as noted below, that part of the investigation relating to allegations of Federal criminal offenses by ITT executives in connection with the settlement of the antitrust cases announced on July 30, 1971, has failed to disclose the commission of any such violations and although the investigation is not being closed at this time, it is fair to say that there is no present expectation of a disclosure of such offenses . .

McLaren, as assistant attorney general, Antitrust Division, was in charge of all aspects of the government's three antitrust merger suits against ITT, including all aspects of the settlement negotiations and procedures . . . Because of former Attorney General

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Respectfully submitted
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Mitchell's early self-disqualification from involvement in the cases based on what he apparently perceived to be a potential conflict-of-interest situation, Deputy Attorney General Kliendienst had assumed the administrative responsibilities normally attendant upon the Attorney General in these cases. Although earlier settlement talk had occurred between ITT and Justice Department lawyers . . . it was on June 17, 1971, that the first concrete settlement offer was made to ITT by McLaren. On that date, McLaren, following an April 29, 1971, ITT economic presentation and an independent financial analysis by Richard Ramsden, recommended to Kleindienst that a settlement proposal be made to ITT which would allow that company to retain the Hartford Fire Insurance Company. Kleindienst approved the settlement proposal, relying upon the expertise of McLaren . . .

At the time of final settlement, neither McLaren nor Kleindienst was aware of any financial commitment by ITT to the San Diego Convention and Tourist Bureau in connection with the hosting of the 1972 Republican National Convention . . . Both McLaren and Kleindienst testified that John N. Mitchell did not talk with them about the ITT cases . . . Mitchell confirmed their testimony on this point . . . There is not a scintilla of evidence to rebut McLaren's statement that - the "Republican convention site and ITTs' contribution had absolutely 100 per cent nothing to do with the settlement I made." . . .

There is no evidence, moreover, linking any action of the President to any ITT financial commitment. The only Presidential involvement in the ITT cases occurred on April 19 and 21, 1971, when he directed the appeal be dropped, but then reversed his position. Both actions were based upon broad policy considerations, rather than on the merits of the cases . . .

Neither The Testimony of Richard G. Kleindienst Nor John N. Mitchell Before the Senate Judiciary Committee Constitutes A Basis For Concluding That The President Was Under Some Legal Duty To Respond To That Testimony

From the time of the printing of The Washington Post on Febraury 29, 1972, until near July 17, 1972, the White House was concerned with the realization that the President and his administration were the focus of an intense scrutiny as to activities surrounding the settlement of the ITT antitrust cases . . .

In order to place the actions of the White House staff and the President in the first half of 1972 in proper perspective, it must be recognized that in the days immediately following the disclosure of the Dita Beard memorandum, Peter M. Flanigan, a top White House aide, then executive director of the Council on Economic Policy, received much attention from the Senate Judiciary Committee, the news media, and the White House staff because of his tangential participation, as described, in one phase of the activity which eventually culminated in the settlement of the ITT cases. At that time, the news media's curiosity was pitched to a posible Kleindienst-Flanigan testimonial contradiction in reference to Kleindienst's White House contacts as illustrated by the following two excerpts from newspaper articles:

The questioning of Kleindienst today, limited to a maximum of 6½ hours by the committee's 5 p.m. deadline for a report to the floor, is expected to focus on the disclosure by White House aide Peter M. Flanigan in a letter Monday in which he said he had several conversations with Kleindienst last year about a settlement of antitrust cases against the International Telephone and Telegraph Corp.

Flanigan, who gave limited testimony before the committee last week, said in the let er that he passed along ITT's complaints about a proposed settlement to the then deputy attorney general and also informed him when an outside consultant had completed his financial anal'sis of ITT's arguments.

Kleindienst, testifying last month, said he did not recall discussing the ITT matter at the White House, but suggested there might have been 'casual reference' to it in other conversations there.

(The Washington Post, April 27, 1972)

Again:

Kleindienst testified that he had 'no recollection' of being told by Flanigan last April that ITT was displeased with the Justice Department's original antitrust settlement offer and the next month that the White House aide had received a financial analysis concerning the cases which had been recruited through Flanigan from a New York investment banker.

Flanigan, who answered a limited number of questions put by the committee last week, told of those conversations with Kleindienst in a letter he sent to Eastland on Monday.

In light of Flaniagn's letter, Kleindienst conceded, it was 'extremly probable' that he did have the contacts described.

