Legal Brief Submitted to House

Panel on Behalf of the President

Special to The New York Times

WASHINGTON, July 23—Following is the text of a legal brief on behalf of President Nixon that was submitted to the House Judiciary Committee last Saturday by the Office of the Special Counsel to the President, headed by James D. St. Clair. A news article on the brief appeared in The New York Times on Sunday.

I. WATERGATE

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.

A. No Evidence Has Been Presented to Show the President Had Prior Knowledge of the Plan 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.

In his March 21, 1973, meeting with the President, John Dean told the President there was no White House involvement in the planning of the burglary:

> D.: Uh, I honestly believe that no one over here (at the White House) knew that (there were plans to break-in the DNC).

After Dean had for the first time told the President some of the details of the Watergate burglary and the cover-up thereof, Dean again told the President that this was new information of which the President was unaware:

> D.: . . . you're not involved in it . . .
> P.: That is true
> D.: I know, sir, it is. Well I can just tell from our conversations that, you know, these are things that you have no knowledge of.

Both Haldeman and Ehrlichman testified before the Senate Select Committee that they did not believe the President had prior knowledge of the break-in plans.

In a conversation with the President on March 21, 1973, Ehrlichman further elaborated that the White House had no advance knowledge of the break-in:

> E.: The, the only thing that we can say for Ziegler to say, 'Look, we've investigated backwards and forwards in the White House, and we're satisfied on the basis of the report we have that nobody in the White House has been involved in a burglary; nobody had notice of it, knowledge of it, participated in the planning, or aided or abetted it in any way.'
> P.: Well, that's what you could say.
> A. And it happens to be true.

Mitchell is the only close adviser alleged to have advance knowledge of the burglary, but Mitchell stated he never discussed this subject with the President. Mitchell believed the President did not know of either the burglary plans or the cover-up because, as Mitchell said:

> I know the . . . [President] . . . I know his reactions to things, and have a very strong feeling that during the period of time in which I was in association with him and did talk to him . . . I just do not believe that he had that information or had the knowledge; otherwise, I think the type of conversations we had would have brought it out.

Finally, Richard Moore, a close associate of the President, confirmed the fact that the President had no prior knowledge. Moore testified before the Senate Select Committee:

> As I sat through the meeting of March 20 with the President and Mr. Dean in the Oval Office, I came to the conclusion in my own mind that the President could not be aware of the things that Dean was worried about or had been hinting at to me. . . . It seemed crystal clear to me that he know of nothing that was inconsistent with the previously stated conclusion that the White House was involved in the Watergate affair, before or after the event.

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

The evidence clearly establishes that after the second meeting in Mitchell's office on Feb. 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 #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.

A Lack of Awareness

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."

Sedan Chair was such an activity. Magruder and Reisner testified that Sedan Chair involved a disgruntled campaign worker from the Humphrey Pennsylvania organization who passed information to C.R.P. Ehrlichman and Porter described a similar operation using a Muskie campaign courier to photograph documents he was delivering. Porter deemed this activity surreptitious but not illegal.

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

The instruction from Haldeman to Strachan to transfer the intelligence "capabilities" from Muskie to McGovern does not establish that Haldeman knew the activities were illgal. The evidence presented by the special staff only shows that Haldeman may have known of the lawful intelligence gathering activities. Strachan suspected that it involved such things as the Muskie driver.

There is no evidence to show that Haldeman ever discussed intelligence gathering with the President. The Senate Select Committee testimony discloses that the Political Matters Memo #18 was prepared by Strachan on March 31, 1972, and submitted to Haldeman. It was returned to Strachan with a check mark opposite the paragraph relating to intelligence gathering. According to Strachan, this mark indicated that Haldeman had seen the matter.

Four days later Strachan prepared a talking paper to Haldeman to use in a meeting that he was having that day with Mitchell—not with the President. After Haldeman met with Mitchell, the talking paper was returned and filed with Memo #18. According to Strachan, the subject of intelligence gathering was never raised again by Haldeman, and Strachan only assumed Haldeman discussed it with Mitchell. Strachan never testified that Haldeman discussed intelligence gathering with the President. In fact, Strachan testified that any memo discussed with the President bore the letter "P" in the upper right hand corner with a check mark through the "P." Strachan is quite certain that none of his Political Matters Memos had this marking.

Haldeman testified that Strachan did not know what transpired at the April 4, 1972, meeting and that Strachan's suggestion that intelligence gathering was discussed is "far-fetched." Haldeman indicated that he and Mitchell did not discuss intelligence gathering activities with the President, but only reviewed matters relating to the I.T.T.-Kleindienst hearings and assignments of regional campaign responsibilities. The notes Haldeman took during this meeting show that no other matters were discussed.

The transcript of the April 4, 1972, meeting of the President with Haldeman and Mitchell fully confirms Haldeman's testimony that no reference was made to any intelligence gathering system. Mitchell confirmed this in his recent testimony before the House Judiciary Committee.

Shock and Surprise

If there remains any doubt that the President had no advance knowledge of the Watergate burglary, his recorded and spontaneous statements of shock and surprise upon first learning of the break-in would seem conclusive. On Feb. 28, 1973, at a meeting with Dean, the President reacted to the burglary saying:

P. Good G—— almighty. I mean, of course, I'm not dumb, and I will never forget when I heard about this G—— damned thing [unintelligible] J—— C——, what in hell is this? What's the matter with these people? Are they crazy? I thought they were nuts.

The President first learned of potential White House involvement in the planning and execution of the break-in on March 13, 1973, when Dean told him Strachan knew about the break-in plans in advance. The President expressed his surprise at this revelation and to make sure he heard correctly, asked again and again.

P. Did Strachan?
D. Yes.
P. He knew?
D. Yes.
P. About the Watergate?
D. Yes.

* * *

P. But he knew? He know about Watergate? Strachan did?
D. Uh huh.
P. I'll be damned. . . .

On March 13, the President again characterized the break-in saying, "What a stupid thing. Pointless."

On March 21, 1973, when the President finally learned substantially all of the details of the White House involvement from Dean, the President said:

P. Why [unintelligible] I wonder? I am just trying to think as to why then. We'd just finished the Moscow trip. I mean, we were ——
D. That's right.
P. The Democrats had just nominated McG——, McGovern. I mean, for C—— sakes, I mean, what the hell were we—I mean I can see doing it earlier but I mean, now let me say. I can see the pressure but I don't see why all the pressure would have been around then.

Finally in the conversation of the President, Haldeman and Ehrlichman on March 27, 1973, the following exchange again demonstrates the President's lack of knowledge:

H. O'Brien raised the question whether Dean actually had no knowledge of what was going on in the intelligence area between the time of the meetings in Mitchell's office, when he said don't do anything, and the time of the Watergate discovery. And I put that very question to Dean, and he said, "Absolutely nothing."

P. I would—the reason I would totally agree—that I would believe Dean there [unintelligible] he would be lying to us about that. But I would believe for another reason—that he thought it was a stupid damn idea.

E. There just isn't a scintilla of hint that Dean knew about this. Dean was pretty good all through that period of time in sharing things, and he was tracking with a number of us on—

P. Well, you know the thing the reason that [unintelligible] thought—and this incidentally covers Colson—and I don't know whether—. I know that most everybody except Bob, and perhaps you, think Colson knew all about it. But I was talking to Colson, remember exclusively about—and maybe that was the point—exclusively about issues. . . .

* * *

P. Right. That was what it is. But in all those talks he had plenty of opportunity. He was always coming to me with ideas, but Colson in that entire period, John, didn't mention it. I think he would have said, "Look we've gotten some information," but he never said they were. Haldeman, in this whole period, Haldeman I am sure—Bob and you, he talked to both of you about the campaign. Never a word. I mean maybe all of you knew but didn't tell me, but I can't believe that Colson—well—

Thus, a full and fair analysis of all the available evidence conclusively demonstrates that the President had absolutely no prior knowledge of the Liddy plans.

B. There Is No Evidence That 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 C.I.A. to thwart the F.B.I.'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 Sept. 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 Sept. 15 meeting that the President was fully aware of the cover-up. However, in answering questions of Senator Baker, he modified this by stating it "is an inference of mine." Later he admitted he had no personal knowledge that the President knew on Sept. 15th about a cover-up of Watergate.

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

P. Well, the whole thing is a can of worms. As you know, a lot of this stuff went on. And, uh, and, uh, and the people who worked (unintelligible) awfully embarrassing. And, uh, and, uh, the, uh, but the, but the way you, you've handled it, it seems to me, has been very skillful, because you—putting your fingers in the dikes every time that leaks have sprung here and sprung there. . . .

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, countersuits, Democratic efforts to exploit Watergate as a political issue and the like. The reference to "putting your finger in the leaks" was clearly related to the handling of the political and public relations aspect of the matter. At no point was the word "contained" used, as Dean insisted had been the case in his testimony.

This is an example of what the President meant when he said that the tapes contain certain ambiguities that someone with a motive to discredit the President could take out of context and distort to suit his own purposes.

If Dean did in fact believe that the President was aware of efforts illegally to conceal the break-in prior to March 21, 1973, it is strange that Dean on that date felt compelled to disclose to the President for the first time what he later testified the President already knew. After some preliminary remarks concerning the Gray confirmation hearings, Dean stated the real purpose for the meeting:

D. Uh, the reason, I thought we ought to talk this morning *is because in, in our conversations, us, uh, I have, I have the impression that you don't*

know everything I know.

P. That's right.

D. and is makes it very difficult for you to make judgments that, uh, that only you can make

P. That's right.

D. on some of these things and I thought that—[Emphasis added]

He then proceeded to detail for the President what he believed the President should be made aware of, first in the "over-all."

Dean stated, "We have a cancer—within—close to the Presidency, that's growing," and "people are going to start perjuring themselves. . . ." He described the genesis of the D.N.C. break-in; the employment of Liddy, the formulation of a series of plans by Liddy which Dean disavowed, as did Mr. Haldeman; the belief that the C.R.P. had a lawful intelligence gathering operation and the receipt of information from this source; and the arrest at the D.N.C. on June 17, 1972. He then informed the President of a call to Liddy shortly thereafter inquiring ". . . whether anybody in the White House was involved in this" and the response, "No, they weren't."

Dean's 'Clear Instructions'

Dean next laid out for the President wht happened after June 17. He informed the President "I was under pretty clear instructions (laughs) not to really investigate this . . . I worked on a theory of containment—to try to hold it right where it was," and he admitted that he was "totally aware" of what the F.B.I. and grand jury were doing.

Throughout these disclosures the President asked Dean a number of questions such as:

P. Tell me this: did Mitchell go along?

* * *

P. That could be—Colson know [sic] what they were talking about?

* * *

P. Did Colson—had he talked to anybody here?

D. No. I think this was an independent—

P. Did he talk to Haldeman?

* * *

D. . . . Strachan. Some of it was given to Haldeman. uh, there is no doubt about it. Uh—

P. Did he know what it was coming from?

Altogether, the President asked Dean more than 150 questions in the course of this meeting.

Dean then described to the President the commencement of what he alleges was a cover-up involving himself and others. Implicit in these revelations, of course, is that the President was not involved but rather he was learning of these allegations for the first time. In fact, later in the conversations, Dean said:

D: I know, sir, it is. Well I can just tell from our conversations that, you know, *these are things that you have no knowledge of.* [Emphasis added]

This evidence demonstrates that the President was not aware of any plot to obstruct justice with respect to the break-in at the Democratic National Committee. This fact is further illustrated by an analysis of each of the categories through which obstruction of justice by some persons has been alleged to have occurred: the interjection of C.I.A. into the investigation; destruction of evidence; perjury and subornation of perjury; and payments to the "Watergate seven" defendants.

(a) The Interjection of C.I.A. into the Investigation

The evidence of the President's role with respect to C.I.A. and the investigation is clear, uncontradicted and totally exculpatory.

The theory that the C.I.A. might have been involved, somehow, in the break-in of the Democratic National Committee originated not in any political circle, but within the Federal Bureau of Investigation. The theory was ostensibly based on some intrinsic evidence, although the previously deteriorated relationship, and, indeed, the antagonistic competition between the C.I.A. and the F.B.I. could have well enhanced the acceptability of the theory within the F.B.I. The testimony of L. Patrick Gray establishes that the origin of the C.I.A. involvement theory was in the F.B.I. and that Gray communicated the theory to Dean on the afternoon of June 22, 1972. Gray testified:

I met again with Mr. Dean at 6:30 P.M. the same day to again discuss the scheduling of interviews of White House staff personnel and to arrange the scheduling of these interviews directly through the Washington field office rather than through F.B.I. headquarters. At this meeting I also discussed with him our very early theories of the case; namely, that the episode was either a C.I.A. covert operation of some sort simply because some of the people involved had been C.I.A. people in the past, or a C.I.A. money chain, or a political money chain, or a purse political operation, or a Cuban right-wing operation, or a combination of any of these. I also told Mr. Dean that we were not zeroing in on any one theory at this time, or excluding any, but that we just could not see any clear reason for this burglary and attempted intercept of communications operation.

Dean's testimony confirms that Gray informed him on June 22, 1972, that one of the F.B.I. theories of the case was that it was a C.I.A. operation, and that Dean reported this information to Haldeman and Ehrlichman on June 23. Dean testified:

It was during my meeting with Mr. Gray on June 22 that we also talked about his theories of the case as it was beginning to unfold. I remember well that he drew a diagram for me showing his theories. At that time Mr. Gray had the following theories: It was a set-up job by a double agent; it was a C.I.A. operation because of the number of former C.I.A. people involved; or it was someone in the re-election committee who was responsible. Gray also had some other theories which he discussed, but I do not recall them now, but I do remember that those I have mentioned were his primary theories.

* * *

On June 23 I reported my conversation with Gray of the preceding evening to Ehrlichman and Haldeman.

Haldeman's testimony confirms that Dean reported to him the F.B.I.'s concern about C.I.A. involvement, and that he in turn reported it to the President, who ordered Haldeman and Ehrlichman to meet with the C.I.A. officials. Haldeman testified:

There was a concern at the White House that activities which had been in no way related to Watergate or to the 1972 political campaign, and which were in the area of national security, would be compromised in the process of the Watergate investigation and the attendant publicity and political furor. The recent public disclosure of the F.B.I. wiretaps on press and N.S.C. personnel, the details of the plumbers operations, and so on, fully justifies that concern.

As a result of this concern and the F.B.I.'s request through Pat Gray to John Dean for guidance regarding some aspects of the Watergate investigation, because of the possibility of C.I.A. involvement, the President directed John Ehrlichman and me to meet with the director and deputy director of the C.I.A. on June 23. We did so and ascertained from them that there had not been any C.I.A. involvement in the Watergate affair and that there was no concern on the part of Director Helms as to the fact that some of the Watergate participants had been involved in the Bay of Pigs operations of the C.I.A.

We discussed the White House concern regarding possible disclosure of non-Watergate-related covert C.I.A. operations or other nonrelated national security activities that had been undertaken previously by some of the Watergate participants, and we requested Deputy Director Walters to meet with Director Gray of the F.B.I. to express these concerns and to coordinate with the F.B.I., so that the F.B.I.'s area of investigation of the Watergate participants not be expanded into unrelated matters which could lead to disclosures of earlier national security or C.I.A. activities.

The President's statement of May 22, 1973, completes the evidence of this transaction, and verifies the circumstances which led to the meeting of Haldeman and Ehrlichman with the C.I.A. officials on June 23, 1972. The President stated:

Within a few days, however, I was advised that there was a possibility of C.I.A. involvement in some way.

It did seem to me possible that, because of the involvement of former C.I.A. personnel, and because of some of their apparent associations, the investigation could lead to the uncovering of covert C.I.A. operations totally unrelated to the Watergate break-in.

In addition, by this time, the name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted to the fact that he had previously been a member of the special investigations unit in the White House. Therefore, I was also concerned that the Watergate investigation might well lead to an inquiry into the activities of the special investigations unit itself.

In this area, I felt it was important to avoid disclosure of the details of the national security matters with which the group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive.

