The original documents are located in Box 16, folder "Nixon, Richard - Pardon: Hungate Subcommittee Appearance (2)" of the Ron Nessen Papers at the Gerald R. Ford Presidential Library.

STATEMENT OF PRESIDENT GERALD R. FORD

HOUSE COMMITTEE ON THE JUDICIARY
Subcommittee on Criminal Justice
October 17, 1974

We meet here today to review the facts and circumstances that were the basis for my pardon of former President Nixon on September 8, 1974.

I want very much to have those facts and circumstances known. The American people want to know them. And members of the Congress want to know them. The two Congressional resolutions of inquiry now before this Committee serve those purposes. That is why I have volunteered to appear before you this morning, and I welcome and thank you for this opportunity to speak to the questions raised by the resolutions.

My appearance at this hearing of your distinguished Subcommittee of the House Committee on the Judiciary has been looked upon as an unusual historic event -- one that has no firm precedent in the whole history of Presidential relations with the Congress. Yet, I am here not to make history, but to report on history.

The history you are interested in covers so recent a period that it is still not well understood. If, with your assistance, I can make for better understanding of the pardon of our former President, then we can help to achieve the purpose I had for granting the pardon when I did.

That purpose was to change our national focus. I wanted to do all I could to shift our attentions from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation. Our nation is under the severest of challenges now to employ its full energies and efforts in the pursuit of a sound and growing economy at home and a stable and peaceful world around us.

We would needlessly be diverted from meeting those challenges if we as a people were to remain sharply divided over whether to indict, bring to trial, and punish a former President, who already is condemned to suffer long and deeply in the shame and disgrace brought upon the office he held. Surely, we are not a revengeful people. We have often demonstrated a readiness to feel compassion and to act out of mercy. As a people we have a long record of forgiving even those who have been our country's most destructive foes.

Yet, to forgive is not to forget the lessons of evil in whatever ways evil has operated against us. And certainly the pardon granted the former President will not cause us to forget the evils of Watergate-type offenses or to forget the lessons we have learned that a government which deceives its supporters and treats its opponents as enemies must never, never be tolerated.

The pardon power entrusted to the President under the Constitution of the United States has a long history and rests on precedents going back centuries before our Constitution was drafted and adopted. The

power has been used sometimes as Alexander Hamilton saw its purpose: "In seasons of insurrection...when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall."[1] Other times it has been applied to one person as "an act of grace...which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."[2] When a pardon is granted, it also represents "the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."[3] However, the Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders.[4] Thus, I am firm in my conviction that as President I did have the authority to proclaim a pardon for the former President when I did.

Yet, I can also understand why people are moved to question my action. Some may still question my authority, but I find much of the disagreement turns on whether I should have acted when I did. Even then many people have concluded as I did that the pardon was in the best interests of the country because it came at a time when it would best serve the purpose I have stated.

1. The Federalist No. 74, at 79 (Central Law Journal ed. 1914) (A. Hamilton).
2. Marshall, C.J., in United States v. Wilson, 32 U.S. (7 Pet.) 150, 160 (1833).
3. Biddle v. Perovich, 247 U.S. 480, 486 (1927).
4. Ex Parte Garland, 4 Wall. 333, 380 (1867); Burdick v. United States, 236 U.S. 79 (1915).

I come to this hearing in a spirit of cooperation to respond to your inquiries. I do so with the understanding that the subjects to be covered are defined and limited by the questions as they appear in the resolutions before you. But even then we may not mutually agree on what information falls within the proper scope of inquiry by the Congress.

I feel a responsibility as you do that each separate branch of our government must preserve a degree of confidentiality for its internal communications. Congress, for its part, has seen the wisdom of assuring that members be permitted to work under conditions of confidentiality. Indeed, earlier this year the United States Senate passed a resolution which reads in part as follows:

* * *

> "...no evidence under the control and in the possession of the Senate of the United States can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession, but by its permission." (S. Res. 338, passed June 12, 1974)

In United States v. Nixon, 42 U.S.L.W. 5237, 5244 (U.S. July 24, 1974), the Supreme Court unanimously recognized a rightful sphere of confidentiality within the Executive Branch, which the Court determined could only be invaded for overriding reasons of the Fifth and Sixth Amendments to the Constitution.

As I have stated before, my own view is that the right of Executive Privilege is to be exercised with caution and restraint. When I was a Member of Congress, I did not hesitate to question the right of the

Executive Branch to claim a privilege against supplying information to the Congress if I thought the claim of privilege was being abused. Yet, I did then, and I do now, respect the right of Executive Privilege when it protects advice given to a President in the expectation that it will not be disclosed. Otherwise, no President could any longer count on receiving free and frank views from people designated to help him reach his official decisions.

Also, it is certainly not my intention or even within my authority to detract on this occasion or in any other instance from the generally recognized rights of the President to preserve the confidentiality of internal discussions or communications whenever it is properly within his Constitutional responsibility to do so. These rights are within the authority of any President while he is in office, and I believe may be exercised as well by a past President if the information sought pertains to his official functions when he was serving in office.