(The Washington Post, April 28, 1972)

The testimony of Charles W. Colson before the House Committee on the Judiciary on July 15 and 16, 1974, is also instructive. He testified that he, not only as a member of the special task force, but as its overseer, . . . had followed the course of the Kleindienst hearings to assess its political impact, rather than for exact content . . . Although he generally kept the President informed of the political give and take or "punch and counter-punch" that occurred, Colson did not recall telling the President what Kleindienst and Mitchell were actually testifying to though Flanigan's testimony was covered . . . Colson testified he met with the President and Haldeman, probably, on March 24, 1972, at which time the President inquired of Haldeman what he, the President, might previsouly have said to Kleindienst about the case or antitrust policy. When Haldeman told him any exchange was limited to policy matters, the President said, "Thank God I didn't discuss the case." . . . The transcript of a June 4, 1972, meeting with Mitchell, the President and Haldeman although replete with references to the ITT matter, is devoid of any remarks relating to Mitchell's or Kleindienst's testimony before the Senate Judiciary Committee . . . The essential point to be grasped by references to the settlement and newspaper excerpts and the Colson testimony is that any input to the President, whether by White House aides or outside sources, was permeated by the controversies of those times. Along with that, it would be well to remember that no evidence has been produced to warrant a reasonable assumption that more than a handful of advisors knew of the President's call to Kleindienst or of his conference with Mitchell two days thereafter. Because of the foregoing, the flow of condensed news to the President would not have, except by happenstance, been geared at Kleindienst's statements in which he stated he could not recollect why the Department of Justice sought an appeal extension in the pending case of U.S. v. ITT (Grinnell) . . . That event, unrelated to the settlement, was cast as insignificant by those concerned with the heat of the day; purely legal history, having occurred three months before the settlement and then forgotten for all practical purposes . . .

Dairy

The President Did Not Impose The Import Quotas Sought By The Dairy Industry Nor Were His Actions Influenced By Campaign Contributions Or Pledges Of Contributions

The dairy industry, like many components of the farm economy is the beneficiary of government price support programs legislated by the Congress. With decisions frequently being made within the executive branch on the administration of critical dairy programs and with dairy legislation constantly under review in the Congress, the dairy farmers have organized into an influential political force in recent years. There are now three major dairy cooperatives in the United States: The Associated Milk Producers, Inc., (AMPI), Mid-America Dairies (Mid-Am) and Dairymen, Inc. (DI).

These dairy organizations not only represent in Washington the interests of their members, they also exert influence through the ballot box and through political contributions. Their activities are not unlike the fund raising and contributing activities of special interest groups such as the Committee on Political Education (COPE) of the AFL-CIO.

The President's first contact with members of the dairy organizations was in 1970 when officials of AMPI invited him to speak at their annual convention. Although the President declined the invitation, in a gesture of courtesy, he invited members of the organization to meet with him in Washington and to arrange a meeting of a larger delegation of dairy leaders at a later date . . . Harold Nelson, general manager of AMPI, and his special assistant David Parr accepted the invitation and paid a courtesy call on the President on September 9, 1970. This meeting was part of a presidential "open hour," lasted less than ten minutes and was devoted to introductions, photographs, and a distribution of Presidential souvenirs.

There is absolutely no evidence which indicates or even suggests that campaign contributions were discussed at any time during this brief exchange. The President did not see a memorandum referring to a campaign pledge by the organization Nelson and Parr represented. Charles Colson did not discuss that or any other contribution or pledge from the dairymen with the President nor was it discussed in the meeting . . . Neither is there any evidence that the Memorandum or any pledge by the dairymen was discussed or mentioned to the President by anyone . . .

In the mass of information presented to this committee there is not a scintilla of evidence to demonstrate that any action was taken by the President because of any campaign contributions or pledges of contributions made by the dairymen to the President's re-election campaign. Nor is there any testimony by anyone that administration or re-election officials sought or accepted contributions or pledges in return for any official act. To the contrary, when a dairymen's representative implied such an overture, one administration official went so far as to consider referral of the suggestion to the Department of Justice. The President's only action hav-

ing favorable consequences for the dairymen was set forth in the tape of the afternoon meeting of March 23, 1971. That tape proves (1) that contributions or pledges to the President's re-election campaign were not discussed nor were they a condition of any presidential action, (2) that the President did not direct or approve the contacting of Charles Colson or any other person for the purpose of seeking or obtaining any contributions or pledges and (3) that the President was advised and specifically concluded, as he has stated, that Congress would pass a mandatory increase and that for political reasons he could not veto it. To consider the President's decision in raising price supports improper because campaign contributions were subsequently made by various entities affected by the decision would require the President and all other elected officials who may ever run for re-election to either forego contributions or abstain from making decisions that are the Constitutional and statutory responsibilities of their office.