I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal—and not at that time having any idea of the extent of political abuse which Watergate reflected—I also had to be deeply concerned with insuring that neither the covert operations of the C.I.A. nor the operations of the special investigations unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to insure that the investigation of the break-in not expose either an unrelated covert operation of the C.I.A. or the activities of the White House investigations unit—and to see that this was personally coordinated between General Walters, the deputy director of the C.I.A., and Mr. Gray of the F.B.I. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way.

From the evidence, it is thus clear that the President, stimulated by the F.B.I.'s theory of possible C.I.A. involvement, which had been relayed to him through Dean and Haldeman on the morning of June 23, 1972, directed Haldeman that Haldeman and Ehrlichman meet with C.I.A. officials to ensure that the F.B.I. investigation not expose an unrelated covert operation of the C.I.A.

There is absolutely no evidence of any other action by the President with

respect to the F.B.I.'s investigation as it related to the C.I.A.

Helms Memorandum Cited

It is relevant to note that the uncertainty regarding the possible uncovering of C.I.A. activities was recognized in a memorandum dated June 28, 1972, from Helms to Walters that stated that it was still the C.I.A.'s position:

> that they [F.B.I.] confine themselves to the personalities already arrested or directly under suspicion and that they desist from expanding this investigation into other areas which may well, eventually, run afoul of our operations.

Moreover, it was not until July 6, 1972, that the C.I.A. categorically informed the F.B.I. that it had no objections to an unlimited Watergate investigation. The President, also on July 6, 1972, clearly indicated to Gray that he did not want a cover-up, for he told Gray, "Pat, you just continue to conduct your aggressive and thorough investigation."

It is also clear that Dean's subsequent attempts to involve the C.I.A. in a "cover-up" were independent of and subsequent to the President's instructions to Haldeman on the morning of June 23, 1972.

Dean testified that he met with John Mitchell, Robert Mardian and Fred LaRue either on Friday afternoon, June 23, or on Saturday morning, June 24. Dean testified that at this meeting he told the others about the F.B.I. theory of C.I.A. involvement, and that it was suggested that C.I.A. "could take care of this entire matter." It was the conversation on the afternoon of June 23, 1972, or the morning of June 24 that led to Dean's approach to C.I.A. Deputy Director Walter on Monday, June 26, 1972.

It is clear from all the evidence hat even the idea that the C.I.A. "could take care of this entire matter" originated subsequent to the President's instuctions to Haldeman, and subsequent to the meeting of Haldeman and Ehrlichman with C.I.A. officials on June 23, 1972. There is not the slightest hint in the the evidence that the President was aware that subsequent to his legal and entirely appropriate precautionary action on the morning of June 23, 1972, Dean, at the instigation of others, undertook to directly involve C.I.A. in a "cover-up."

(b) Destruction of Evidence

The President was unaware that political evidence had been destroyed and it should be noted that neither Dean nor any of the other participants had ever alleged that the President was aware of this; moreover, it is pure speculation to suggest the contrary. It is evident, for example, that the President was not aware that Gray had destroyed documents found in Hunt's safe until April of 1973. On April 17, Petersen explained to the President what had occurred:

> HP: Yes sir—I'll tell you what happened. He said he met with Ehrlichman — in Ehrlichman's office — Dean was there and they told him they had some stuff in Hunt's office that was utterly unrelated to the Watergate case. They gave him two manila envelopes that were sealed. He took them. He says, they said get rid of them. Dean doesn't say that. Dean says I didn't want to get rid of them so I gave them to Gray. But in any event, Gray took them back, and I said Pat where are they, and he said I burned them. And I said—
>
> P: He burned them? [Emphasis added]

Nor was the President aware until Petersen informed him on April 16, 1972, that two notebooks were missing from Hunt's office, and both, even then, were unaware that Dean had destroyed this evidence.

> HP: By the way Mr. President, I think that.
>
> P: (Inaudible) evidence — not evidence? (Inaudible) explain that the evidence was not evidence—is that right? The stuff out of his safe?
>
> HP: Well—that's.
>
> P: What would you get after him on this—destruction of evidence?
>
> HP: Well, you see the point of it is—there are two other items that—according to the defense—Hunt's defense — that were missing. Both of which were notebooks.
>
> P: Hunt's notebooks?
>
> HP: And we can't find those notebooks. Dean says, Fielding says, and Kehrli says, they have no recollection of those notebooks.
>
> P: Yeah.
>
> HP: Hunt says they were there, and—
>
> P: So—
>
> HP: So only to the extent that the notebooks are missing which Hunt says they're germane.
>
> P: (Inaudible) does he tell us very much, huh?
>
> HP: No, sir.

Dean did not disclose this fact even in his Senate testimony. It was not until Nov. 5, 1973, when he appeared before the court and admitted for the first time destroying this evidence.

There is no information which would even tend to show that the President knew of the destruction of evidence until many months after the fact.

(c) Knowledge of Perjury

The President was also unaware prior to March 21, 1973, that Magruder and Porter perjured themselves by stating to a grand jury that Liddy was authorized to spend up to $250,000 to gather intelligence information for use in attempting to prevent disruptions at the Republican convention and at political speeches. This was apparent from the President's conversation with Dean on March 21, 1973.

> D: Yeah. Magruder is totally knowledgeable on the whole thing.
>
> P: Yeah.
>
> D: All right, now, we've gone through the trial. We've—I don't know if Mitchell has perjured himself in the Grand Jury or not. I've never—
>
> P: Who?
>
> D: Mitchell. I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the Grand Jury. I know that Porter has perjured himself, uh, in the Grand Jury.
>
> P: Porter? [unintelligibile]
>
> D: He is one of Magruder's deputies.

All the evidence shows conclusively that the President was not even aware until March 21, 1973, of the fact that Magruder and Porter had committed perjury.

Indeed, the President's warning to Ehrlichman and to Haldeman to avoid perjury belies any allegation that the President would countenance it.

> P: You better damned well remember being—The main thing is this, John, and when you meet with the lawyers—and you, Bob, and I hope Strachan has been told—believe me don't try to hedge anything before the damned Grand Jury. I'm not talking about morality, but I'm talking about the vulnerabilities.

(d) Payment of Hush Money

At no point in the exhaustive presentation of information by the special staff is there any indication that the President was aware of any hush money paid the Watergate defendants prior to March 21, 1973. It was not until Dean meets with the President on that morning that the President was informed for the first time of allegations of the payment of hush money. At that time Dean disclosed these events to the President for the first time. He told the President:

> D: Uh, Liddy said, said that, you know, if they all got counsel instantly and said that, you know, "Well, we'll ride this this thing out." All right, then they started making demands. "We've got to have attorneys' fees. Uh, we don't have any money ourselves, and if—you are asking us to

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> take this through the election." All right, so arrangements were made through Mitchell, uh, initiating it, in discussions that—I was present—that these guys had to be taken care of. Their attorneys' fees had to be done. Kalmbach was brought in. Uh, Kalmbach raised some cash. Uh, they were obv—, uh, you know,

Dean then advised the President that in his opinion these payments constituted an obstruction of justice by saying:

> D: the most troublesome post-thing, uh, because (1) Bob is involved in that; John is involved in that; I am involved in that; Mitchell is involved in that. And that's an obstruction of justice.
>
> P: In other words the fact that, uh, that you're you're, you're taking care of witnesses.
>
> D: That's right. Uh,
>
> P: How was Bob involved?
>
> D: Well, th—, they ran out of money over there. Bob had three hundred and fifty thousand dollars in a safe over here that was really set aside for polling purposes. Uh, and there was no other source of money, so they came over here and said, "You all have got to give us some money."
>
> P: Right.
>
> D: I had to go to Bob and say, "Bob, you know, you've got to have some—they need some money over there." He said, "What for?" And so I had to tell him what it was for 'cause he wasn't about to just send money over there willy-nilly. And, uh, John was involved in those discussions, and we decided, you know, that, you know, that there was no price too high to pay to let this thing blow up in front of the election.

Mitchell, Ehrlichman and Haldeman all dispute Dean's allegations of obstructing justice, but there is no information that even remotely connects knowledge of the payments to the President prior to March 21, 1973.

C. The Evidence Establishes That the President Did Not Authorize the Payment of Howard Hunt's Attorney Fees

On March 1, 1974, a Federal grand jury returned an indictment against seven individuals charging all defendants with one count of conspiracy in violation of Title 18 U.S.C. Sec. 371 and charging some of the defendants with additional charges of perjury, making false declarations to a grand jury or court, making false statements to agents of the Federal Bureau of Investigation and obstruction of justice.

It has recently been disclosed that the grand jury voted to name the President as one of the unindicted co-con-

spirators referred to in the conspiracy count (count one) of the indictment of March 1, 1974. It is apparent from an analysis of the indictment that the grand jury vote with respect to the President was related to the implications of a series of overt acts numbered 40 through 44 alleged in the indictment as follows:

40. On or about March 21, 1973, from approximately 11:15 A.M. to approximately noon, HARRY R. HALDEMANN and John W. Dean 3d, attended a meeting at the White House in the District of Columbia, at which time there was a discussion about the fact that E. Howard Hunt Jr. had asked for approximately $120,000.

41. On or about March 21, 1973, at approximately 12:30 P.M. HARRY R. HALDEMAN had a telephone conversation with JOHN N. MITCHELL.

42. On or about the early afternoon of March 21, 1973, JOHN N. MITCHELL had a telephone conversation with Fred C. LaRue during which MITCHELL authorized LaRue to make a payment of approximately $75,000 and for the benefit of E. Howard Hunt Jr.

43. On or about the evening of March 21, 1973, in the District of Columbia, Fred C. LaRue arranged for the delivery of approximately $75,000 in cash to William O. Bittman.

44. On or about March 22, 1973, JOHN D. EHRLICHMAN, HARRY R. HALDEMAN, and John W. Dean 3d, met with JOHN N. MITCHELL at the White House in the District of Columbia, at which time MITCHELL assured EHRLICHMAN that E. Howard HUNT Jr. was not a "problem" any longer.

It is clearly the intended implication of these allegations that the President, at the meeting with Dean, subsequently joined by Haldeman, at 11:45 A.M. on March 21, 1973, authorized a payment of money to E. Howard Hunt Jr. (alleged overt act No. 40) and that thereafter H. R. Haldeman communicated that authorization by telephone to John N. Mitchell (alleged overt act No. 41), who in turn communicated the authorization to Fred C. LaRue (alleged overt act No. 42); and that Fred C. LaRue, acting upon the authorization, arranged for the delivery to William O. Bittman, attorney for E. Howard Hunt Jr. of approximately $75,000 in cash (alleged overt act No. 43).

Court 'Staging' Alleged

The implication of the indictment was further buttressed by the dramatically staged circumstances involved in the return of the indictment into court, during the course of which the assistant special prosecutor, in open court attended by representatives of virtually all the major media, handed up a sealed envelope to the judge together with a briefcase stated to contain grand jury materials and with a statement that the grand jury requested that the material be submitted to the House Committee on the Judiciary.

Coincidentally therewith, stories appeared in the media clearly recognizing the implications of the indictment and stating that the material handed up to judge in open court charged the President with commission of a crime.

The evidence before the grand jury, which was transmitted by the grand jury to the committee, not only fails to support but indeed contradicts the allegation by the grand jury that the President was a co-conspirator with respect to count one of the indictment. It is contradictory also to the implication of the alleged overt acts 40 through 44 of the indictment.

The clear implication of alleged overt act No. 40 is that the President, during his meeting with Dean and Haldeman, authorized the payment of money to Hunt. The evidence is to the contrary.

Among the alternatives considered during the meeting were the payment of money generally and the payment of the amount demanded by Hunt, specifically. The mechanics of these alternatives, such as how the money could be raised and delivered, were explored.

Throughout the earlier, broadly exploratory part of the conversation, the President repeatedly expressed one view and then the opposite on the question of meeting Hunt's reported demand, throwing each in turn out for examination and discussion.

At one point in the conversation the President discards the suggestion entirely by saying:

P: That in the end, we are going to be bled to death, and it's all going to come out anyway, then you get the worst of both worlds. We are going to lose, and people are going to—

H: And look [unintelligible].

P: And we're going to look like we covered up. So that we can't do.

The inherent wisdom of this observation is such that an ultimately contrary decision would not be possible.

At another point, he inquired as to whether or not the money should be paid:

P: That's why your, for your immediate thing you've got no choice with Hunt but the hundred and twenty or whatever it is. Right?

D: That's right.

P: Would you agree that that's a buy time thing, you better damn well get that done, but fast?

D: I think he ought to be given some signal, anyway, to, to—

P: Yes.

D: Yeah—You know.

P: Well for C----- sakes, get it in a, in a way that, uh—Who's, who's going to talk to him? Colson? He's the one who's supposed to know him.

This obviously refers to Dean's suggestion that Hunt should be given some "signal," not money.

However, this was not the President's final word on the matter. Later, we find the President saying to Dean:

P: But, but my point is, do you ever have any choice on Hunt? That's the point.

D: [Sighs]

P: No matter what we do here now, John,

D: Well, if we—

P: Hunt eventually, if he isn't going to get commuted and so forth, he's going to blow the whistle.

Further on, the entire conversation takes a major turn. This turn becomes highly significant in light of the fact that the urgency of Hunt's immediate demand stemmed solely from the fact that his sentencing and imprisonment was two days away, and he reportedly was insisting on getting his financial affairs in order before he went to prison —so that meeting his immediate demand was at first seen as the only way to buy the time needed even to consider alternative courses; and of the further fact that the President saw Hunt's principal threat in terms not of Watergate disclosures, but rather of disclosure of the national security matters Hunt had been involved in as a member of the plumbers.

Proposal for New Grand Jury

As the conversation continues, Dean introduces a theme that the President immediately seizes on, and that increasingly comes to dominate the discussion: The possibility of calling a new grand jury.

Initially, the discussion centers on the advantages of a new grand jury as a preferable alternative to having the White House staff appear before the Ervin committee, and as a means by which the President could seize the initiative in launching the new investigation.

As the discussion develops, however, two other crucial advantages emerge—advantages which make the payment to Hunt unnecessary.

First, the President concludes that national security matters — his primary concern in connection with Hunt — would not have to be disclosed in a grand jury setting in contrast to a public hearing:

P: Including Ehrlichman's use of Hunt on the other deal? [the Ellsberg situation].

D: That's right.

P: You'd throw that out?

D: Uh, well, Hunt will go to jail for that too—he's got to understand that.

P: That's the point too. I don't think I would limit it to—I don't think you need to go into every G-- damned thing Hunt has done.

D: No.

P: He's done some things in the national security area. Yes. True.

The other, and very important, factor that emerged was that institution of a new grand jury proceeding could be used to delay sentencing—and thus to take the heat out of the Hunt demand, in effect mooting it, and making the immediate payment necessary as a means of buying time:

P: You see, the point is, the reason that time is of the essence, we can't play around with this, is that they're going to sentence on Friday. We're going to have to move the G-- damned thing pretty fast. See what I mean?

D: That's right.

P: So we've got to act, we really haven't time to [unintelligible].

D: The other, the other thing is that the Attorney General could call Sirica, and say that, "The Government has some major developments that it's considering. Would you hold sentencing for two weeks?" If we set ourself on a course of action.

P: Yep, yep.

D: Say, that "The sentencing may be in the wrong perspective right now. I don't know for certain, but I just think there are some things that, uh, I am not at liberty to discuss with you, that I want to ask that the, the court withhold two weeks sentencing."

H: So then the story is out: "Sirica Delays Sentencing Watergate For—"

D: I think, I think that could be handled in a way between Sirica and Kleindienst that it would not get out.

P: No.

D: Sirica tells me, I mean Kleindienst apparently does have good rapport with Sirica. He's never talked to him since this case has developed.

H or P: Why not?

D: but, uh—

P: That's helpful. Kleindienst could say that he's, uh, he's working on something and would like, like, like to have a week. I wouldn't take two weeks. I would take a week.