I bring up these important points before going into the balance of my statement, so there can be no doubt that I remain mindful of the rights of confidentiality which a President may and ought to exercise in appropriate situations. However, I do not regard my answers as I have prepared them for purposes of this inquiry to be prejudicial to those rights in the present circumstances or to constitute a precedent for responding to Congressional inquiries different in nature or scope or under different circumstances.

Accordingly, I shall proceed to explain as fully as I can in my present answers the facts and circumstances covered by the present resolutions of inquiry. I shall start with an explanation of these events which were the first to occur in the period covered by the inquiry, before I became President. Then I will respond to the separate questions as they are numbered in H. Res. 1367 and as they specifically relate to the period after I became President.

H. Res. 1367* before this Subcommittee asks for information about certain conversations that may have occurred over a period that includes when I was a Member of Congress or the Vice President. In that entire period no references or discussions on a possible pardon for then President Nixon occurred until August 1 and 2, 1974.

You will recall that since the beginning of the Watergate investigations, I had consistently made statements and speeches about President Nixon's innocence of either planning the break-in or of participating in the cover-up. I sincerely believed he was innocent.

Even in the closing months before the President resigned, I made public statements that in my opinion the adverse revelations so far did not constitute an impeachable offense. I was coming under

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* Tab A attached.

increasing criticism for such public statements, but I still believed them to be true based on the facts as I knew them.

In the early morning of Thursday, August 1, 1974, I had a meeting in my Vice Presidential office, with Alexander M. Haig, Jr., Chief of Staff for President Nixon. At this meeting, I was told in a general way about fears arising because of additional tape evidence scheduled for delivery to Judge Sirica on Monday, August 5, 1974. I was told that there could be evidence which, when disclosed to the House of Representatives, would likely tip the vote in favor of impeachment. However, I was given no indication that this development would lead to any change in President Nixon's plans to oppose the impeachment vote.

Then shortly after noon, General Haig requested another appointment as promptly as possible. He came to my office about 3:30 P.M. for a meeting that was to last for approximately three-quarters of an hour. Only then did I learn of the damaging nature of a conversation on June 23, 1972, in one of the tapes which was due to go to Judge Sirica the following Monday.

I describe this meeting because at one point it did include references to a possible pardon for Mr. Nixon, to which the third and fourth questions in H. Res. 1367 are directed. However, nearly the entire meeting covered other subjects, all dealing with the totally new situation resulting from the critical evidence on the tape of

June 23, 1972. General Haig told me he had been told of the new and damaging evidence by lawyers on the White House staff who had first-hand knowledge of what was on the tape. The substance of his conversation was that the new disclosure would be devastating, even catastrophic, insofar as President Nixon was concerned. Based on what he had learned of the conversation on the tape, he wanted to know whether I was prepared to assume the Presidency within a very short time, and whether I would be willing to make recommendations to the President as to what course he should now follow.

I cannot really express adequately in words how shocked and stunned I was by this unbelievable revelation. First, was the sudden awareness I was likely to become President under these most troubled circumstances; and secondly, the realization these new disclosures ran completely counter to the position I had taken for months, in that I believed the President was not guilty of any impeachable offense.

General Haig in his conversation at my office went on to tell me of discussions in the White House among those who knew of this new evidence.

General Haig asked for my assessment of the whole situation. He wanted my thoughts about the timing of a resignation, if that decision were to be made, and about how to do it and accomplish an orderly change of Administration. We discussed what scheduling problems there might be and what the early organizational problems would be.

General Haig outlined for me President Nixon's situation as he saw it and the different views in the White House as to the courses of action that might be available, and which were being advanced by various people around him on the White House staff. As I recall there were different major courses being considered:

(1) Some suggested "riding it out" by letting the impeachment take its course through the House and the Senate trial, fighting all the way against conviction.

(2) Others were urging resignation sooner or later.

I was told some people backed the first course and other people a resignation but not with the same views as to how and when it should take place.

On the resignation issue, there were put forth a number of options which General Haig reviewed with me. As I recall his conversation, various possible options being considered included:

(1) The President temporarily step aside under the 25th Amendment.

(2) Delaying resignation until further along the impeachment process.

(3) Trying first to settle for a censure vote as a means of avoiding either impeachment or a need to resign.

(4) The question of whether the President could pardon himself.

(5) Pardoning various Watergate defendants, then himself, followed by resignation.

(6) A pardon to the President, should he resign.

The rush of events placed an urgency on what was to be done. It became even more critical in view of a prolonged impeachment trial which was expected to last possibly four months or longer.

The impact of the Senate trial on the country, the handling of possible international crises, the economic situation here at home, and the marked slowdown in the decision-making process within the federal government were all factors to be considered, and were discussed.

General Haig wanted my views on the various courses of action as well as my attitude on the options of resignation. However, he indicated he was not advocating any of the options. I inquired as to what was the President's pardon power, and he answered that it was his understanding from a White House lawyer that a President did have the authority to grant a pardon even before any criminal action had been taken against an individual, but obviously, he was in no position to have any opinion on a matter of law.

As I saw it, at this point the question clearly before me was, under the circumstances, what course of action should I recommend that would be in the best interest of the country.