IRS

There Has Been No Evidence Presented That The President Misused The Internal Revenue Service

All of the materials dealing with the alleged misuse of the Internal Revenue Service by this administration emphasize the one fundamental point that the Internal Revenue Service (IRS) was not, in fact, misused. The various materials, testimony, and reports of the House Committee on the Judiciary, Senate Select Committee on Presidential Campaign Activities, and the Joint Committee on Internal Revenue Taxation demonstrate and affirm this fact. The evidence consists of memos that claim that someone at the White House asked someone at the IRS to do something that might harass some individual or organization. Nevertheless, the overriding fact remains that these suggestions were not carried out.

On December 20, 1973, the Joint Committee on Internal Revenue Taxation's staff issued a report, Investigation Into Certain Charges Of The Use Of The Internal Revenue Service For Political Purposes, 93rd Congress, 1st Sess. (December 20, 1973) . . . That committee investigation was based on charges made y Mr. John Dean during the public hearings of the Senate Select Committee on Presidential Campaign Activities in late June of 1973.

There are two key points to be emphasized in Mr. Dean's basic allegations. First, it is claimed that several individuals in the White House attempted to misuse the IRS for partisan political purposes. It is clear that such an alleged misuse could only succeed if it were supported by the power and authority of the President. On looking at all the evidence available, it is clear that the President took no action to accomplish this objective.

One of the President's most basic functions in relation to the IRS is the appointment of the commissioner of internal revenue, and his superior, the Secretary of the Treasury. During his time in office President Nixon appointed three highly "principled" commissioners of the highest integrity and capability. No one, in all the hearings, allegations, or even newspaper leaks has ever suggested anything to the contrary. The commissioners were all men of stature and independence . . .

Thus, the record reveals a President who has appointed independent commissioners of internal revenue and who has in no way prevented them from resisting any improper political pressure. Concerning the allegation of IRS misuse, the ultimate fact is that the President's appointees did, in fact, resist any improper suggestions for the use or misuse of the agency . . .

The second key point to be emphasized in Dean's original charges concerns the alleged desire of the White House to "do something about audits that were being performed on friends of President Nixon who felt that they were being harassed by the IRS." . . . On the face of the statement, there is nothing improper for either the President or any other citizen to be concerned about any other citizen's charge of harassment by a government agency. The President, in fact, has a mandate to prevent such harassment. However, even if we were to assume that this concern, supposedly expressed to Mr. Dean, through Mr. Haldeman, Mr. Higby, or the President, in some manner, somehow acquires a sinister implication, the actions do not support that implication . . .

Thus, there are absolutely no facts to substantiate any charge that the President in any way misused or directed the misuse of the IRS to either harm his "enemies" or to benefit his "friends."

What becomes quite obvious when reviewing the House Judiciary Committee's exhibits is the fact that John Dean was the key actor and instigator of any apparent efforts to improperly utilize the IRS that did occur in the Nixon administration. In terms of actually achieving any improper influence, Dean's efforts (mainly carried out through the assistance of Mr. John Caulfield) seem to have achieved nothing . . .

Thus, Dean's claims of presidential direction in Dean's efforts to misuse the IRS are contradicted by the sequence of events that point to no presidential involvement, or interest in this matter. In any event, whatever it was the President said, the crucial fact is that nothing ever happened.

In conclusion, what the record clearly shows is that while some personnel at the White House may indeed have had improper intentions abou what the IRS should do, and may in fact, have communicated such intentions to their colleagues at the White House or to some individuals at the IRS, no abuse of the IRS ever occurred resulting from presidential action. No action by the IRS resulted. No involvement of the President has ever been shown to be likely, let alone probable.

For the foregoing reasons and in light of the complete absence of any conclusive evidence demonstrating presidential wrongdoing sufficient to justify the grave action of impeachment, the committee must conclude that a recommendation of impeachment is not justified.