Clearly, this was seized on by the President as a preferable alternative to paying the hush money, a payment he saw the dangers of and saw as ultimately futile: and this is demonstrated conclusively in his final instructions as the meeting ended—instructions not to pay the money, but rather to move on the grand jury idea, to convene the meeting among Haldeman, Mitchell, Ehrlichman and Dean, and in that meeting to consider the various means of proceeding:

P: Why doesn't the President — could, could the President call him in as special counsel to the White— to the, to the White House for the purpose of conducting an investigation, represent—uh, you see, in other words—rather than having Dean in on it.

D: I have thought of that. I have

thought of that.

P: I have him as special counsel to represent to the Grand Jury and the rest.

D: That is one possibility.

P: Yeah.

H: On the basis that Dean has now become a principal, rather—

P: That's right.

H: than a special counsel.

D: Uh huh.

P: That's right.

D: Uh huh.

P: And that he's a —

D: And I, and I could recommend that to you.

P: He could recommend it, you could recommend it, and Peterson would come over and be the, uh—And I'd say, "Now —"

H: Petersen's planning to leave, anyway.

P: And I'd say, "Now,"

D: Is he?

P: "I want you to get—we want you to (I)—" We'd say to Petersen, "We want you to get to the bottom of the G-- damned thing. Call another grand jury or anything else" Correct? Well, now you've got to follow up to see whether Kleindienst can get Sirica to put off—Right? If that is, if we—Second, you've got to get Mitchell down here. And you and Ehrlichman and Mitchell and let's—and—by tomorrow.

Conclusion of the Meeting

Not once, from the time it first was suggested that the new grand jury proceedings could permit delay of sentencing and thereby make consideration of Hunt's demand no longer urgent, was there any suggestion that Hunt's demand be met.

The conclusion of the meeting is clear in its recognition that the blackmail and the cover-up cannot continue:

H: John's point is exactly right, that the erosion here now is going to you, and that is the thing that we've got to turn off, at whatever the cost. We've got to figure out where to turn it off at the lowest cost we can, but at whatever costs it takes.

D: That's what, that's what we have to do.

P: Well, the erosion is inevitably going to come here, apart from anything, you know, people saying that uh, well, the Watergate isn't a major concern. It isn't. But it would, but it will be. It's bound to be.

D: We cannot let you be tarnished by that situation.

P: Well, I [unintelligible] also because I—Although Ron Ziegler has to go out—They blame the [unintelligible] the White House [unintelligible).

D: That's right.

P: We don't, uh, uh, I say that the White House can't do it. Right?

H: Yeah.

D: Yes, sir.

Neither of the other participants in the meeting came away with any impression that the President had authorized payment to Hunt. Haldeman concluded that the President rejected payment to Hunt.

Significantly, at no point in his testimony either before the Senate Select Committee or before the grand jury did even John Dean accuse the President of having authorized any payment to Hunt. Dean testified: "The money matter was left very much hanging at that meeting. Nothing was resolved."

Although Dean's testimony changed slightly before the Judiciary Committee, the transcript of the meeting on the morning of March 22 with Haldeman and the President confirms that the payment of blackmail was out of the question.

P. Damn it—when people are in jail there is every right for people to raise money for them. (inaudible) and that's all there is to it. I don't think we ought to (inaudible)—there's got to be funds — I'm not being — *I don't mean to be blackmailed by Hunt—that goes too far,* but for taking care of these people that are in jail—my God they did this for—we are sorry for them—we do it out of compassion, yet I don't (inaudible) about that—people have contributed (inaudible) report on that damn thing—there's no report required (inaudible) what happens. Do you agree? What else. (inaudible)

H. That's why I—it seems to me that there is no real problem on obstruction of justice as far as Dean is concerned, and I think, it doesn't seem to me we are obstructing justice.

P. Yeah.

H. People have pled guilty.

P. Yeah.

H. When a guy goes and pleads guilty are you obstructing justice? (inaudible) His argument is that when you read the law that uh

P. Yeah—but Dean didn't do it. Dean I don't think—I don't think Dean had anything to do with the obstruction. He didn't deliver the money —that's the point. I think what really set him off was when Hunt's lawyer saw him at this party, and said Hunt needs a hundred and twenty thousand dollars—well that was— kind of very (inaudible)—that was a shot across the bow. *You understand that that would look like a straight damn blackmail if Dean had gotten the money* (inaudible). You see what I mean? [Emphasis added].

These statements, made by the President *after* the delivery of the $75,000 to Hunt's attorney, make it crystal clear that not only did the President not authorize the payment to Hunt but also that he did not know that the money had already been delivered. Moreover, if Haldeman had some role in the delivery of the money to Hunt he certainly did not tell the President.

Advice From Dean

The conversations of the President with Haldeman, Ehrlichman and Dean in the afternoon of March 21, 1973, is further evidence that the President had not authorized any payment to Hunt earlier in the day. During this conversation the President asks Dean for advice as to what should be done about Hunt's demand:

P. So then now—so the point we have to, the bridge you have to cut, uh, cross there is, uh, which you've got to cross, I understand, quite soon, is whether, uh, we, uh, what you do about, uh, his present demand. Now, what, what, uh, what [unintelligible] about that?

D. Well, apparently Mitchell and, uh, uh,

Unidentified. LaRue.

D. LaRue are now aware of it, so they know what he is feeling.

P. True. [Unintelligible] do something.

D. I, I have, I have not talked with either. I think they are in a position to do something, though.

P. It's a long road, isn't it? I mean, the way you look back on that, as John has pointed out here is that that's a, that's a, that's a long road.

D. It sure is.

It is inconceivable that the President would be asking for such advice if he had authorized the payment several hours earlier.

Any implication, therefore, of the allegation contained in count 40 of the indictment that the President authorized any action with respect to payments for Hunt are in conflict with the evidence.

Count 41 of the indictment alleges that H. R. Haldeman had a telephone conversation with John Mitchell about 12:30 P.M. on March 21, 1973. By the sequencing of his allegation, an implication is created that the question of a payment to Hunt was the subject of this conversation.

There is no evidence of any description that the subject of a payment to Hunt was discussed by Haldeman and Mitchell and there is substantial evidence that it was not. It is true that shortly after the meeting of the President with Haldeman and Dean, Haldeman did call Mitchell. However, this was not to request Mitchell to authorize the payment of Hunt's legal fees, as implied in the indictment, but rather to invite Mitchell to attend a meeting with him, Ehrlichman and Dean the next morning as the President had requested be done. Dean confirms that this was the purpose of the call.

Unsuccessful Efforts

The grand jury minutes disclose repeatedly unsuccessful efforts on the part of the Assistant Special Prosecutor to establish that Haldeman had talked to Mitchell on that phone call about this payment, as indicated by Haldeman's testimony:

Q. Now following that meeting did there come a time when you had a conversation with John Mitchell who was then in New York City on the telephone?

A. Yes, I am sure there did. Let's see — March 21st. Yes.

Q. Can you give us the best of your recollection of the time of the telephone conversation and the substance of it?

A. I don't have—I should qualify my previous answer. I am sure that there was a telephone conversation because one of the results of one of the outcomes of the March 21st meeting with Mr. Dean and the President was a request by the President that Mr. Dean, Mr. Ehrlichman, Mr. Mitchell and I meet that day or the following day to discuss some of these questions and then to report back to the President. I feel sure that I called Mr. Mitchell to request his coming down for such a meeting.

Q. What do you recall of the conversation between yourself and Mr. Mitchell?

A. That's about all I recall. I am really assuming that there was such a call. I think I called him. It is possible that someone else called him. My general recollection now would be that I had called him and said that the President wanted us to meet and asked him to come down.

Q. It is not the case that you discussed with more particularity the problems about which the President suggested you meet in your conversation with Mr. Mitchell?

A. Not that I recall, no.

Q. Is it your testimony that you do not recall saying to Mr. Mitchell in substance that the President requested that you meet as to how to deal with Mr. Hunt's demand for substantial cash payments?

A. Not that I recall, no.

Q. Is it your testimony that you do not recall saying to Mr. Mitchell in substance that the President's requested that you meet as to how to deal with Mr. Hunt's demand for substantial cash payments?

A. Yes. I have no recollection of that being discussed.

Q. It is your testimony that—is it your testimony that in the telephone conversation with Mr. Mitchell you did not allude in any way to the subject matter about which you would be meeting the following day?

A. My recollection is that the subject matter about which we would be meeting was the general subject of how to deal with the overall—what has now become called the Watergate situation, as it stood at that time. I don't recall the point that you raised as being the specific subject for the meeting.

Q. I'm sorry but your answer is

not responsive to my question, most respectfully. I asked whether you did not recall alluding to the subject matter in your telephone conversation with Mr. Mitchell.

A. I don't recall alluding to the subject matter. My recollection would be that if I discussed the subject matter it would be in the context that I have just described. The purpose of the meeting was, as I recall it, to review the Watergate situation.

Q. Is it not a fact, Mr. Haldeman, that in your telephone conversation with Mr. Mitchell you stated to him in substance, or you asked him in substance, whether he was going to take care of Mr. Hunt's problem?

A. I don't recall any such discussion, no.

Q. When you say you do not recall any such discussion, that would be something you would recall, would it not, if you had such a discussion?

A. I would think so but I don't see that as having been the major point of discussion either at the time of the phone call to set up the meeting or at the meeting which took place on the 22nd.

Q. You're talking now again about Mr. Hunt's specific request, is that correct?

A. Yes.

Discussion of the Payment

During the course of the hearings Congressman Wiggins inquired of Special Counsel John Doar as to whether there was any evidence that Haldeman did discuss this payment with Mitchell during that telephone call, and Mr. Doar responded that there was no such evidence. In regard to this point, testimony before the Judiciary Committee indicated:

ST. CLAIR: During the course of that conversation did Mr. Haldeman in any form of words discuss the payment or prospective payment of monies to Mr. Hunt or his attorney for legal fees?

MITCHELL: No sir.

Count 42 of the indictment alleges that in the early afternoon of March 21, 1973, John Mitchell had a telephone conversation with Fred C. LaRue to make a payment of approximately $75,000 to and for the benefit of E. Howard Hunt.

Again the sequencing of the allegations raises the implication that Mitchell called LaRue to pass on an authorization he received from Haldeman. Any such implication is in stark conflict with the evidence.

First, the undisputed evidence is that Mitchell did not call LaRue, but that LaRue called Mitchell.

Mitchell's testimony before the Judiciary Committee about this conversation was:

MITCHELL: It is my testimony, Mr. St. Clair, that I had received a telephone call from Mr. LaRue, which to the best of my strong recollection was before I talked to Mr. Haldeman and whether it was on the 21st or prior to that time I am not certain.

ST. CLAIR: As I understand it, you have examined your telephone records and are satisfied that you did not place a call to Mr. LaRue on March 21, is that correct?

MITCHELL: There is no record on the basis of the toll charges furnished by the telephone company which shows any call from my office to Mr. LaRue on March 21.

ST. CLAIR: There are records that would show calls placed from your office to Mr. LaRue on other occasions, are there not?

MITCHELL: Many.

ST. CLAIR: Is it your best memory that the call or that the discussion you had with Mr. LaRue on the 21st, or as you say perhaps earlier, was initiated by Mr. LaRue and not by you?

MITCHELL: Yes, sir.

LaRue's testimony before the House Judiciary Committee was consistent with Mitchell's:

LARUE: My best memory is that I placed the call in the morning. Whether I was successful or what time I was successful in getting Mr. Mitchell on the phone I just do not recall.

ST. CLAIR: Didn't you tell us that it was your best memory that you got him on the phone when you placed the call but you could not be certain about it? Or words to that effect?

LARUE: I do not recall, Mr. St. Clair, when I actually talked to Mr. Mitchell. My best recollection is, as I state, that I placed that call to him in the morning.

ST. CLAIR: And you received the authority that you were seeking from Mr. Mitchell as a result of that call?

LARUE: Yes sir.

ST. CLAIR: Then following that, you placed a call to Mr. Bittman, did you not?

LARUE: Correct.

Phons Call From LaRue

The evidence relating to the telephone call from LaRue to Mitchell on the morning of March 21, 1973, belies any implication of any initiative by Mitchell with respect to payments to Hunt.

Not only are the implications of the sequencing of the allegations of Counts 40-44 of the indictment unsupported by the evidence but, in addition, the evidence before the grand jury and the Judiciary Committee demonstrates the chain of events which actually did take place.

Prior to LaRue's call to Mitchell, and probably on the early morning of March 21, Dean called LaRue. Both Dean and LaRue confirm the time and substance of this conversation. Dean testified before the Judiciary Committee:

DEAN: When Mr. LaRue arrived in my office, he asked me what I was going to do about these demands and I told him that I didn't plan to do anything, that I was not in the money business. He said, what do you think I should do? And I said, I think you ought to get hold of John Mitchell.

ST. CLAIR: And what did he then say?

DEAN: He said fine and left the office.

LaRue testified:

LARUE: Mr. Dean told me that there was a need for money, or that Mr. Hunt had a need for a rather large sum of money. As I recall, the figure was $60,000 for family support and $75,000 for his attorneys' fees. Mr. Dean told me that he was getting out of the money operation, that he did not want to have anything else to do with it and that he was just passing this information along to me for whatever use of it I wanted to to Mr. Bittman or through Mr. Bittman.

From the evidence, it is clear that the initiative for the discussion of payments to Hunt between Mitchell and LaRue came from LaRue, because Dean had told LaRue, in Dean's words, "I was out of that business," or, in LaRue's words, "that he was not going to have any further involvement, contact, in the deliveries of monies to the Watergate defendants."

The Role of LaRue

The sequence of events which is supported by the evidence, therefore, is that Dean informed LaRue that he and the White House would have nothing to do with paying Hunt, and LaRue, acting on his own initiative, called Mitchell and sought Mitchell's advice. LaRue's testimony also demonstrates that it was LaRue, on his own, who was making decisions on the subject.

LaRue decided to limit the payment to Hunt to $75,000 for attorneys fees and to ignore the amount demanded for maintenance. LaRue testified, "I think this was a decision I made myself." LaRue asked Mitchell's advice and Mitchell answered, "If I were you, I would continue and make the payment."

Thus, LaRue, after soliciting and obtaining Mitchell's advice, himself made the decision to make the payment to Hunt, just as he had made the decision to ignore the demand for an additional amount for maintenance.

This entire sequence—up to and including the authorization of the payment by Mitchell—took place idependently of Haldeman's call to Mitchell; therefore, there is no way in which the Haldeman call could have been part of the chain authorization. As further evidence, the entire discussion among the President, Haldeman and Dean centered on the $120,000 figure, not the $75,000—and it was the $75,000, the amount discussed earlier between LaRue and Mitchell, that was paid, not the $120,000. Quite clearly, therefore, there is no basis whatever for implicating the President in the chain of events that led to the payment.

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We see, therefore, that the indictment in U.S. v. Mitchell, et. al. was artfully contrived in order to suggest a pattern, or chain, of events that is belied by the evidence—in order, that is, to fashion an apparent chain beginning at the morning meeting among the President, Haldeman and Dean on the morning of March 21, 1973, running from the President to Haldeman, from Haldeman to Mitchell, and Mitchell to LaRue, and culminating in the payment of $75,000 by LaRue that night, and thus providing a basis for a grand jury vote that the President was a co-conspirator in the crime alleged by the indictment.

The fact, as we have seen from the evidence which the prosecutor had, is that the chain of events leading to the payment was quite separate: that it was initiated separately from Dean and Haldeman's meeting with the President, that it proceeded on an entirely separate track, that in fact it did not in any way involve the President and in fact was concealed from the President. Dean himself stated as much when he admitted to the President on April 16, 1973:

D: I. I have tried, uh, all along to make sure that anything I passed to you myself didn't cause you any personal problems.

The Chain of Events

Moreover, although Dean had set in motion the chain of events that led to the delivery of the $75,000 to Hunt's lawyer, he at no time on March 21, 1973, informed the President that he had directed LaRue to Mitchell for approval of the payment to Hunt. If on March 21 Dean was as interested in ending the cover-up as he would have the committee believe he might have in-

formed the President that perhaps LaRue was implementing the delivery of the money while the President was in the process of deciding not to make the payment.