I told General Haig I had to have time to think. Further, that I wanted to talk to James St. Clair. I also said I wanted to talk to my wife before giving any response. I had consistently and firmly held the view previously that in no way whatsoever could I recommend

either publicly or privately any step by the President that might cause a change in my status as Vice President. As the person who would become President if a vacancy occurred for any reason in that office, a Vice President, I believed, should endeavor not to do or say anything which might affect his President's tenure in office. Therefore, I certainly was not ready even under these new circumstances to make any recommendations about resignation without having adequate time to consider further what I should properly do.

Shortly after 8:00 o'clock the next morning James St. Clair came to my office. Although he did not spell out in detail the new evidence, there was no question in my mind that he considered these revelations to be so damaging that impeachment in the House was a certainty and conviction in the Senate a high probability. When I asked Mr. St. Clair if he knew of any other new and damaging evidence besides that on the June 23, 1972, tape, he said "no." When I pointed out to him the various options mentioned to me by General Haig, he told me he had not been the source of any opinion about Presidential pardon power.

After further thought on the matter, I was determined not to make any recommendations to President Nixon on his resignation. I had not given any advice or recommendations in my conversations with his aides, but I also did not want anyone who might talk to the President to suggest that I had some intention to do so.

For that reason I decided I should call General Haig the afternoon of August 2nd. I did make the call late that afternoon and told him I wanted him to understand that I had no intention of recommending what President Nixon should do about resigning or not resigning, and that nothing we had talked about the previous afternoon should be given any consideration in whatever decision the President might make. General Haig told me he was in full agreement with this position.

My travel schedule called for me to make appearances in Mississippi and Louisiana over Saturday, Sunday, and part of Monday, August 3, 4, and 5. In the previous eight months, I had repeatedly stated my opinion that the President would not be found guilty of an impeachable offense. Any change from my stated views, or even refusal to comment further, I feared, would lead in the press to conclusions that I now wanted to see the President resign to avoid an impeachment vote in the House and probable conviction vote in the Senate. For that reason I remained firm in my answers to press questions during my trip and repeated my belief in the President's innocence of an impeachable offense. Not until I returned to Washington did I learn that President Nixon was to release the new evidence late on Monday, August 5, 1974.

At about the same time I was notified that the President had called a Cabinet meeting for Tuesday morning, August 6, 1974.

At that meeting in the Cabinet Room, I announced that I was making no recommendations to the President as to what he should do in the light of the new evidence. And I made no recommendations to him either at the meeting or at any time after that.

In summary, I assure you that there never was at any time any agreement whatsoever concerning a pardon to Mr. Nixon if he were to resign and I were to become President.

The first question of H. Res. 1367 asks whether I or my representative had "specific knowledge of any formal criminal charges pending against Richard M. Nixon." The answer is: "no."

I had known, of course, that the Grand Jury investigating the Watergate break-in and cover-up had wanted to name President Nixon as an unindicted co-conspirator in the cover-up. Also, I knew that an extensive report had been prepared by the Watergate Special Prosecution Force for the Grand Jury and had been sent to the House Committee on the Judiciary, where, I believe, it served the staff and members of the Committee in the development of its report on the proposed articles of impeachment. Beyond what was disclosed in the publications of the Judiciary Committee on the subject and

additional evidence released by President Nixon on August 5, 1974, I saw on or shortly after September 4th a copy of a memorandum prepared for Special Prosecutor Jaworski by the Deputy Special Prosecutor, Henry Ruth.* Copy of this memorandum had been furnished by Mr. Jaworski to my Counsel and was later made public during a press briefing at the White House on September 10, 1974.

I have supplied the Subcommittee with a copy of this memorandum. The memorandum lists matters still under investigation which "may prove to have some direct connection to activities in which Mr. Nixon is personally involved." The Watergate cover-up is not included in this list; and the alleged cover-up is mentioned only as being the subject of a separate memorandum not furnished to me. Of those matters which are listed in the memorandum, it is stated that none of them "at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon."

This is all the information I had which related even to the possibility of "formal criminal charges" involving the former President while he had been in office.

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* Tab B attached.

The second question in the resolution asks whether Alexander Haig referred to or discussed a pardon with Richard M. Nixon or his representatives at any time during the week of August 4, 1974, or any subsequent time. My answer to that question is: not to my knowledge. If any such discussions did occur, they could not have been a factor in my decision to grant the pardon when I did because I was not aware of them.

Questions three and four of H. Res. 1367 deal with the first and all subsequent references to, or discussions of, a pardon for Richard M. Nixon, with him or any of his representatives or aides. I have already described at length what discussions took place on August 1 and 2, 1974, and how these discussions brought no recommendations or commitments whatsoever on my part. These were the only discussions related to questions three and four before I became President, but question four relates also to subsequent discussions.

At no time after I became President on August 9, 1974, was the subject of a pardon for Richard M. Nixon raised by the former President or by anyone representing him. Also, no one on my staff brought up the subject until the day before my first press conference

on August 28, 1974. At that time, I was advised that questions on the subject might be raised by media reporters at the press conference.

As the press conference proceeded, the first question asked involved the subject, as did other later questions. In my answers to these questions, I took a position that, while I was the final authority on this matter, I expected to make no commitment one way or the other depending on what the Special Prosecutor and courts would do. However, I also stated that I believed the general view of the American people was to spare the former President from a criminal trial.