The indictment, therefore, is not only unsupported but is actually contradicted by the evidence. Like a composite photograph, the individual parts of this portion of the indictment may be literally correct; but the artful language and distorted juxtaposition of the parts resulted in a total impression that is grossly distorted insofar as the imputed involvement of the President in the Watergate cover-up is concerned.

It has been alleged that on the afternoon of March 22, 1973, during a conversation with Ehrlichman, Haldeman, Mitchell and Dean, the President indicated a desire to continue a cover-up. Nothing could be farther from the truth. During this conversation the President and his aides were discussing whether or not executive privilege should be asserted at the Senate Select Committee hearings. Even a cursory reading of the transcript of this conversation reveals that the President was being advised that a broad assertion of executive privilege in the Senate would give the *appearance* of a cover-up and that this should be avoided.

The only rational interpretation of this conversation is that the President was attempting to decide how to avoid charges that he was affecting a cover-up and not urging that a cover-up be implemented. In fact, at one point in the conversation, after raising the possibility of a "stonewall" position at the Senate Select Committee, the President tells Mitchell that it was his preference that it not be done that way.

Ultimately the President did waive executive privilege and all of his aides were permitted to testify freely before the Senate Select Committee and the Grand Jury.

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D. 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 D.N.C. the President promptly undertook an investigation 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:

P. And it was that time that I started my investigation.
D. That's right. . .

* * *

P. That is when I became interested. I was—I became frankly interested in the case and I said, 'Now G-- damn it I want to find out the score' And I set in motion Ehrlichman, Mitchell and—not Mitchell but a few others.

At the meeting with Mitchell and the others on the afternoon of March 22nd, the President instructed Dean to prepare a written report of his earlier oral disclosures:

H. I think you (Dean) ought to hole up—now that you—for the weekend and do that.
P. Sure.
H. Let's put and end to your business and get it done.
P. I think you need a—that's right. Why don't you do this? Why don't you go up to Camp David. And, uh—
D. I might do that; I might do that.
A place to get away from the phone.
P. Completely away from the phone and so forth. Just go up there . . . once you have *written it,* you will have to continue to defend [unintelligible] action.

Later during this same conversation the President said:

P. I feel that at the very minimum we've got to have the statement and, uh, let's look at it, whatever the hell it is. If, uh, it opens up doors, it opens up doors, you know.

Recording Is Cited

The recording of this conversation in which the President instructed Dean to go to Camp David to write a report should be compared with Dean's testimony in which he stated:

He (the President) *never at any time* asked me to write a report, and it wasn't until after I had arrived at Camp David that I received a call from Haldeman asking me to write the report up.

Dean in fact did go to Camp David and apparently did some work on such a report but he never completed the task. The President then assigned Ehrlichman to investigate these allegations.

By as early as March 27, just six days after Dean's disclosures, the President met with Ehrlichman and Haldeman to discuss the evidence thus far developed and how it would be best to proceed.

Again the President stated his resolve that White House officials should appear before the grand jury:

P. Actually if called, we are not going to refuse for anybody called before the grand jury to go, are we, John?

The President then reviewed with Haldeman and Ehrlichman the evidence developed to that time. They stated that they had not yet talked to Mitchell and indicated this would have to be done. They reviewed what they had been advised was Magruder's current position as to what had happened and compared that with what Dean had told them. They reported that Hunt was before the grand jury that same day. It is interesting to note that neither the President, Haldeman nor Ehrlichman say anything that indicate surprise in Hunt's testifying before the grand jury. If in fact he had been paid to keep quiet, it might have been expected that someone would have expressed at least disappointment that he was testifying before the grand jury less than a week earlier.

Prior Knowledge Denied

They confirmed to the President, as Dean had, that no one at the White House had prior knowledge of the Watergate break-in. Ehrlichman said, "There just isn't a scintilla of a hint that Dean knew about this." The President asked about the possibility of Colson having prior knowledge and Ehrlichman said, "...his response...was one of total surprise. ...He was totally nonplussed, as the rest of us." Ehrlichman then reviewed with the President the earlier concern that they had for national security leaks and the steps taken to find out about how they occurred.

It was decided to ask Mitchell to come to Washington to receive a report of the facts developed so far and a call was placed to him for that purpose. It was also decided that Ehrlichman should also call the Attorney General and review the information on hand with him.

It was during this meeting that the possibility of having a commission or a special prosecutor appointed in order to avoid the appearance of the Administration investigating itself and a call was placed to former Attorney General Rogers to ask him to meet with the President to discuss the situation.

The next day Ehrlichman, pursuant to the President's direction given the previous day, called Attorney General Kleindienst and among other things advised him that he was to report directly to the President if any evidence turns up of any wrongdoing on the part of anyone in the White House or about Mitchell.

Kleindienst raised the question of a possibility of a conflict of interest and suggests that thought be given to appointing a special prosecutor.

On March 30, 1973, consideration was given to the content of a press briefing with respect to White House officials appearing before the grand jury. As a result thereof, Mr. Ziegler stated at the press briefing that day:

"With regard to the grand jury, the President reiterates his instructions that any member of the White House staff who is called by the grand jury will appear before the grand jury to answer questions regarding that individual's alleged knowledge or possible involvement in the Watergate matter."

Even prior to the completion of Ehrlichman's investigation, the President was taking steps to get the additional facts before the grand jury. On April 8, 1973, on the airplane returning to Washington from California, the President met with Haldeman and Ehrlichman and directed they meet with Dean that day and urge him to go to the grand jury—"I am not going to wait, he is going to go." Haldeman and Ehrlichman met with Dean that afternoon from 5 to 7. At 7:33 P.M. Ehrlichman reported the results of that meeting to the President by telephone:

P. Oh, John, Hi.
E. I just wanted to post you on the Dean meeting. It went fine. He is going to wait until after he'd had a chance to talk with Mitchell and to pass the word to Magruder through his lawyers that he is going to appear at the grand jury. His feeling is that Liddy has pulled the plug on Magruder, and that [unintelligible] he thinks he knows it now. And he says that there's no love lost there, and that that was Liddy's motive in communicating informally.

Presidential Stimulus

Indeed, Dean did, in fact communicate his intentions to Mitchell and Magruder not to support Magruder's previous testimony to the grand jury. This no doubt was the push, initially stimulated by the President, which got Magruder to go to the U. S. Attorneys on the following Saturday, April 14, and change his testimony and Magruder and Dean's testimony were critical:

ST. CLAIR: Now, sir, to go back, what was it that to your knowledge, well, 'broke the case?' Was it Mr. Magruder's coming in and offering to change his testimony?

PETERSEN: Well, I think it was a combination of factors. It was one, Mr. Magruder coming in, and Mr. Dean coming in, and while the negotiations with Mr. Dean stumbled for a period of time, not only while we had the case, but after it was turned over to the special prosecutors, nevertheless, that was a fact of shattering import, coupled with Mr. Magruder's statement. And Mr. Magruder at or about the time he came in went about making his apologies, I am informed, to his erstwhile companions, and that was a factor which added to the momentum, tended to bring in Mr. LaRue. And Mr. LaRue indicated that in effect the jig was up. He was quite prepared to plead. All of these things developed, you know, in a matter of

MITCHELL: It is my testimony, Mr. St. Clair, that I had received a telephone call from Mr. LaRue, which to the best of my strong recollection was before I talked to Mr. Haldeman and whether it was on the 21st or prior to that time I am not certain.

ST. CLAIR: As I understand it, you have examined your telephone records and are satisfied that you did not place a call to Mr. LaRue on March 21, is that correct?

MITCHELL: There is no record on the basis of the toll charges furnished by the telephone company which shows any call from my office to Mr. LaRue on March 21.

ST. CLAIR: There are records that would show calls placed from your office to Mr. LaRue on other occasions, are there not?

MITCHELL: Many.

ST. CLAIR: Is it your best memory that the call or that the discussion you had with Mr. LaRue on the 21st, or as you say perhaps earlier, was initiated by Mr. LaRue and not by you?

MITCHELL: Yes, sir.

LaRue's testimony before the House Judiciary Committee was consistent with Mitchell's:

LARUE: My best memory is that I placed the call in the morning. Whether I was successful or what time I was successful in getting Mr. Mitchell on the phone I just do not recall.

ST. CLAIR: Didn't you tell us that it was your best memory that you got him on the phone when you placed the call but you could not be certain about it? Or words to that effect?

LARUE: I do not recall, Mr. St. Clair, when I actually talked to Mr. Mitchell. My best recollection is, as I state, that I placed that call to him in the morning.

ST. CLAIR: And you received the authority that you were seeking from Mr. Mitchell as a result of that call?

LARUE: Yes sir.

ST. CLAIR: Then following that, you placed a call to Mr. Bittman, did you not?

LARUE: Correct.

Phons Call From LaRue

The evidence relating to the telephone call from LaRue to Mitchell on the morning of March 21, 1973, belies any implication of any initiative by Mitchell with respect to payments to Hunt.

Not only are the implications of the sequencing of the allegations of Counts 40-44 of the indictment unsupported by the evidence but, in addition, the evidence before the grand jury and the Judiciary Committee demonstrates the chain of events which actually did take place.

Prior to LaRue's call to Mitchell, and probably on the early morning of March 21, Dean called LaRue. Both Dean and LaRue confirm the time and substance of this conversation. Dean testified before the Judiciary Committee:

DEAN: When Mr. LaRue arrived in my office, he asked me what I was going to do about these demands and I told him that I didn't plan to do anything, that I was not in the money business. He said, what do you think I should do? And I said, I think you ought to get hold of John Mitchell.

A decision was reached to speak to both Mitchell and Magruder before turning such information as they had developed over to the Department of Justice in order to afford them "an opportunity to come forward." The President told Ehrlichman that when he met with Mitchell to advise him that "the President has said let the chips fall where they may. He will not furnish cover for anybody." The President summed up the situation by stating:

P. No, seriously, as I have told both of you, the boil had to be pricked. In a very different sense—that's what December 18th was about. We have to prick the boil and take the heat. Now that's what we are doing here. We're going to prick this boil and take the heat. I—am I overstating?

E. No, I think that's right. The idea is, this will prick the boil. It may not. The history of this thing has to be though that you did not tuck this under the rug yesterday or today, and hope it would go away.

The decision was also made by the President that Ehrlichman should provide the information which he had collected to the Attorney General. Ehrlichman called the Attorney General but did not reach him.

Mitchell Innocence Cited

Mitchell came to Washington that afternoon and met with Ehrlichman. Immediately following that meeting, Ehrlichman reported to the President, stating Mitchell protested his innocence, stating:

"You know, these characters pulled this thing off without my knowledge. . . I never saw Liddy for months at a time . . . I didn't know what they were up to and nobody was more surprised than I was . . ."

Ehrlichman said he explained to Mitchell that the President did not want anyone to stand mute on his account; that everyone had a right to stand mute for his own reasons but that the "interests of the Presidency were not served by a person standing mute, for that reason alone."

Ehrlichman said that he advised Mitchell that the information that had been collected would be turned over to the Attorney General and that Mitchell agreed this would be appropriate.

Even later on April 14, Ehrlichman finally was able to reach Magruder and met with Magruder and his lawyers for the purpose of informing him that he should not remain silent out of any misplaced loyalty to the President. Ehrlichman found, however, that Magruder had just come from a meeting with the U.S. Attorneys where he had told the full story as he knew it. Magruder told Ehrlichman what he had told the U.S. Attorney, which Ehrlichman duly reported to the President.

During this meeting with the President, Ehrlichman's earlier call to the Attorney General was completed, and Ehrlichman spoke to the Attorney General from the President's office. Ehrlichman told the Attorney General that he had been conducting an investigation for about the past three weeks for the President as a substitute for Dean.

He also told him that he had reported his findings to the President the day before and that he had advised people not to be reticent on the President's behalf about coming forward. He informed the Attorney General that he had talked to Mitchell and had tried to reach Magruder, but that he had not been able to meet with Magruder until after Magruder had conferred with the U.S. Attorneys. He offered to make all of his information available if it would be in any way useful.

Discussion of Magruder

Following the telephone call, Ehrlichman said that the Attorney General wanted him to meet with Henry Petersen the next day regarding the information he had obtained. During the course of the conversation relating to Magruder changing his testimony the President stated:

P. It's the right thing. We all have to do the right thing. Damn it! We just cannot have this kind of business, John. Just cannot be.

Late on the evening of April 14th, after the White House Correspondents' dinner the President spoke by telephone first with Haldeman and then with Ehrlichman. The President told each that he now thought all persons involved should testify in public before the Ervin Committee.

On the morning of Sunday, April 15th, the President talked with Ehrlichman and told him that he had received a call from the Attorney General who had advised him that he had been up most of the night with the U.S. Attorney, and with Assistant Attorney General Petersen. The Attorney General had requested to see the President, personally, the President told Ehrlichman, and the President had agreed to see him after church. The President and Ehrlichman again reviewed the available evidence developed during Ehrlichman's investigation and the status of relations with the media.

In the early afternoon of April 15, the President met with Attorney General Kleindienst. Kleindienst confirmed to the President that the U.S. Attorneys had broken the case and knew largely the whole story as a result of Magruder's discussions with them and from disclosure made by Dean's attorneys, who were also talking to the U.S. Attorney.

The Attorney General anticipated indictments of Mitchell, Dean and Magruder and others, possibly including Haldeman and Ehrlichman. Kleindienst indicated that he felt that he could not have anything to do with these cases especially because of his association with Mitchell, Mardian and LaRue. The President expressed reservations about having a special prosecutor:

P. First, it's a reflection—it's sort of an admitting mea culpa for our whole system of justice. I don't want to do that.

The President then suggested that Kleindienst step aside and that the Deputy Attorney General, Dean Sneed, be placed in charge of the matter. The President expressed confidence in Silbert doing a thorough job.

Kleindienst pointed out that even if he were to withdraw, his deputy is still the President's appointee and that he would be "in a tough situation." Kleindienst recommended that a special prosecutor be appointed and a number of names were suggested. The President's reaction to the idea of a Special Prosecutor was negative:

P. I want to get some other judgments because I—I'm open on this. I lean against it and I think it's too much of a reflection on our system of justice and everything else.

Following a further review of the evidence, Kleindienst raised the question about what the President should do in the event charges are made against White House officials. The President resisted the suggestion that they be asked to step aside on the basis of charges alone:

P. The question really is basically whether an individual, you know, can be totally, totally—I mean, the point is, if a guy isn't guilty, you shouldn't let him go.

K. That's right, you shouldn't.

P. It's like me—wait now — let's stand up for people if there—even though they are under attack.

Further discussion on this subject included the suggestion that Assistant Attorney General Henry Petersen might be placed in charge rather than the Deputy Attorney General. Kleindienst pointed out, "He's the first career Assistant Attorney General I think in the history of the department."

Shortly after this, the tape at the President's office in the Executive Office Building ran out. It is clear, however, from a recorded telephone conversation between the President and Kleindienst that he and Henry Petersen met later in the afternoon with the President. This was verified by Petersen's testimony before the Senate Committee.

It was during this meeting that the President assigned the responsibility for the ongoing investigation to Petersen and instructed Petersen to do what had

to be done to get at the truth. It should be noted that at this meeting Petersen recommended that the President not name a special prosecutor, because that would be tantamount to a confession that the Department of Justice was unable to competently perform this assignment.

At his meeting with the President, Assistant Attorney General Petersen presented to the President a summary of the allegations which related to Haldeman, Ehrlichman and Strachan, and that the summary indicated no case of criminal conduct by Haldeman and Ehrlichman at that time.

Four Telephone Conversations

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.

Subsequently, 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 stated:

P. I just want him (Liddy) to be sure to understand that as far as the President is concerned everybody in this case is to talk and to tell the truth. You are to tell everybody, and you don't even have to call me on that with anybody. You just say those are your orders.

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. Petersen stated:

DOAR: Did you have any discussion with the President during that 10-day period with respect to the use of grand jury material?

PETERSEN: In the course of the conversation, the President indicated that he wanted to be advised of the scope of matter of these things, but that he did not want grand jury information. Implicit in that, I think, was perhaps at least a thought in his mind that he was not entitled to grand jury information. I don't believe that is the law. I think the President as Chief Executive is entitled to grand jury information, at least to the extent that the prosecutor feels it appropriate to make that information available in the course of, in furtherance of his duties. Which is almost the language of Rule 6 (e).

On April 16, 1973, the President learned from Petersen that LaRue had admitted his role in the cover-up and indicated that he was talking freely with the prosecutors about the involvement of others.

LaRue Data To Kalmbach

On April 17, the President instructed Haldeman to make sure that Kalmbach was informed that LaRue was talking freely. The President's purpose was not to suggest that Kalmbach lie to the prosecutors but rather that Kalmbach be made aware that others are cooperating with the prosecutors and that Kalmbach should also tell the truth. It was similar action by the President that resulted in Dean and Magruder cooperating with the prosecutors and the subsequent breaking of the case.

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 provide 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. Petersen could not reveal the details of the further disclosures by Dean's attorneys, so the President sought Petersen's advice about getting further information from Dean:

P. Right. Let me ask you this—why don't I get him in now if I can find him and have a talk with him?

H. P. I don't see any objection to that, Mr. President.

P. Is that all right with you?

H. P. Yes sir.

P. All right—I am going to get him over because I am not going to screw around with this thing. As I told you.

H. P. All right.

P. But I want to be sure you understand, that you know we are going to get to the bottom of this thing.

H. P. I think the thing that - -

P. What do you want me to say to him? Ask him to tell me the whole truth?

After talking with Dean and reviewing Dean's further information, the President raised the question about when Dean and perhaps Haldeman and Ehrlichman should resign and Petersen responded, "We would like to wait, Mr. President."

On the morning of April 16, the President began a long series of meetings on the entire subject of Watergate resignations. Being uncertain of when the case would become public, the President decided he wanted resignations or requests for leave in hand from those against whom there were allegations. He had Ehrlichman draft such letters, and discussed them with Haldeman and Ehrlichman.

The President then met with Dean and discussed with him the manner in which his possible resignation would be handled. Dean resisted the idea of his resigning without Haldeman and Ehrlichman resigning as well. The President reviewed with Dean the disclosures Dean made to the President on March 21st, and on the evening of April 15th.

More Advice for Dean

The President had some more advice for John Dean on this occasion:

P. Fine. Thank God, John. Don't ever do it, John. I want you to tell the truth. That's the thing that you're going to — I have told everybody around here, said 'G - - damn it, tell truth.' Cause all they do, John, is compound it.

D. That's right.

P. That son-of-a-bitch Hiss would be free today if he hadn't lied about his espionage. He could have just said he - - he didn't even have to. He could've just said, 'I - - look, I knew, Chambers. And, yes, as a young man I was involved with some Communist activities but I broke it off many years ago.' And Chambers would have dropped it.

P. But, the son-of-a-bitch lied, and he goes to jail for the lie rather than the crime.

D. Uh —

P. So believe me, don't ever lie with these bastards.

As to the President's action, he told Dean:

P. No, I don't want that, understand? When I say, 'Don't lie,' don't lie about me either.

D. No, I won't sir. You're—I, I'm not going—

The President met with Haldeman at noon on April 16th to discuss at length how and when Haldeman should make a public disclosure of his actions in the Segretti and Watergate matters. Haldeman reported that Mr. Garment recommended that he and Ehrlichman resign.

Garment had been assigned by the President on April 9 to work on the matter. The President stated that he would discuss that problem with William Rogers that afternoon and asked Haldeman to get with Ehrlichman and fill in Rogers on the facts.

The President met in the early afternoon alone with Henry Petersen for nearly two hours in the Executive Office Building. They discussed the effect the Senate Committee hearings would have on he trials in the even indictments are returned.

The President then asked Petersen what he should do about Dean's resignation:

H.P. Yes. As prosecutor I would do something different. But from your point of view I don't think you can sit on it. I think we have the information under control but that's a dangerous thing to say in this city.

P. Ah.

H.P. And if this information comes out I think you should have his resignation and it should be effective...

Petersen Reviewed Evidence

Petersen, however, urged the President not to announce the resignation if the information did not get out, as that would be "counterproductive" in their negotiations with Dean's counsel. Petersen reviewed the status of the evidence at length with the President with a view toward making a press release before an indictment or information was filed in open court.

During the course of the conversation Petersen informed the President that they were considering giving Dean immunity. As for Haldeman and Ehrlichman, Petersen recommended that they resign. The status of the situation was reviewed as follows:

P. Okay. All right come to the Haldeman/Ehrlichman thing. You see you said yesterday they should resign. Let me tell you they should resign in my view if they get splashed with this. Now the point is, is the timing. I think that's it. I want to get your advice on it, I think it would be really hanging the guy before something comes in if I say look, you guys resign because I understand that Mr. Dean in the one instance, and Magruder in another instance, made some charges against you. And I got their oral resignations last night and they volunteered it. They said, look, we want to go any time. So I just want your advice on it. I don't know what to do, frankly. (Inaudible) so I guess there's nothing in a hurry about that is there? I mean I—Dean's resignation. I have talked to him about it this morning and told him to write it out.

H.P. (Inaudible)

P. It's under way—I asked for it. How about Haldeman and Ehrlichman? I just wonder if you have them walk the plank before Magruder splashes and what have you or what not. I mean I have information, true, as to what Magruder's going to do. (Inaudible) nothing like this (inaudible).

H.P. Or for that matter, Mr. President.

P. Yeah.

H.P. Its confidence in the Office of the Presidency.

P. Right. You wouldn't want—do you think they ought to resign right now?

H.P. Mr. President, I am sorry to say it. I think that mindful of the need for confidence in your office—yes.

P. (Inaudible) basis?

H.P. That has nothing to do—that has nothing to do with guilt or innocence.

At the end of the meeting with Petersen, the President had every reason to believe that a public disclosure of the entire case in court would be made within 48 hours and perhaps sooner. The remaining questions for Presidential decision were: (1) What action he should take on the resignation, suspension or leave of Haldeman, Ehrlichman and Dean and whether it should be before or after they were formally charged; (2) what position he should take on immunity for Dean; and (3) what statement they should issue prior to the public disclosure in court.

White House Immunity

On the afternoon of April 17, the President discussed the problem of granting immunity to White House officials with Henry Petersen. Petersen pointed out that he was opposed to immunity but he pointed out that they might need Dean's testimony in order to get Haldeman and Ehrlichman. The President agreed that under those circumstances he might have to move on Haldeman and Ehrlichman, provided Dean's testimony was corroborated. The President told Petersen:

P. That's the point. Well, I feel it strongly—I mean—just understand—I am not trying to protect anybody—I want the damn facts if you can get the facts from Dean and I don't care whether—

H.P. Mr. President, if I thought you were trying to protect somebody, I would have walked out.

As for Dean, the President told Petersen:

P. No I am not going to condemn Dean until he has a chance to present himself. No, he is in exactly the same position they are in.

The President remained convinced, however, that a grant of immunity to a senior aide would appear as a cover-up:

P. What you say—Look we are having you here as a witness and we want you to talk.

H.P. That is described as immunity by estoppel.

P. I see, I see—that's fair enough.

H.P. That is really the prosecutor's bargain.

P. That is much better basically than immunity—let me say I am not, I guess my point on Dean is a matter of principle—it is a question of the fact that I am not trying to do Dean in—I would like to see him save himself but I think find a way to do it without—if you go the immunity route I think we are going to catch holy hell for it.

H.P. Scares hell out of me.

Draft of the Statement

The President went over the draft of his proposed statement with Petersen. Petersen further counseled the President that no discussion of the facts of the case could be made without prejudicing the case and the rights of the defendants.

Later on the afternoon of April 17, the President announced to the public: (i) that he had new facts and had begun his own investigation on March 21; (ii) that White House staff members who were indicted would be suspended, and if they were convicted, they would be discharged; and (iii) that all members of the White House staff would appear and testify before the Senate Committee.

The President further stated that:

"I have expressed to the appropriate authorities my view that no individual holding, in the past or present, a position of major importance in the Administration should be given immunity from prosecution."

In addition he stated that all White House staff employees were expected fully to cooperate in this matter.

After making his public statement, the President met with Secretary of State Rogers, and they were joined later by Haldeman and Ehrlichman. Secretary Rogers reiterated his advice that the President could not permit any senior official to be given immunity.

The President had concluded that he should treat Dean, Haldeman and Ehrlichman in the same manner. Petersen had advised the President that action on Dean would prejudice the negotiations of the U.S. Attorneys with Dean's lawyers, and that Dean's testimony might be needed for the case.

On the evening of April 19, the President met with Messrs. Wilson and Strickler, counsel retained by Haldeman and Ehrlichman upon recommendation of Secretary Rogers. Wilson and Strickler made strong arguments that Haldeman and Ehrlichman had no criminal liability and should not be discharged.

Action Against Nixon Aides

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, At-

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torney 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.

II. NATIONAL SECURITY MATTERS

A. There Has Been No Showing That Any Of The Seventeen Wiretaps Were Illegal

There was clear legal authority for the legality of warrantless national security wiretaps at the time the 17 wiretaps were conducted. *United States* v. *Clay*, 430 F. 2d 165 (5th Cir. 1970), *reversed on other grounds*, 403 U.S. 698 (1971); *United States* v. *Brown*, 317 F. Supp. 531 (E. D. La. 1970), *affirmed*, 484 F. 2d 418 (5th Cir. 1973). The Fifth Circuit Court of Appeals in the *Clay* decision held:

"No one would seriously doubt in this time of serious international insecurity and peril that there is an imperative necessity for obtaining foreign intelligence information, and we do not believe such gathering is forbidden by the Constitution or by statutory provision."

Foreign policy wiretapping has not been affected by the Supreme Court's decision to overrule warrantless domestic security wiretaps. *United States* v. *United States District Court*, 407 U.S. 297, 308 (1972) (also known as the *Keith* case). In the *Keith* decision, the Supreme Court carefully limited its opinion to domestic security wiretapping, expressing no opinion on national security wiretaps.

In his concurring opinion in *Giordano* v. *United States*, 394 U.S. 310, 314 (1969), Justice Stewart notes that foreign policy wiretapping is still an open question. Although the constitutionality of foreign policy wiretaps has not been finally resolved by the Supreme Court, former Attorney General Elliott Richardson has stated that the Department of Justice is justified in relying on lower court decisions permitting warrantless national security wretaps.

The 17 wiretaps were legal then and still meet the current legal standards. The Third Circuit Court of Appeals in *United States* v. *Butenko*, 494 F. 2d 593 (3rd Cir. 1974), has held that warrantless foreign policy wiretapping does not violate the Fourth Amendment provided that the reasons for instituting the wiretap are reasonable. Unlike other Fourth Amendment cases, reasonableness is not judged by a probable cause standard.

Instead, the interception of conversations is permissible when conducted solely for the purpose of gathering foreign intelligence information — particularly when wiretapping is used as a tool for impeding the flow of sensitive information from the Government. *Butenko*, *supra*, at 601.

The evidence of the circumstances surrounding these 17 wiretaps demonstrates clearly that they involved national security. The Government was faced with massive leaks of sensitive foreign policy information when the President was just beginning to establish policies or future relations with other nations.

These leaks began in the spring of 1969, when the President was exploring solutions to the Vietnam war. Following a National Security Council meeting on March 28, 1969, the President directed that several studies be conducted on alternative solutions to the Vietnam war, and one alternative to be studied was a unilateral troop withdrawal.

The study directive was issued on

April 1, 1969, and on April 6, 1969, The New York Times printed a front-page article indicating that the United States was considering unilateral withdrawal from Vietnam. Similarly in early June 1969, shortly after the decision had been reached to begin the initial withdrawal of troops from Vietnam, The Evening Star and The New York Times reported this decision indicating that it would be made public following the President's meeting with South Vietnam's President Nguyen Van Thieu.

These leaks were particularly damaging to the diplomatic efforts being made to end the Vietnam war. In this connection, Henry Kissinger stated:

"Each of the above disclosures was extremely damaging with respect to this Government's relationship and credibility with its allies. Although the initial troop withdrawal increment was small, the decision was extremely important in that it reflected a fundamental change in United States policy. For the South Vietnamese Government to hear publicly of our apparent willingness to consider unilateral withdrawals, without first discussing such an approach with them, raised a serious question as to our reliability and credibility as an ally. Similarly, though in a reverse context, these disclosures likewise impaired our ability to carry on private discussions with the North Vietnamese, because of their concern that negotiations could not, in fact, be conducted in absolute secrecy."

Some of the most damaging leaks occurred with regard to the SALT negotiations. On Jan. 20, 1969, when the President first took office, he immediately directed that an over-all study be undertaken regarding the United States strategic force posture for the internal use of the government and for use in the SALT negotiations. A fundamental requirement of this study was to determine what programs should be adopted to insure credibility of our country's deterrent capability.

The study included an analysis of five possible strategic options from an emphasis of offensive capabilities to heavy reliance on anti-ballistic missile systems. The costs for the various approaches were included. Notwithstanding the need for secrecy of this study, the May 1, 1969, edition of The New York Times reported the five strategic options under study with close estimates of the costs for each option. These options were published before they were considered by the National Security Council.

In addition to the above study, the United States Intelligence Board (U.S.-I.B.) had been engaged in an anlysis of the Soviet Union's testing of missiles, and in early June of 1969 issued a report setting forth their estimate of the Soviet Union's strategic strength and possible first strike capability. On June 18, 1969, The New York Times published this same official assessment of the first strike capabilities of the Soviet Union.

The damaging nature of these disclosures was summed up by Henry Kissinger stating:

"Each of these disclosures was of the most extreme gravity. As presentations of the Government's thinking on these key issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessments of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities. . . .

[The disclosure of the assessment of the Soviet's first strike capability] . . . would provide a useful signal to the Soviet Union as to the . . . efficacy of our intelligence system. It would also prematurely reveal the intelligence basis on which we were developing our position for the impending strategic arms talks."

Finally, the June 3, 1969, edition of The New York Times, reported that the President had determined to remove nuclear weapons from Okinawa in the upcoming negotiations with Japan over the reversion of the island. The article stated that the President's decision had not yet been communicated to Japan. This disclosure had significant impact on the negotiations the United States was undertaking with Japan as noted by Henry Kissinger:

"The consequences of this disclosure, attributed to well-placed informants, in terms of compromising negotiating tactics, prejudicing the Government's interest, and complicating our relations with Japan were obvious, and clearly preempted any opportunity we might have had for obtaining a more favorable outcome during our negotiations with the Japanese."

Thus, it can be seen that the leaks which occurred in 1969 were extremely damaging to the national security of the United States. The reasonableness and legality of the wiretaps should be determined by an examination of the circumstances surrounding the institution of the taps rather than the results. In light of the consequences of the leaks, these wiretap were clearly justified. The reasonableness and legality of the taps is buttresed by the fact that the wiretaps did produce useful information to outsiders.

In June, 1973, the F.B.I. completed a background report on the 17 wiretaps, and reported that the intercepted conversations were "replete with details, gossip and loose talk about . . . matters handled by the staff of N.S.C." Specifically, the F.B.I. reported that several of the N.S.C. staff members had extensive contacts with members of the press. In particular, two former employees, X and L, discussed many aspects of the internal working of the N.S.C. with Y, a newsman. X held extensive discussions on Southeast Asian policies with Y and others. Various F.B.I. documents suggest that Y may have aided foreign governments in gathering intelligence information in the past. X, Y and L were three of the subjects of these wiretaps.

The records of the F.B.I. indicate that the information obtained was put to good use to prevent further leaks. The F.B.I. reported that the wiretaps had been helpful in "evaluating key persons on the White House staff, and in making a determination as to whether each could be trusted with highly classified information." The F.B.I. documents also reflect that X's employment with the Government was terminated as a result of the information gathered through this wiretap.

Based on the damage being caused by these leaks of national security information, the Government was completely justified in using these wiretaps to help stem the flow of critical information out of the government to the front pages of the nation's newspapers. The Department of Justice met all of the legal requirements in undertaking these wiretaps. Certainly, the President committed no illegal act in instituting these wiretaps and, indeed, he would have failed in his constitutional responsibilities if he did not attempt to prevent further disclosure of national security information.