Shortly afterwards I became greatly concerned that if Mr. Nixon's prosecution and trial were prolonged, the passions generated over a long period of time would seriously disrupt the healing of our country from the wounds of the past. I could see that the new Administration could not be effective if it had to operate in the atmosphere of having a former President under prosecution and criminal trial. Each step along the way, I was deeply concerned, would become a public spectacle and the topic of wide public debate and controversy.

As I have before stated publicly, these concerns led me to ask from my own legal counsel what my full right of pardon was under the Constitution in this situation and from the Special Prosecutor what criminal actions, if any, were likely to be brought against the former President, and how long his prosecution and trial would take.

As soon as I had been given this information, I authorized my Counsel, Philip Buchen, to tell Herbert J. Miller, as attorney for Richard M. Nixon, of my pending decision to grant a pardon for the former President. I was advised that the disclosure was made on September 4, 1974, when Mr. Buchen, accompanied by Benton Becker, met with Mr. Miller. Mr. Becker had been asked, with my concurrence, to take on a temporary special assignment to assist Mr. Buchen, at a time when no one else of my selection had yet been appointed to the legal staff of the White House.

The fourth question in the resolution also asks about "negotiations" with Mr. Nixon or his representatives on the subject of a pardon for the former President. The pardon under consideration was not, so far as I was concerned, a matter of negotiation. I realized that unless Mr. Nixon actually accepted the pardon I was preparing to grant, it probably would not be effective. So I certainly had no intention to proceed without knowing if it would be accepted. Otherwise, I put no conditions on my granting of a pardon which required any negotiations.

Although negotiations had been started earlier and were conducted through September 6th concerning White House records of the prior administration, I did not make any agreement on that subject a condition

of the pardon. The circumstances leading to an initial agreement on Presidential records are not covered by the Resolutions before this Subcommittee. Therefore, I have mentioned discussions on that subject with Mr. Nixon's attorney only to show they were related in time to the pardon discussions but were not a basis for my decision to grant a pardon to the former President.

The fifth, sixth, and seventh questions of H. Res. 1367 ask whether I consulted with certain persons before making my pardon decision.

I did not consult at all with Attorney General Saxbe on the subject of a pardon for Mr. Nixon. My only conversation on the subject with Vice Presidential nominee Nelson Rockefeller was to report to him on September 6, 1974, that I was planning to grant the pardon.

Special Prosecutor Jaworski was contacted on my instructions by my Counsel, Philip Buchen. One purpose of their discussions was to seek the information I wanted on what possible criminal charges might be brought against Mr. Nixon. The result of that inquiry was a copy of the memorandum I have already referred to and have furnished to this Subcommittee. The only other purpose was to find out the opinion of the Special Prosecutor as to how long a delay would follow,

in the event of Mr. Nixon's indictment, before a trial could be started and concluded.

At a White House press briefing on September 8, 1974, the principal portions of Mr. Jaworski's opinion were made public. In this opinion, Mr. Jaworski wrote that selection of a jury for the trial of the former President, if he were indicted, would require a delay "of a period from nine months to a year, and perhaps even longer." On the question of how long it would take to conduct such a trial, he noted that the complexities of the jury selection made it difficult to estimate the time. Copy of the full text of his opinion dated September 4, 1974, I have now furnished to this Subcommittee.*

I did consult with my Counsel, Philip Buchen, with Benton Becker, and with my Counsellor, John Marsh, who is also an attorney. Outside of these men, serving at the time on my immediate staff, I consulted with no other attorneys or professors of law for facts or legal authorities bearing on my decision to grant a pardon to the former President.

Questions eight and nine of H. Res. 1367 deal with the circumstances of any statement requested or received from Mr. Nixon. I asked for no

* Tab C attached.

confession or statement of guilt; only a statement in acceptance of the pardon when it was granted. No language was suggested or requested by anyone acting for me to my knowledge. My Counsel advised me that he had told the attorney for Mr. Nixon that he believed the statement should be one expressing contrition, and in this respect, I was told Mr. Miller concurred. Before I announced the pardon, I saw a preliminary draft of a proposed statement from Mr. Nixon, but I did not regard the language of the statement, as subsequently issued, to be subject to approval by me or my representatives.

The tenth question covers any report to me on Mr. Nixon's health by a physician or psychiatrist, which led to my pardon decision. I received no such report. Whatever information was generally known to me at the time of my pardon decision was based on my own observations of his condition at the time he resigned as President and observations reported to me after that from others who had later seen or talked with him. No such reports were by people qualified to evaluate medically the condition of Mr. Nixon's health, and so they were not a controlling factor in my decision. However, I believed and still do, that prosecution and trial of the former President would have proved a serious threat to his health, as I stated in my message on September 8, 1974.

H. Res. 1370* is the other resolution of inquiry before this Subcommittee. It presents no questions but asks for the full and complete facts upon which was based my decision to grant a pardon to Richard M. Nixon.

I know of no such facts that are not covered by my answers to the questions in H. Res. 1367. Also:

Subparagraphs (1) and (4): There were no representations made by me or for me and none by Mr. Nixon or for him on which my pardon decision was based.

Subparagraph (2): The health issue is dealt with by me in answer to question ten of the previous resolution.

Subparagraph (3): Information available to me about possible offenses in which Mr. Nixon might have been involved is covered in my answer to the first question of the earlier resolution.