B. The Special Investigations Unit Was Created By The President In Response To A Threat To The National Security And Was Nevr 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. The President naturally was greatly concerned about the implications of this disclosure and he noted that:

"There was every reason to believe this was a security leak of unprecedented proportions. It created a situation in which the ability of the Government to carry on foreign relations even in the best of circumstances could have been severely compromised. Other governments no longer knew whether they could deal with the United States in confidence. Against the background of the delicate negotiations the United States was then involved in on a number of fronts—with regard to Vietnam, U.S.-Soviet relations, and others — in which the utmost degree of confidentiality was vital, it posed a threat so grave as to require extraordinary actions."

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. As David Young stated in describing this period of uncertainity:

"It was in the wake of the Pentagon papers disclosure, considerable concern as to how serious a problem the leak was becoming, whether or not it was the Pentagon Papers themselves were a part of it, more extensive and wider effort to put out classified material."

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.

Reaction by the President

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 C.I.A., and to have the F.B.I. 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. As Colson observed this danger and the President's concern was very real:

"I was in several meetings with the

President in the period following the publication in the press of the 'Pentagon papers' in The New York Times, the Washington Post and other papers. During that period the President repeatedly emphasized the tremendous gravity of the leaks and his concern that Ellsberg and/or Ellsberg's associates might continue the pattern. I can remember the President saying on a number of occasions that if the leaks were to continue, there could be no 'credible U.S. foreign policy' and that the damage to the Government and to the national security at a very sensitive time would be severe. He referred to many of the sensitive matters that were then either being negotiated or considered by the Administration, e.g., SALT, Soviet détente, the Paris peace negotiations and his plans for ending the war in Vietnam. (He had earlier made me aware of his desire to visit the Peoples Republic of China.)"

The President was also concerned that Ellsberg's action would be distorted and would endanger the success of the Vietnamese peace negotiations. Colson stated:

COLSON: I don't think those were the President's words so much as they were mine. I think he was concerned that he would become a martyr. He was concerned that he would be a rallying point. He had gotten a lot of national publicity at that point for his role in the Pentagon papers release — tremendous national publicity. I think Dr. Kissinger, the President, myself, John Ehrlichman—we were all very concerned that—

ST. CLAIR: Why did this concern you? I'm sorry I cut you off. I'm sorry.

COLSON. Well, mid-1971, you have to remember that we had a tremendous outburst of domestic turmoil following the Cambodian operation in 1970. In the spring of 1971, the war was winding down, the casualties were down, the Laotian operation kind of brought public attitudes back a little bit, excited the public again a little bit more. But in the summer of 1971, when all of this was going on, there had been kind of a quieting of attitudes and a calming of feelings over the war as it was gradually de-escalating and Dr. Ellsberg's actions threatened to turn it into a red hot issue again at a very time when Dr. Kissinger was engaged in the most sensitive negotiations in Paris trying to end the war. It was a very—it was a time when we were trying very hard to keep public support for our policies, because that was crucial to, in our view at that time, to the North Vietnamese accepting the peace proposals that we were advancing through Dr. Kissinger in Paris.

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. The President observed:

"Therefore during the week following the Pentagon Papers publication, I approved the creation of a special investigations unit within the White House—which later came to be known as the 'plumbers.' This was a small group at the White House whose principal purpose was to stop security leaks and to investigate other sensitive security matters."

It is important to emphasize that the unit was created to function within the Government to stop security leaks in an entirely legal manner and that it was not established as a field operative investigative force. As Krogh stated:

"On or about July 15, 1971, affiant was given oral instructions by Mr. John D. Ehrlichman, Assistant to the President of the United States for Domestic Affairs, to begin a special national security project to co-ordinate a government effort to determine the causes, sources, and ramifications of the unauthorized disclosure of classified documents known as the Pentagon Papers."

Further, the unit did, in fact, operate in this manner. For example on July 21, 1971, Young attended a meeting at C.I.A. headquarters to discuss the Pentagon papers and on July 26, 1971, he attended a meeting at the Senate Department to discuss this same subject.

It must also be remembered that in addition to the Pentagon papers disclosure and the disclosure on July 23, 1971, by The New York Times of details of our country's negotiating position in the Strategic Arms Limitations (SALT) talks the unit was also responsible for a number of other projects related to national security. There is nothing in the record that indicates that in these areas the unit did not operate within the governmental system and in a legal manner.

The record also strongly suggests that the unit would have continued to function in this fashion and never have become a field operative investigative force involved in the entry of Dr. Fielding's office if Ehrlichman, Krogh, and Young were satisfied with the F.B.I.'s investigation of the Ellsberg case. Krogh has described this situation in the following manner:

Q. Did you or Mr. Young discuss this matter of an entry in Dr. Fielding's office to examine these files with anyone else after the discussion with Mr. Young, or between Mr. Young and you and Mr. Hunt and Mr. Liddy?

A. Yes, I recall meeting, I recall a meeting that we had with Mr. Ehrlichman. I don't remember the precise date but August the 5th is the most reasonable date to me because it happened right about that period of time—we had scheduled a meeting with him on that date and we reported to him, as best I can recall, that the F.B.I. had been unsuccessful in interviewing Dr. Fielding and that if we were to be able to examine these files then we would have to conduct an operation of our own.

I cannot give you the precise words on that but we were trying to convey to him that we felt that the unit would have to become operational—in other words, prior to that time the unit's principal or even exclusive responsibility was working through other departments and agencies.

That was the reason for meetings that had been established with the Secretary of Defense, the Attorney General, the director of the C.I.A.—we had work with the security offices who had been assigned by these departments.

I suppose we were more a coordinating body as well as a body trying to encourage them to make more vigorous investigations. This was the first time that the unit was going to become operational in the sense that our own employees would be directly involved and, to go beyond that, as I say, that initial franchise, we felt we needed authority to do.

Ehrlichman indicated he informed the President of Krogh's concern:

"Mr. Krogh complained of the F.B.I.'s failure to cooperate fully in the Ellsberg investigation. I discussed the problem with the Attorney General. He advised me of a continuing problem with Mr. Hoover. I recall specifically Mr. Krogh complaining that the F.B.I. had not even designated the Ellsberg case as a primary or priority case.

"I advised Krogh of my talk with the Attorney General and he recommended that some of the unit's people be sent out to quickly complete the California investigation of Ellsberg.

"I told the President of these conversations, sometime between July 26 and August 5, as nearly as I can now reconstruct it. He responded that Krogh should, of course, do whatever he considered necessary to get to the bottom of the matter—to learn what Ellsberg's motives and potential further harmful action might be. I told Krogh, in substance, that he should do whatever he considered necessary."

However what is critically important to note with respect to this shift in the unit's modus operandi that culminated in the entry of Dr. Fielding's office on Sept. 3, 1971, is that there is not one scintilla of evidence in the record that indicates that the President was aware of the entry let alone that the President authorized this entry.

The President has indicated that while he can understand how this action could have occurred he did not and would not have approved such an operation. President Nixon said:

"Because of the extreme gravity of the situation, and not then knowing what additional national secrets Mr. Ellsberg might disclose, I did impress upon Mr. Krogh the vital importance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal.

"However, because of the emphasis I put on the crucial importance of protecting the national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention.

"Consequently, as President, I must and do assume reponsibility for such actions despite the fact that I, at no time approved or had knowledge of them."

Only John Dean has ever suggested the President did authorize the entry into Fielding's office and Egil Krogh clearly refuted Dean's implications when he stated:

"It was in this context that the Fielding incident, the break-in into the offices of Dr. Ellsberg's psychiatrist, took place. Doubtless, this explains why John Dean has reported that I told him that instructions for the break-in had come directly from the Oval office. In fact, the July 24 meeting was the only direct contact I had with the President on the work of the unit. I have just listened to a tape of that meeting, and Dr. Ellsberg's name did not appear to be mentioned.

"I had been led to believe by the White House statement of May 22, 1973, that the President had given me instructions regarding Dr. Ellsberg in the July 24, 1971, meeting. It must be that those instructions were relayed to me by Mr. Ehrlichman. In any event, I received no specific instruction or authority whatsoever regarding the break-in from the President, directly or indirectly."

David Young never even discussed the Pentagon Paper or the Ellsberg break-in with the President:

Q. Did you have any discussions with the President of the United States about this?

A. I had no discussions with the President about the Pentagon papers investigation or this matter here, the Ellsberg-Fielding matter. I had discus-

sions with the President with regard to another leak investigation.

Moreover in testimony before this committee, Colson has indicated not only did he not have any evidence that the President authorized the Fielding entry, but that Ehrlichman told Colson that he had not discussed in advance the Fielding entry with the Preident. It should be noted that Ehrlichman informed Colson of this fact in preparation for Ehrlichman's recent trial before Judge Gesell and at a time when Ehrlichman's defense on the grounds of national security would have been greatly enhanced by Ehrlichman's stating that the President authorized or was aware in advance of the Fielding entry. In fact, as the President has reiterated on many occasions it was not until March 17, 1973, that the President first learned of the break-in at Dr. Fielding's office.

The transcript of the President's conversation with Dean on March 17, 1973, clearly proves that this was the first time he was aware of the unit's involvement in the Ellsberg break-in.

D. The other potential problem is Ehrlichman's and this is—

P. In connection with Hunt?

D. In connection with Hunt and Liddy both.

P. They worked for him?

D. They—these fellows had to be some idiots as we've learned after the fact. They went out and went into Dr. Ellsberg's doctor's office and they had, they were geared up with all this C.I.A. equipment—cameras and the like. Well they turned the stuff back in to the C.I.A. some point in time and left film in the camera. C.I.A. has not put this together, and they don't know what it all means right now. But it wouldn't take a very sharp investigator very long because you've got pictures in the C.I.A. files that they had to turn over to (unintelligible).

P. What in the world—what in the name of God was Ehrlichman having something (unintelligible) in the Ellsberg (unintelligible)?

D. They were trying to—this was a part of an operation that—in connection with the Pentagon papers. They were—the whole thing—they wanted to get Ellsberg's psychiatric records for some reason. I don't know.

P. This is the first I ever heard of this. I, I (unintelligible) care about Ellsberg was not our problem.

D. That's right.

Moreover, after being made aware of this fact, the President authorized Attorney General Kleindienst to report the break-in to Judge Byrne, despite the fact there was no legal obligation to report the break-in.

III. ITT

A. The President Did Not Cause 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 (I.T.T.) controversy. In late December, 1968, Richard W. McLaren received from Richard G. Kleindienst and John N. Mitchell a commitment that he would not be interferred 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, Anti-trust 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, noted in the introductory pages of Volume 1, Book V of the Special Staff's presentation material, 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 I.T.T. 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 offense."

McLaren, as Assistant Attorney General, Antitrust Division, was in charge of all aspects of the Government's three antitrust merger suits against I.T.T. including all aspects of the settlement negotiations and procedures.

Because of former Attorney General 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 Kleindienst had assumed the administrative responsibilities normally attendant upon the Attorney General in these cases. Although earlier settlement talk had occurred between I.T.T. and Justice Department lawyers, it was on June 17, 1971, that the first concrete settlement offer was made to I.T.T. by McLaren. On that date, McLaren, following an April 29, 1971, I.T.T. economic presentation and an independent financial analysis by Richard Ramsden, recommended to Kleindienst that a settlement proposal be made to I.T.T. which would allow that company to retain the Hartford Fire Insurance Company. Kleindienst approved the settlement proposal, relying upon the expertise of McLaren.

Between June 17, 1971, and July 31, 1971, the date of the final settlement, the details of the settlement were worked out by staff attorneys at the Department of Justice and I.T.T. attorneys. According to I.T.T., settlement was reached on July 30, 1971, when the Justice Department agreed that I.T.T. need only divest itself of the Fire Protection Division of Grinnell, a factor which I.T.T. regarded as decisive in the settlement negotiations.

McLaren agreed because he felt the partial divestiture would be a pro-competitive step in the fire protection industry. McLaren and Solicitor General Griswold thought the settlement to be very favorable. It should be noted that the latter, when authorizing appeal, thought the case (Grinnell) to be very hard. His chief assistant, Daniel M. Friedman, Deputy Solicitor General, in recommending the appeal because of no practical alternative, characterized the case as extremely difficult and the chances of winning as minimal.

At the time of final settlement, neither McLaren nor Kleindienst was aware of any financial commitment by I.T.T. 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 I.T.T. cases. Mitchell confirmed their testimony on this point.

In fact Kleindienst did not talk with McLaren from June 17 until July 30 when McLaren called Kleindienst to tell him a settlement had been worked out by I.T.T. and Antitrust Division lawyers and would be announced the following day. There is not a scintilla of evidence to rebut McLaren's statement that the "Republican convention site and I.T.T.'s contribution had absolutely 100 per cent nothing to do with the settlement I made."

The President's Role

There is no evidence, moreover, linking any action of the President to any I.T.T. financial commitment. The only Presidential involvement in the I.T.T. 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. Although Peter M. Flanigan, then executive director of the Council of Economic Policy, became a focal point of attention during the Kleindienst hearings, his role in the settlement picture was limited to locating at McLaren's request, Richard Ramsden, who made, at McLaren's request, a financial analysis which projected certain economic consequences if a forced divestiture of the Hartford Fire Insurance Company by I.T.T. occurred. Both McLaren and Flanigan described Flanigan's role as that of a conduit only.

On May 12, 1971, Harold S. Geneen, president of I.T.T. discussed with Congressman Bob Wilson (Republican of California) during the time of the annual I.T.T. shareholders' meeting the feasibility of attracting the 1972 Republican Convention to San Diego. Because the Sheraton Corporation, an I.T.T. subsidiary, was opening a new hotel in San Diego, Geneen was interested in the convention as a business promotional venture.

Included in those discussions was talk of an I.T.T. financial participation *if* the convention actually materialized in San Diego. The City of San Diego, after retracting its earlier decision not to submit a bid, on June 29, 1971, resolved, in essence, to submit a bid of $1.5-million to the Republican National Committee, $900,000 of which was to include contribution of cash and services from noncity sources. (This occurred 12 days *after* McLaren with Kleindienst's approval, notified I.T.T. of the Justice Department's settlement proposal). Subsequently, on July 21 1971, the Sheraton Corporation forwarded a telegram to the San Diego Convention and Tourist Bureau setting forth its financial commitment of, essentially, $200,000.

Because of the solidarity of evidence supporting the bona fide nature of the final settlement of the I.T.T. antitrust litigation and the absence of any Presidential intervention in the final disposition of the cases and the absence of any evidence of any Presidential intervention as a quid pro quo for value, no assertions of Presidential misconduct should be sustained.

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B. 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 Feb. 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 I.T.T. antitrust cases. Charles Colson, in testimony on June 14, 1973, before the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce testified to the White House interest in the matter as follows:

PICKLE: Was Mr. Dean working on the case at the same time?

COLSON: Several of us were, yes, sir.

PICKLE: Several of you, it was a major project at the time, was it?

COLSON: It was a major controversy at the time.

Shortly thereafter, he continued:

COLSON: We were trying at that point in time to determine whether or not that was in fact an authentic memorandum. If you will recall the circumstances at that time the entire thrust of the case that was being built against Mr. Kleindienst, the entire thrust of the cast in controversy in the Senate Judiciary Committee turned on the language of that memorandum. The question of whether or not that was in fact an authentic memorandum. The question of whether the facts presented in that memorandum were facts or were not facts were very central to the question of whether Mr. Kleindienst would be confirmed. Those were very serious accusations ostensibly made in Mrs. Beard's memorandum.

The preoccupation of top aides such as Ehrlichman, Colson and Dean, along with the White House press aides, with the settlement aspect of the I.T.T. episode is explainable by reference to the language of the first paragraph of Jack Anderson's February 29, 1972, article:

"We now have evidence that the settlement of the Nixon Administration's biggest antitrust case was privately arranged between Attorney General John Mitchell and the top lobbyist for the company involved."