In addition, in an unnumbered paragraph at the end, H. Res. 1370 seeks information on possible pardons for Watergate-related offenses which others may have committed. I have decided that all persons requesting consideration of pardon requests should submit them through the Department of Justice.

Only when I receive information on any request duly filed and considered first by the Pardon Attorney at the Department of Justice would I consider the matter. As yet no such information has been

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* Tab D attached.

received, and if it does I will act or decline to act according to the particular circumstances presented, and not on the basis of the unique circumstances, as I saw them, of former President Nixon.

By these responses to the resolutions of inquiry, I believe I have fully and fairly presented the facts and circumstances preceding my pardon of former President Nixon. In this way, I hope I have contributed to a much better understanding by the American people of the action I took to grant the pardon when I did. For having afforded me this opportunity, I do express my appreciation to you, Mr. Chairman, and to Mr. Smith, the Ranking Minority Member, and to all the other distinguished Members of this Subcommittee; also to Chairman Rodino of the Committee on the Judiciary, to Mr. Hutchinson, the Ranking Minority Member of the full Committee, and to other distinguished Members of the full Committee who are present.

In closing, I would like to re-emphasize that I acted solely for the reasons I stated in my proclamation of September 8, 1974, and my accompanying message and that I acted out of my concern to serve the best interests of my country. As I stated then: "My concern is the immediate future of this great country...My conscience tells me it is my duty, not merely to proclaim domestic tranquility, but to use every means that I have to insure it."

93D CONGRESS
2D SESSION

H. RES. 1367

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 1974

MS. ABZUG (for herself, MR. BADILLO, MR. JOHN L. BURTON, MR. DELLUMS, MR. EILBERG, MR. HECHLER of West Virginia, MR. HELSTOSKI, MS. HOLTZMAN, MR. KOCH, MR. ROSENTHAL, MR. STARK, MR. STOKES, MR. SYMINGTON, and MR. CHARLES H. WILSON of California) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Resolved, That the President of the United States is hereby requested to furnish the House, within ten days, with the following information:

1. Did you or your representatives have specific knowledge of any formal criminal charges pending against Richard M. Nixon prior to issuance of the pardon? If so, what were these charges?

2. Did Alexander Haig refer to or discuss a pardon for Richard M. Nixon with Richard M. Nixon or representatives of Mr. Nixon at any time during the week of August 4, 1974, or at any subsequent time? If so, what promises were

made or conditions set for a pardon, if any? If so, were tapes or transcriptions of any kind made of these conversations or were any notes taken? If so, please provide such tapes, transcriptions or notes.

3. When was a pardon for Richard M. Nixon first referred to or discussed with Richard M. Nixon, or representatives or Mr. Nixon, by you or your representatives or aides, including the period when you were a Member of Congress or Vice President?

4. Who participated in these and subsequent discussions or negotiations with Richard M. Nixon or his representatives regarding a pardon, and at what specific times and locations?

5. Did you consult with Attorney General William Saxbe or Special Prosecutor Leon Jaworski before making the decision to pardon Richard M. Nixon and, if so, what facts and legal authorities did they give to you?

6. Did you consult with the Vice Presidential nominee, Nelson Rockefeller, before making the decision to pardon Richard M. Nixon and, if so, what facts and legal authorities did he give to you?

7. Did you consult with any other attorneys or professors of law before making the decision to pardon Richard M. Nixon, and, if so, what facts or legal authorities did they give to you?

8. Did you or your representatives ask Richard M. Nixon to make a confession or statement of criminal guilt, and, if so, what language was suggested or requested by you, your representatives, Mr. Nixon, or his representatives? Was any statement of any kind requested from Mr. Nixon in exchange for the pardon, and, if so, please provide the suggested or requested language.

9. Was the statement issued by Richard M. Nixon immediately subsequent to announcement of the pardon made known to you or your representatives prior to its announcement, and was it approved by you or your representatives?

10. Did you receive any report from a psychiatrist or other physician stating that Richard M. Nixon was in other than good health? If so, please provide such reports.

WATERGATE SPECIAL PROSECUTION FORCE DEPARTMENT OF JUSTICE

Memorandum

TO : Leon Jaworski DATE: Sept. 3, 1974

FROM : Henry Ruth

SUBJECT: Mr. Nixon

The following matters are still under investigation in this Office and may prove to have some direct connection to activities in which Mr. Nixon is personally involved:

1. Tax deductions relating to the gift of pre-Presidential papers.

2. The Colson obstruction of justice plea in the Ellsberg matter.

3. The transfer of the national security wire tap records from the FBI to the White House.

4. The initiating of wire tapping of John Sears.

5. Misuse of IRS information.

6. Misuse of IRS through attempted initiation of audits as to "enemies."

7. The dairy industry pledge and its relationship to the price support change.

8. Filing of a challenge to the Washington Post ownership of two Florida television stations.

9. False and evasive testimony at the Kleindienst confirmation hearings as to White House participation in Department of Justice decisions about ITT.

10. The handling of campaign contributions by Mr. Rebozo for the personal benefit of Mr. Nixon.

None of these matters at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon, but I thought you ought to know which of the pending investigations were even remotely connected to Mr. Nixon. Of course, the Watergate cover-up is the subject of a separate memorandum.

cc: Mr. Lacovara

C

"/ATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

September 4, 1974

Philip W. Buchen, Esq.
Counsel to the President
The White House
Washington, D. C.