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 Commitee, 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 I.T.T. cases.

At that time, the news media's curiosity was pitched to a possible 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 Corporation.

"Flanigan, who gave limited testimony before the committee last week, said in the letter that he passed along I.T.T.'s complaints about a proposed settlement to the then Deputy Attorney General and also informed him when an outside consultant had completed his financial analysis of I.T.T.'s arguments.

"Kleindienst, testifying last month, said he did not recall discussing the I.T.T. 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 I.T.T. 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 Flanigan's letter Kleindienst conceded, it was 'extremely 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, probbaly, on March 24, 1972, at which time the President inquired of Haldeman what he, the President, might previously 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 I.T.T. matter, is devoid of any remarks relating to Mitchell's or Kleindienst's testimony before the Senate Judiciary Committee.

Input to the President

The essential point to be grasped by references to the settlement and newspaper exceprts 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 advisers 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. I.T.T. (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.

Mr. Kleindienst, in an Oct. 31, 1973, statement, stated that his testimony before the Senate Judiciary Committee was focused, solely, on the negotiations and settlement of the I.T.T. antitrust litigation and Flanigan issues.

Mitchell's testimony certainly could be construed as consistent with his conversation with the President of April 21, 1971, in which he voiced political and general policy consideration to the President without discussing the merits of the cases. The Washington Post of March 10, 1972, while bannering the headline "No Nixon Role in I.T.T. Case, Mitchell Says", explicity made it clear in paragraphs 1 and 6 of that story, that the Attorney General's remarks related to his denial of any Presidential intervention in the settlement of the case.

Finally, and not without weight, is the fact that Kleindienst, on May 17, 1974, pled guilty, with the concurrence of the special prosecutor, not to perjury, but to a misdemeanor—namely—one count of "refusing or failing fully to respond to questions propounded to him by the Senate Committee on the Judiciary on March 2, 3, 7, and 8, and April 27, 1972."

IV. DAIRY

A. 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., (A.M.P.I.), Mid-America Dairies (Mid-Am) and Dairymen, Inc. (D.I.).

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 A.F.L.-C.I.O.

The President's first contact with members of the dairy organizations was in 1970 when officials of A.M.P.I. 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 Wash-

ington and to arrange a meeting of a larger delegation of dairy leaders at a later date.

Harold Nelson, general manager of A.M.P.I., and his special assistant David Parr accepted the invitation and paid a courtesy call on the President on Sept. 9, 1970. This meeting was part of a Presidential "open hour," lasted less than 10 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 conribution 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.

At Secretary of Agriculture Hardin's request, the President on May 13, 1970, directed the Tariff Commission to investigate and report on the necessity for import controls on four new dairy products which had been developed to evade import controls previously established on recognized articles of commerce.

After an investigation had been conducted, the Tariff Commission, a body of impartial experts, issued a report in which is unanimously agreed that imports of the four products were interfering with the dairy program.

Therefore the Commission recommended zero quotas for three of the items and an annual quota of 100,000 pounds for the fourth. On Oct. 19, 1970, Secretary Hardin recommended that the Tariff Commission's recommendations be implemented. Secretary Hardin on Nov. 30, 1970, in a memorandum to Bryce N. Harlow, Asssitant to the President, again pushed for a zero quota on one of the items.

Subsequently, on Dec. 16, 1970, Patrick J. Hillings of the law firm of Reeves and Harrison, Washington, D. C., gave Roger Johnson, special assistant to the President, a letter addressed to the President requesting that the Tariff Commission's recommendations be adopted. The letter referred to contributions to Republican candidates in the 1970 Congressional election and to plans to contribute $2-million to the re-election campaign.

Mr. Johnson referred the matter to H. D. Haldeman, White House chief of stall. John Brown, the staff secretary, referred it to "J.C.," who was to check with "E + Colson" regarding whether the letter should be sent to the President.

Charles Colson then obtained the letter and kept it in his safe.

Angry Colson Reaction

This statement is fully supported by the testimony of Charles Colson who testified that the letter bounced around Bob Haldeman's staff system for a few days then came to him, with a cover message from Larry Higby, an assistant to Mr. Haldeman, saying "What shall we do with the attached?" When Colson received the letter it had not gone to the President.

Colson testified that upon reading it he "hit the roof," called in Hillings, "chewed him out" and told him to withdraw the letter or it woud be turned over to the Department of Justice. Hillings agreed to withdraw it. Colson kept the original and gave it to John Dean, counsel to the President, when documents were being assembled for the Nader v. Butz suit. This suit was field on Jan. 24, 1972.

This testimony of Mr. Colson is fully corroborated by both Hillings and Chotiner. Hillings in fact stated that he had neither expected nor intended that the President see the letter in the first place.

There are no notations or markings on the letter or any evidence that the President ever saw it. Neither is there any evidence that its contents were ever discussed with the President.

After reviewing the recommendations of the Tariff Commission, the Secretary of Agriculture and the Task Force on Agriculture Trade of the Counsel of Economic Advisors, the President, on Dec. 31, 1970, by Proclamation Number 4026 ultimately established quotas totaling in excess of 25 million pounds for three of the products and in excess of 400,000 gallons for the fourth.

Despite a report that any modification of the Tariff Commission's recommendation would be viewed by the dairly people as a "slap in the face," the President rejected the zero quota system recommended by the commission and sought by the dairy organizations. Instead the President took an action which in his view would halt the evasion of existing import quotas without imposing a zero quota restraint on foreign dairy products.

B. The Milk Price Support Level for 1971-72 Was Increased Due to Economic Factors and Congressional Pressure, Not in Return for a Pledge of Campaign Contributions

Each year the Secretary of Agriculture announces the price at which the Government will support milk prices for the following year. In 1970, Secretary Hardin had announced that for the marketing year running from April 1, 1970, through March 31, 1971, the Government would support manufacturing milk at $4.66 per 100 pounds, 85 per cent of parity. This figure represented an increase of 2 per cent of the parity rate over the year before (1969-1970).

As the 1971-72 marketing season approached, inflation had caused the parity level to drop. The question within the Government was whether to continue supporting the milk price at $4.66 per 100 pounds or to rase the price in order to maintain parity at the previous year's level.

During late 1970 and early 1971 the dairy industry actively sought Congressional support and action in its effort to obtain an increase in the milk price support level. In February and March of 1971 approximately 100 Senators and Congressmen wrote the Secretary of Agriculture to urge that the support price be increased. Most of these Congressmen recommended that the price support be raised to 90 per cent of parity. Some requested that the price support be raised to at least 85 per cent of parity.

Some of the letters openly referred to the fact that spokesmen for the dairy cooperatives had written or called upon the Congressmen to ask for support and a number of letters were apparently drafted by these various lobbying groups.

At the same time, many Congressmen took to the floor of the House and Senate to express their concern over the low price support. On March 1, Congressman Robert W. Kastenmeier (Democrat of Wisconsin) rose to tell his colleagues:

"We need your assistance in persuading the Administration to raise dairy price supports to 90 per cent of parity."

His sentiments were echoed by Congressman Les Aspin (Democrat of Wisconsin) and Congressman Vernon Thompson (Republican of Wisconsin).

Again on March 8, Congressman William Steiger (Republican of Wisconsin) entered into the Congressional Record a letter he had sent to Secretary Hardin calling for 90 per cent parity, and on March 9, Senator Vance Hartke (Democrat of Indiana) called for at least 85 per cent support and hopefully "substantially higher." Congressman Robert McClory (Republican of Illinois) likewise called for a price increase.

On March 10, Congressman Ed Jones (Democrat of Tennessee) argued that even 90 per cent would not be a "decent return, but it would help." Congressman Jones urged the Department of Agriculture not to "sit idly by and watch our dairy industry decline into oblivion. Unless dairy price supports are set at a level high enough to guarantee 90 per cent of parity, that is exactly what we are inviting." Senator Mondale also called for the 90 per cent level on that date.

On March 17, Congressman David Obey (Democrat of Wisconsin) called for an increase to 90 per cent, and on March 19, Senator Harold Hughes (Democrat of Iowa) called for the passage of a bill to set parity at least 85 per cent. The sole opposition voiced to an increase in price was by Congressman Paul Findley (Republican of Illinois).

While their colleagues were marshalling support in open floor speeches, senior Democratic leaders in the Congress were expressing their concerns privately to representatives of the Administration. On Feb. 10, the chairman of the House Ways and Means Committee, Wilbur Mills (Democrat of Arkansas), arranged a meeting in the office of Speaker Carl Albert (Democrat of Oklahoma) to discuss the dairy issue. Representatives of the dairy industry had apparently asked for the meeting to plead their case. In attendance were Congressmen Mills and Albert, Congressman John Byrnes (Republican of Wisconsin), William Galbraith, head of Congressional liaison for the Department of Agriculture; Clark Mac Gregor, then counsel to the President for Congressional relations; and Harold Nelson and David Parr from A.M.P.I.

Congressional leaders continued to make their views known in several private conversations thereafter. Congressman Mills urged Clark MacGregor on at least six occasions in late February and early March to urge the President to raise the support price, a fact which MacGregor relayed to John Ehrlichman, assistant to the President for domestic affairs, and George Shultz, director of the Office of Management and Budget.

Congressman Mills and Speaker Albert also telephone George Shultz with the same request. Mr. Shultz sent a memorandum to John Ehrlichman at the White House indicating the substance of the Mills request for a rise in the support level.

Rejection and New Lobbying

On March 12, 1971, Secretary Hardin announced that the support level would not be raised for the 1971-72 marketing year. Intense lobbying began. On March 16, 1971, Richard T. Burress, deputy assistant to the President, reported to John Ehrlichman that the decision had been hit by partisan attacks, that legislation mandating an increase would have the support of the Speaker and Congressman Mills, and that Congressman Page Belcher, Republican of Oklahoma, was mounting opposition which the White House should support.

Despite Administration efforts, however, the milk producers' Congressional lobbying efforts made progress. In the House, 28 separate bills with 29 Republicans and 96 Democratic sponsors were introduced between March 16 and March 25 to set the support price at a minimum of 85 per cent and a maximum of 90 per cent of parity.

In the Senate, Democratic Senator Gaylord Nelson of Wisconsin, introduced legislation on March 16, 1971, that would have required support levels at a minimum of 85 per cent of parity. Of

the bill's 28 sponsors, 1 was a Republican and 28 were Democrats. Three days later, Senator Hubert Humphrey sponsored his own bill seeking a higher parity.

On March 19, 1971, John Whitaker reported to John Ehrlichman that contrary to a previous vote count, Secretary Hardin was convinced there is a 90 per cent chance that an 85 per cent of parity support bill will be passed by the Congress and that the President should allow himself to be won over to an increase to 85 per cent of parity.

As the President was subsequently advised, John Ehrlichman, George Shultz, Don Rice, Henry Cashen and John Whitaker met on March 19 with Secretary Hardin and Under Secretary Phil Campbell regarding the entire problem. Their recommendation to the President concerning the scheduled March 23 meeting with dairy leaders was to listen to their arguments and then wait to see if the Democrats could move the bill.

Their recommendation was conveyed to the President in a briefing memorandum from John Whitaker concerning the March 23 meeting with dairy leaders. This memo recapitulated the March 12 price support announcement, the status of pending legislation, and briefly noted that the dairy lobby—like organized labor—had decided to spend political money. This memo discussed in much more detail the pressure which was coming from the Congress for higher supports; that the Congress was acting at Speaker Albert's instigation; and that a bill for higher supports would probably be passed, thus presenting the President with a very difficult veto situation.

On March 23, 1971, the morning of the dairy meeting, the President called Secretary of the Treasury Connally. This is confirmed by Secretary Connally's log, and thus a memorandum for the record to the effect that Connally called the President is incorrect. The primary subject of their brief conversation was an unrelated legislative matter.

During the latter part of their conversation, the discussion touched on the fact that the President would be meeting later that morning with a group of dairymen and the potential effect of a support level increase on consumer prices.

While the Secretary's side of the conversation was not recorded, it was later reported in a memorandum for the record that Secretary Connally had suggested that the President announce in the meeting that the level would be raised to 85 per cent of parity.

Any suggestion that Secretary Connally contacted the President by telephone on March 20 or March 23, 1971, to convey offers of campaign contributions from the milk producers is clearly erroneous, for the logs of both the President and the Secretary show that it was the President who contacted Secretary Connally to discuss various issues and not the reverse. Moreover, the taped conversation confirms the fact that the President did not discuss campaign contributions with the Secretary.

Similarly it has been erroneously suggested by some that Secretary Connally subsequent to March 23, 1971, sought campaign contributions from the dairy producers as a condition precedent to the higher price support. Such an assertion is entirely incorrect and is wholly refuted by the fact that the Secretary advised the President prior to the March 23 meeting to announce the increased price support at that time.

On the morning of March 23, 1971, the President met with 18 dairy representatives in the Cabinet Room of the White House. The meeting was also attended by numerous government officials, including O.M.B. director, George Shultz; associate director of O.M.B., Donald Rice; assistant to the President, John Ehrlichman; and deputy assistants to the President, Henry Cashen and John Whitaker. Representing the Department of Agriculture were Secretary Hardin; Under Secretary Phil Campbell; Assistant Secretaries Clarence Palmby and Richard Lyng; and Deputy Secretary William Galbraith.

Contrary to various allegations, the meeting had been planned and scheduled some months in advance. The President originally invited the dairy leaders over six months earlier, during a courtesy telephone call on Sept. 4, 1970, and a courtesy meeting on September 9, 1971.

Specific arrangements began in mid-January 1971. The Department of Agriculture obtained a list of the officers and representatives of the major dairy industry groups which was forwarded to the White House by Secretary Hardin on Jan. 26, 1971, with his recommendation that a meeting be scheduled. On Feb. 25, 1971, Secretary Hardin was informed that the President had approved the meeting and that it had been set for 10:30 A.M. March 23, 1971. Thus this meeting was planned and a specific time, date and guest list established at least one month prior to the meeting date, and wholly independent of either of the 1971 price support announcements.

The President opened the meeting by thanking the dairy leaders for their nonpartisan support of Administration policies. In this meeting the general problems of the dairy industry were discussed, and in particular the immediate need for higher price supports. No conclusions were reached about the support price and campaign contributions were not mentioned.

With increased pressure from Capitol Hill and following the discussion with the dairymen, the President, met during the afternoon of March 23, with seven senior Administration officials to explore the situation; Secretary John Connally; Secretary Clifford Hardin, Under Secretary of Agriculture, Phil Campbell; George Shultz, director of the Office of Management and Budget; John Ehrlichman, assistant to the President for domestic affairs; John Whitaker, Deputy Assistant to the President for domestic affairs; and Donald Rice, associate director of the Office of Management and Budget.

The meeting opened with Secretary Connally, at the President's request, outlining the situation. He pointed out first that politically the President was going to have to be strong in rural America and that the farmers had many problems and that this was one of the few which the President could do anything about; second, that the major dairy groups represented some 100,000 dairymen who were being tapped, labor union style, to amass an enormous amount of money which they were going to use in various Congressional and Senatorial races all over the country to the President's political detriment. Secretary Connally also advised the President twice that he believed a support level increase to be economically sound.

The discussion then centered on the pending legislation which would require a support level increase. The President stated that he believed such a bill would pass. Secretary Hardin expressed the view that a bill forcing an increase was almost certain to pass and told the President that 150 names were on the bill and that Speaker Carl Albert supported it. Secretary Connally stated that Wilbur Mills also supported it and that it would pass the House beyond any question. Secretary Connally said the move would gain liberal support as it would embarrass the President.

A veto was then discussed and ruled out with Secretary Hardin emphasizing that the President would have no alternative but to sign the bill. In addition Secretary Connally stated that on Capitol Hill, the dairymen were arguing that a veto would cost the Republicans the states of Missouri, Wisconsin, South Dakota, Ohio, Kentucky and Iowa in the 1972 election.

Promise From Dairymen

The President then concluded that Congress would pass a bill for higher support levels and that he could not veto it. However, to limit the extent of the price increase and deter any future request by the dairy industry, the President accepted a proposal by Secretary Connally that a promise be sought from the dairymen that they would not seek any further increase in 1972.