Dear Mr. Buchen:

You have inquired as to my opinion regarding the length of delay that would follow, in the event of an indictment of former President Richard M. Nixon, before a trial could reasonably be had by a fair and impartial jury as guaranteed by the Constitution.

The factual situation regarding a trial of Richard M. Nixon within constitutional bounds, is unprecedented. It is especially unique in view of the recent House Judiciary Committee inquiry on impeachment, resulting in a unanimous adverse finding to Richard M. Nixon on the Article involving obstruction of justice. The massive publicity given the hearings and the findings that ensued, the reversal of judgment of a number of the members of the Republican Party following release of the June 23 tape recording, and their statements carried nationwide, and finally, the resignation of Richard M. Nixon, require a delay, before selection of a jury is begun, of a period from nine months to a year, and perhaps even longer. This judgment is predicated on a review of the decisions of United States Courts involving prejudicial pre-trial publicity. The Government's decision to pursue impeachment proceedings and the tremendous volume of television, radio and newspaper

coverage given thereto, are factors emphasized by the Courts in weighing the time a trial can be had. The complexities involved in the process of selecting a jury and the time it will take to complete the process, I find difficult to estimate at this time.

The situation involving Richard M. Nixon is readily distinguishable from the facts involved in the case of United States v. Mitchell, et al, set for trial on September 30th. The defendants in the Mitchell case were indicted by a grand jury operating in secret session. They will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions. It is precisely the condemnation of Richard M. Nixon already made in the impeachment process, that would make it unfair to the defendants in the case of United States v. Mitchell, et al, for Richard M. Nixon now to be joined as a co-conspirator, should it be concluded that an indictment of him was proper.

The United States v. Mitchell, et al, trial will within itself generate new publicity, some undoubtedly prejudicial to Richard M. Nixon. I bear this in mind when I estimate the earliest time of trial of Richard M. Nixon under his constitutional guarantees, in the event of indictment, to be as indicated above.

If further information is desired, please advise me.

Sincerely,

Leon Jaworski

LEON JAWORSKI
Special Prosecutor

93D CONGRESS
2D SESSION

H. RES. 1370

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1974

Mr. CONYERS submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Resolved, That the President is directed to furnish to the House of Representatives the full and complete information and facts upon which was based the decision to grant a pardon to Richard M. Nixon, including—

(1) any representations made by or on behalf of Richard M. Nixon to the President;

(2) any information or facts presented to the President with respect to the mental or physical health of Richard M. Nixon;

(3) any information in possession or control of the President with respect to the offenses which were al-

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legally committed by Richard M. Nixon and for which a pardon was granted;

(4) any representations made by or on behalf of the President to Richard M. Nixon in connection with a pardon for alleged offenses against the United States.

The President is further directed to furnish to the House of Representatives the full and complete information and facts in his possession or control and relating to any pardon which may be granted to any person who is or may be charged or convicted of any offense against the United States within the prosecutorial jurisdiction of the Office of Watergate Special Prosecution Force.

MEMORANDUM FOR: RON NESSEN

FROM: Roberts

RE: POSSIBIE QUESTIONS AND SOME ANSWERS FOR BRIEFING OCT. 18

Q: What answer is being given to the Wisconsin farmers who want to send slaughtered calves to Honduras hurricane victims if transportation is provided?

A:

Q: Congresswoman Holtzman asked the President a series of questions of which the President answered only two. Will he answer the others and if so, when ?

A: Miss Holtzman didn't wait for answers. It wasn't clear whether she wante I would think the President would be able to provide answers if Miss Holtzman want

Q: Why was Mr. Nixon pardoned without specifying his crimes, or obtaining a confessio of guilt?

A: Acceptance of pardon is generally considered to be an admission of guilt. Pres said.

Q: Why wasn't the Attorney General consulted?

A: Up to him. Sole power of Pres. Sought legal advice from his counsel.

Q: Why were the deliberations conducted in such haste and with such secrecy?

A: Normal. Not a matter of open public debate. He explained process and meeting steps - step.

Q: What was the connection between the pardon and the agreement giving Mr. Nixon contr over access to his tape recordings?

A: There was none. The agreement for the tapes was reached separately.

Q: Why was a lawyer Benton Becker under criminal investigation used as an intermediary in the pard negotiations? It is my understanding At time no information that he was under investigation Pres & Buker did not know at the time that he was under investigation That the matter had been dropped

A:

Q: The Commerce Department says the U.S. economic output has declined for the third q in a row--wprse than the 1969-70 recession. Does the President still claim we are not in a recession?

A: (I THINK WE'RE BEGINNING TO LOOK SILLY SAYING WE'RE NOT IN A RECESSION)

Q: Governor Reagan says he may help develop a third party in 1976 if the Republican Party fails to carry out the mandate of the 1972 election. Does this concern the President?

A: The President has repeatedly declared his belief that a strong two party is essential to good government, and is doing his best to maintain and inc the strength of the Republican party. He welcomes help in those efforts from every citizen.

WHITE HOUSE RESPONSE TO HOUSE JUDICIARY SUBCOMMITTEE LETTER pardon

Q. Chairman Hungate of the House Judiciary Subcommittee sent a letter to the President yesterday asking for specific answers to his questions and also for an appearance by Mr. Buchen before the Subcommittee. Has the letter been received and will Mr. Buchen appear?

A. Yes, the letter arrived Thurs and we are in the process of preparing a response. No decision has been made as to whether or not Mr. Buchen or anyone else on the White House staff will appear to testify.

Q. When will that decision be made?

A. All I can say is that the matter is under consideration, but I would again point out to you, as I did yesterday, that regardless of any background information or advice the President may have received in deciding to pardon the former President, he is the one responsible for the decision. He is satisfied that it was the right course to follow and in accordance with his conscience and convictions.

Q. Can you give us any guidance as to the nature of White House response?

A. No, as of now, there is nothing I can say.

Q. Will there be a response?

A. Yes, we will answer the letter.
(FYI ONLY: We have been in telephone contact with Hungate to get an extension so we can answer all the questions).

Pardon
Ltr. to Congress.

FOR RELEASE UPON DELIVERY October 17, 1974

Office of the White House Press Secretary

- -

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT
TO BE DELIVERED BEFORE SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES

We meet here today to review the facts and circumstances that were the basis for my pardon of former President Nixon on September 8, 1974.

I want very much to have those facts and circumstances known. The American people want to know them. And members of the Congress want to know them. The two Congressional resolutions of inquiry now before this Committee serve those purposes. That is why I have volunteered to appear before you this morning, and I welcome and thank you for this opportunity to speak to the questions raised by the resolutions.

My appearance at this hearing of your distinguished Subcommittee of the House Committee on the Judiciary has been looked upon as an unusual historic event -- one that has no firm precedent in the whole history of Presidential relations with the Congress. Yet, I am here not to make history, but to report on history.

The history you are interested in covers so recent a period that it is still not well understood. If, with your assistance, I can make for better understanding of the pardon of our former President, then we can help to achieve the purpose I had for granting the pardon when I did.

That purpose was to change our national focus. I wanted to do all I could to shift our attentions from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation. Our nation is under the severest of challenges now to employ its full energies and efforts in the pursuit of a sound and growing economy at home and a stable and peaceful world around us.

We would needlessly be diverted from meeting those challenges if we as a people were to remain sharply divided over whether to indict, bring to trial, and punish a former President, who already is condemned to suffer long and deeply in the shame and disgrace brought upon the office he held. Surely, we are not a revengeful people. We have often demonstrated a readiness to feel compassion and to act out of mercy. As a people we have a long record of forgiving even those who have been our country's most destructive foes.

Yet, to forgive is not to forget the lessons of evil in whatever ways evil has operated against us. And certainly the pardon granted the former President will not cause us to forget the evils of Watergate-type offenses or to forget the lessons we have learned that a government which deceives its supporters and treats its opponents as enemies must never, never be tolerated.

more

The pardon power entrusted to the President under the Constitution of the United States has a long history and rests on precedents going back centuries before our Constitution was drafted and adopted. The power has been used sometimes as Alexander Hamilton saw its purpose: "In seasons of insurrection...when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall."1/ Other times it has been applied to one person as "an act of grace...which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."2/ When a pardon is granted, it also represents "the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."3/ However, the Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders.4/ Thus, I am firm in my conviction that as President I did have the authority to proclaim a pardon for the former President when I did.

Yet, I can also understand why people are moved to question my action. Some may still question my authority, but I find much of the disagreement turns on whether I should have acted when I did. Even then many people have concluded as I did that the pardon was in the best interests of the country because it came at a time when it would best serve the purpose I have stated.

I come to this hearing in a spirit of cooperation to respond to your inquiries. I do so with the understanding that the subjects to be covered are defined and limited by the questions as they appear in the resolutions before you. But even then we may not mutually agree on what information falls within the proper scope of inquiry by the Congress.

I feel a responsibility as you do that each separate branch of our government must preserve a degree of confidentiality for its internal communications. Congress, for its part, has seen the wisdom of assuring that members be permitted to work under conditions of confidentiality. Indeed, earlier this year the United States Senate passed a resolution which reads in part as follows:

* * *

> "...no evidence under the control and in the possession of the Senate of the United States can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession, but by its permission." (S. Res. 338, passed June 12, 1974)

In United States v. Nixon, 42 U.S.L.W. 5237, 5244 (U.S. July 24, 1974), the Supreme Court unanimously recognized a rightful sphere of confidentiality within the Executive Branch, which the Court determined could only be invaded for overriding reasons of the Fifth and Sixth Amendments to the Constitution.

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1. The Federalist No. 74, at 79 (Central Law Journal ed. 1914) (A. Hamilton).
2. Marshall, C.J., in United States v. Wilson, 32 U.S. (7 Pet.) 150, 160 (1833).
3. Biddle v. Perovich, 247 U.S. 480, 486 (1927).
4. Ex Parte Garland, 4 Wall. 333, 380 (1867); Burdick v. United States, 236 U.S. 79 (1915).