Following this decision, it was suggested that the Administration take credit for the increase and at the same time obtain in return the support of Speaker Albert and Congressman Wilbur Mills on other pending legislation. The problem of keeping the decision quiet until Congressmen Albert and Mills could be approached but still obtain the promise from the dairymen not to request an increase in 1972, was then discussed and settled.

At the end of the meeting John Ehrlichman mentioned contacting Charles Colson and Bob Dole, and the President outlined who was to contact Speaker Albert and Congressman Mills and that he understood Phil Campbell would contact the dairymen about not seeking an increase in 1972.

Six facts thus become clear:

1. The announcement of the decision was to be timed in order that a compromise might be worked out with Speaker Albert and Congressman Mills, not an attempt to obtain campaign contributions.
2. The President's understanding of the plan was that Phil Campbell, not Charles Colson, was to contact the dairymen about obtaining a pledge not to seek an increase in 1972, not a pledge of campaign contributions.

(3). Only a vague and passing reference was made regarding Charles Colson which did not include any statement of why Colson would be contacted or what, if anything, his role would be.

4. The President's chief advisers including agricultural expert, Secretary of Agriculture Hardin, recommended and fully concurred in the decision.
5. Based on unanimous advice, the President firmly concluded that the mandatory bill would pass and that for political reasons he could not veto it, and
6. Contributions to the President's campaign were not mentioned at all.

Thus it is clear, that the President did not raise the milk price support level in 1971 as a result of any suggestion or promise of campaign contributions from the dairy industry.

Moreover, subsequent events clearly demonstrate that the support level was not raised due to a promise of campaign donations. Phil Campbell testified in executive session before the Senate Select Committee that he did in fact call Harold Nelson after the meeting and asked him whether the dairymen would refrain from asking for further increases if the Administration raised the support level. Mr. Nelson agreed.

Campbell did not tell him of the meeting with the President or discuss any other matter with Mr. Nelson. Nor did he suggest that Nelson not boycott a Republican fund-raising dinner.

Similarly, following the meeting of March 23, 1971, the President had no contact with John Ehrlichman at any time prior to a meeting between Ehrlichman and Charles Colson later that day. Nor did the President meet or speak with Charles Colson during that time.

The President's telephone conversation with Charles Colson on that date was prior to the afternoon meeting. In any event, Colson testified that the President never discussed with him a

two million dollar commitment from the dairymen or any campaign contributions relative to the 1972 campaign.

Charles Colson testified that he didn't know whether or not Erhlichman told him in their meeting on the afternoon of March 23 that the support level decision was going to be reversed. In any event, Colson did testify that he did not mention that fact to Chotiner in a subsequent meeting that day. Colson further testified that he undoubtedly told Chotiner, as he had previously, that the dairymen should live up to their commitments regardless of Administration policies.

Colson's conversation with Chotiner dealt with dinner tickets, not with campaign contributions or pledges. In addition, Colson testified that at no time in his discussions with representatives of A.M.P.I. which also includes Chotiner, did he ever indicate that there was a quid pro quo. In fact, Colson stated that the actions of A.M.P.I.'s representatives had a negative rather than favorable effect. Colson's actions were persistent with an earlier instruction from Haldeman telling Colson to be sure the dairymen didn't expect anything in return.

In this regard, it is interesting to note that the memoranda regarding the Senate staff interviews with Murray Chotiner curiously do not mention whether Mr. Chotiner was asked the seemingly obvious question of whether Colson, Ehrlichman or anyone had told him that campaign pledges and/or contributions were to be obtained from the dairymen as a quid pro quo for a support increase. Rather Chotiner is reported to have said that at an earlier point Colson told David Parr that there could not be a quid pro quo. Colson' testimony corroborates this.

Testimony From Kalmbach

Herbert Kalmbach testified that at a meeting on the night of March 24, 1971, Harold Nelson of A.M.P.I. reaffirmed a campaign pledge. Kalmbach testified that he was unaware of a pending announcement regarding price supports and thus gave Chotiner and Nelson no information regarding price supports and made no promises or predictions of any kind respecting price supports in the meeting. Nothing was said as to whether anything was to hapen if the decision was not changed.

This is consistent with Mr. Kalmbach's testimony before the Senate Select Committee that he had no understanding with Haldeman, Ehrlichman, Nelson, Chotner, or anyone that the reaffirmation was being made in any way as a condition of the announcement of the price increase.

On this same point, Mr. Chotiner has stated in sworn testimony that he did not know of the decision to increase support levels until it was publicly announced, that he did not discuss campaign contributions in seeking a support level increase on behalf of the dairymen and that he did not talk to the dairymen in the context of contributions in return for favorable action.

The Senate Select Committee and other testimony of Harold Nelson, the third participant in the March 24 meeting, also contradicts any misinterpretation of Kalmbach's testimony suggesting that the reaffirmation was to have or did have any effect on the decision to increase the support level.

This misconstruction is also contradicted by the sworn testimony of David Parr and Marion Harrison. Indeed, while Mr. Kalmbach testified that he reported the reaffirmation to Mr. Ehrlichman at noon the next day, there is no evidence that this fact was communicated to the Department of Agriculture before its announcement of the increase.

It is noteworthy that the Senate Select Committee has offered an explanation for the dairymen's fund raising ac-

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tivities between March 23 and 25, 1971. Based on the testimony of Harold Nelson of A.M.P.I., the Senate Select Committee posits that Nelson had learned of the pending announcement of a support level increase and that Nelson hoped to induce commitments from other dairy leaders by telling them that the increase was only possible rather than definite. In any event neither the President nor any member of his Administration or his re-election effort sought or accepted a campaign contribution or pledge in return for any Presidential action favorable or unfavorable.

Finally, there are a few considerations that should be mentioned to complete the record. First, Secretary of Agriculture, Clifford M. Hardin, changed his decision regarding the milk price support level as a result of economic factors and traditional political considerations. In a sworn deposition Secretary Hardin pointed out that some of the purposes of the support program are, among others, to assure adequate supplies of milk and dairy products; encourage development of efficient production units and stabilize the economy of dairy farmers at a level which will provide a fair return for their labor and investment when compared with the things that farmers buy.

He also stated that increased costs and other economic factors raised by dairymen, the political pressure which precluded a veto of a bill which would set parity at a minimum of 85 per cent and possibly as high as 90 per cent, the potential threat of production controls which would decrease the milk supply, and the need for an increased supply of cheese were additional factors that caused him to re-evaluate and then change his earlier decision, and that the change was based entirely on a reconsideration of the evidence on the basis of the statutory criteria.

Increasing Demand for Cheese

In this regard, the Commodity Credit Corporation Docket MCP 98a, Amendment 1, which implements the Secretary's decision, states that the change was based on a re-evaluation of the dairy situation, giving full recognition to increasing labor, waste disposal, and other costs on dairy farms and to increasing demand for cheese. On April 15, 1971, the General Counsel of the Department of Agriculture approved for legal sufficiency the dockets authorization and advised the Board of Directors of the Commodity Credit Corporation that the determination of the support level necessary to meet the statutory criteria was solely within the discretion of the Secretary. In May 12, 1971, the amendment raising the support level to 85 per cent of parity was approved by the Board of Directors.

Second, when Mr. Kalmbach was asked by the dairymen in 1972 to intercede on their behalf regarding antitrust suits by the Justice Department, he, ass associate finance chairman, refused, abrogated their outstanding commitment and advised them that their funds were not wanted. Mr. Kalmbach advised Mr. Ehrlichman of this fact and Mr. Ehrlichman indicated he felt it was a good judgment. Those antitrust suits are still proceeding in the courts.

Third, any suggestion that contributions by the dairy industry in early 1971 represented "early money" for the 1972 Presidential campaign is totally without merit.

The fact is that the President's campaign received no contributions from the dairymen throughout the first half of 1971, the entire period contemporaneous with the milk price support decisions. It is true contributions during that period were made to committees associated wth the Republican National Committee but not to the President's campaign.

This fact is reaffirmed by the conclusion of the Senate Select Committee that there is no evidence of any transfer of funds from any R.N.C. Committee to the President's re-election organizations in 1971. Specifically with regard to contributions by one of the dairy trusts, ADEPT, the Senate Committee concluded that there is on evidence that any portion of the money benefitted the President's re-election campaign.

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 having 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 campagn contributions were subsequently made by various entities affected by the decisions 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.

V. I.R.S.

A. 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 (I.R.S.) was not, in fact, misused. The various materials, testimony, and reports 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 I.R.S. to do something that might harass some individual or organization. Nevertheless, the overriding fact remains that these suggestions were not carried out.

On Dec. 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," 93d Congress, 1st Sess. (Dec. 20, 1973). That committee investigation was based on charges made by Mr. John Dean during the public hearings of the Senate Select Committee on Presidential Campaign Activities in late June of 1973. According to the Joint Committee's report:

"He [Mr. Dean] made several allegations that individuals in the White House *attempted* to use the Internal Revenue Service for partisan political purposes. Dean alleged that he was asked to stimulate audits on several "political opponents" of the White House and to "do something" about audits that were being performed on friends of President Nixon *who felt that they were being* harassed by the I.R.S. In addition, Dean revealed the existence of a special group within the Internal Revenue Service to collect information about extremist individuals and organizations. Since Dean's testimony, there have been several newspaper articles making similar accusations about the IRS". (Emphasis added).

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 I.R.S. 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 I.R.S. 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. Under these Presidential appointments the record of the I.R.S. for fair nonpartisan enforcement of the tax laws was exemplary.

The records of the Administration's four Secretaries of the Treasury in relation to their responsibilities is equally commendable. 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 I.R.S. 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 staff report of the Joint Committee on Internal Revenue Taxation, in going beyond the evidence of "memos" and allegations, tells an important story. When Dean turned over his "enemies" list to Commissioner Johnnie Walters of the I.R.S. on Sept. 11, 1972, four days before Dean's meeting with the President on Sept. 15, 1972, Dean asserted "it [the request] doesn't come from the President." Most importantly, Dean's request did not result in any political harassment of the individuals on the list. As the report put it:

"The staff's investigation paid particular attention to the cases of those individuals mentioned in the press as victims of politically motivated audits. The Joint Committee staff has difficulty in discussing these cases specifically because of the problem this would present in violating the individuals' rights of confidentiality. *However, in none of these cases has the staff found any evidence that the taxpayer was unfairly treated by the Internal Revenue Service because of political views or activities.* If the staff fere freed from restraint as to disclosure of information, it believes the information it has would indicate that these taxpayers were treated in the same manner as taxpayers generally." (Emphasis added).

This conclusion is further supported by the House Judiciary Committee's materials. Commissioner Walters stated in his affadivit of May 6, 1974, with respect to the list furnished him by Dean:

"At no time did I furnish any name or names from the list to anyone, nor did I request any I.R.S. employe or official to take any action with respect to the list.

"I removed the list from the safe when I left I.R.S. and thereafter personally kept it in the sealed evelope and locked in my present office."

The absurdity of the charges of Presidential misuse of the I.R.S. against "enemies" is further highlighted by an illustration revealed in the Joint Committee's report when in discussing the audit of Robert W. Greene, a reporter for Newsday, it stated:

"In this case, Dean stated that John Caulfied had initiated an audit with an informant's letter. According to statements made by Greene, however, his return was not audited by the Internal Revenue Service but rather by New York State under the Federal/state exchange program. The staff has talked with Mr. Greene, the New York revenue agent who audited Greene's return, and other people in the New York State Department of Taxation and, as a result, believes that his audit by New York State was unrelated to his being classified as a White House enemy."

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 I.R.S."

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. The Joint Committee staff report found:

"Statements have also been made that on occasion names on the sensitive case list have been seen by those on the White House staff and that requests have been made not to harass or otherwise bear down too hard on cases involving "friends." It is clear from information available that in two or three of the cases such requests were made by White House personnel. In one case, to demonstrate that there was no harassment, a special study was made by the Internal Revenue Service to show that the returns of others in the same industry were given at least as much attention as was the return of the taxpayer in question. In another case it is clear that there was a communication from the Commissioner of Internal Revenue to a District Director and to the agent working on the return regarding a "friend's" return. On the other hand, in the case of one "friend" an indictment has been obtained, and in another case the audit is continuing. In another situation, the Government did not prosecute a case involving a prominent "friend." Questions may be raised as to whether this was appropriate action.

"In reviewing the returns, the staff finds it difficult to "second-guess' the agents who were actually performing the audits. *The staff believes that in three cases there are substantial questions about decisions made by governmental agencies about friends of the White House, but the staff does not have evidence that there was any pressure involved.* With the approval of the committee, the staff has requested I.R.S. to re-examine these cases and to present analyses showing why it believes further action should, or should not, be taken.

"While the staff is not as yet satisfied as to some of the cases involving "friends," *the staff also believes that a number of "enemies" either were not audited when the staff believes they should have been or were audited too leniently.* (Emphasis added).

Thus, there are absolutely no facts to substantiate any charge that the President in any way misused or directed the misuse of the I.R.S. 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 I.R.S. 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.

The thrust of the alleged abuses involved minimal efforts of a very preliminary nature: a suggestion memo, a preliminary investigation or a proposed action. The only improperly motivated efforts that did occur involved memos from one party to another party urging that something happen. However, a review of all the facts reveals that nothing ever did happen.

House Panel Testimony

In his testimony before the House Judiciary Committee, Dean noted that "He [the President] made some rather specific comments to me, which in turn resulted in me going back to [Commissioner] Walters again." This testimony implies that the President was attempting to have McGovern campaign supporters on the "enemies" list audited by the I.R.S. and was attempting to direct Dean to do this. Yet in response to a question by Congressman Railsback: "[a]nd the extent of the President's knowledge about the requested audits?" Dean stated:

MR. DEAN. Well, I can't tell you what prompted the discussion of the audit. I can only recall that that launches the President into a—into an extended discussion about the situation and about the Internal Revenus Service and not using it effect-

ively and from there we immediately went to the fact that we were not using the entire apparatus of the government effectively and the changes that would be made after the election.

Thus, Dean could not say what actually prompted the President's discussion of the I.R.S. matter and Dean also never testified as to content of the President's comments. Dean admits, however, that in the Sept. 11, 1972 meeting with Commissioner Walter he asserted "it [the request] doesn't come from the President," and in fact he has also admitted that at the time of the Sept. 11, 1972 meeting he had no personal knowledge of the President's involvement in this matter. Yet after all this he implies that the President made some specific comments to him on Sept. 15, 1972, resulting in Mr. Dean renewing his request to Commissioner Walters.

The fact of the matter is that when Dean returned to Commissioner Walters on Sept. 25, he, according to Commissioner Walters, "inquired as to what progress I had made with respect to the list. I told him that no progress had been made." Thus, Dean pursued this topic where he had left it on Sept. 11, 1972, before any alleged comments by the President on Sept. 15, 1972. There is no evidence that this request was somehow a newly motivated one resulting from the meeting with the President. Quite the contrary, it was obviously a continuation of Dean's admitted efforts, prior to the Presidential conversation of Sept. 15, 1972. When Congressman Railsback inquired as to what happened then and what did the President do as a result of the Dean "failure," Mr. Dean's response was:

MR. DEAN. Well, I have got to be very candid. I was happy it had been turned off. I didn't like it, and I didn't do anything more. I got continual—one of Mr. Ehrlichman's staff assistants, Mr. Hullin, continued to call me and ask about it. And I think, I gather from a conversation I had with Mr. Walters that he had also called Mr. Walters and Mr. Walters was a little annoyed about it, but they kept resisting and resisting, so *I don't know if the President got back in it or not or I don't know of any audits that were accomplished.* (emphasis added).

Thus, Dean's claims of presidential direction in Dean's efforts to misuse the I.R.S. 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 about what the I.R.S. should do, and may in fact, have communicated such intentions to their colleagues at the White House or to some individuals at the I.R.S., no abuse of the I.R.S. ever occurred resulting from Presidential action. No action by the I.R.S. resulted. No involvement of the President has ever been shown to be likely, let alone probable.

VI. CONCLUSION

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.