As I have stated before, my own view is that the right of Executive Privilege is to be exercised with caution and restraint. When I was a Member of Congress, I did not hesitate to question the right of the Executive Branch to claim a privilege against supplying information to the Congress if I thought the claim of privilege was being abused. Yet, I did then, and I do now, respect the right of Executive Privilege when it protects advice given to a President in the expectation that it will not be disclosed. Otherwise, no President could any longer count on receiving free and frank views from people designated to help him reach his official decisions.

Also, it is certainly not my intention or even within my authority to detract on this occasion or in any other instance from the generally recognized rights of the President to preserve the confidentiality of internal discussions or communications whenever it is properly within his Constitutional responsibility to do so. These rights are within the authority of any President while he is in office, and I believe may be exercised as well by a past President if the information sought pertains to his official functions when he was serving in office.

I bring up these important points before going into the balance of my statement, so there can be no doubt that I remain mindful of the rights of confidentiality which a President may and ought to exercise in appropriate situations. However, I do not regard my answers as I have prepared them for purposes of this inquiry to be prejudicial to those rights in the present circumstances or to constitute a precedent for responding to Congressional inquiries different in nature or scope or under different circumstances.

Accordingly, I shall proceed to explain as fully as I can in my present answers the facts and circumstances covered by the present resolutions of inquiry. I shall start with an explanation of these events which were the first to occur in the period covered by the inquiry, before I became President. Then I will respond to the separate questions as they are numbered in H. Res. 1367 and as they specifically relate to the period after I became President.

H. Res. 1367* before this Subcommittee asks for information about certain conversations that may have occurred over a period that includes when I was a Member of Congress or the Vice President. In that entire period no references or discussions on a possible pardon for then President Nixon occurred until August 1 and 2, 1974.

You will recall that since the beginning of the Watergate investigations, I had consistently made statements and speeches about President Nixon's innocence of either planning the break-in or of participating in the cover-up. I sincerely believed he was innocent.

Even in the closing months before the President resigned, I made public statements that in my opinion the adverse revelations so far did not constitute an impeachable offense. I was coming under increasing criticism for such public statements, but I still believed them to be true based on the facts as I knew them.

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* Tab A attached.

In the early morning of Thursday, August 1, 1974, I had a meeting in my Vice Presidential office, with Alexander M. Haig, Jr., Chief of Staff for President Nixon. At this meeting, I was told in a general way about fears arising because of additional tape evidence scheduled for delivery to Judge Sirica on Monday, August 5, 1974. I was told that there could be evidence which, when disclosed to the House of Representatives, would likely tip the vote in favor of impeachment. However, I was given no indication that this development would lead to any change in President Nixon's plans to oppose the impeachment vote.

Then shortly after noon, General Haig requested another appointment as promptly as possible. He came to my office about 3:30 P.M. for a meeting that was to last for approximately three-quarters of an hour. Only then did I learn of the damaging nature of a conversation on June 23, 1972, in one of the tapes which was due to go to Judge Sirica the following Monday.

I describe this meeting because at one point it did include references to a possible pardon for Mr. Nixon, to which the third and fourth questions in H. Res. 1367 are directed. However, nearly the entire meeting covered other subjects, all dealing with the totally new situation resulting from the critical evidence on the tape of June 23, 1972. General Haig told me he had been told of the new and damaging evidence by lawyers on the White House staff who had first-hand knowledge of what was on the tape. The substance of his conversation was that the new disclosure would be devastating, even catastrophic, insofar as President Nixon was concerned. Based on what he had learned of the conversation on the tape, he wanted to know whether I was prepared to assume the Presidency within a very short time, and whether I would be willing to make recommendations to the President as to what course he should now follow.

I cannot really express adequately in words how shocked and stunned I was by this unbelievable revelation. First, was the sudden awareness I was likely to become President under these most troubled circumstances; and secondly, the realization these new disclosures ran completely counter to the position I had taken for months, in that I believed the President was not guilty of any impeachable offense.

General Haig in his conversation at my office went on to tell me of discussions in the White House among those who knew of this new evidence.

General Haig asked for my assessment of the whole situation. He wanted my thoughts about the timing of a resignation, if that decision were to be made, and about how to do it and accomplish an orderly change of Administration. We discussed what scheduling problems there might be and what the early organizational problems would be.

General Haig outlined for me President Nixon's situation as he saw it and the different views in the White House as to the courses of action that might be available, and which were being advanced by various people around him on the White House staff. As I recall there were different major courses being considered:

(1) Some suggested "riding it out" by letting the impeachment take its course through the House and the Senate trial, fighting all the way against conviction.

(2) Others were urging resignation sooner or later. I was told some people backed the first course and other people a resignation but not with the same views as to how and when it should take place.

On the resignation issue, there were put forth a number of options which General Haig reviewed with me. As I recall his conversation, various possible options being considered included:

(1) The President temporarily step aside under the 25th Amendment.

(2) Delaying resignation until further along the impeachment process.

(3) Trying first to settle for a censure vote as a means of avoiding either impeachment or a need to resign.

(4) The question of whether the President could pardon himself.

(5) Pardoning various Watergate defendants, then himself, followed by resignation.

(6) A pardon to the President, should he resign.

The rush of events placed an urgency on what was to be done. It became even more critical in view of a prolonged impeachment trial which was expected to last possibly four months or longer.

The impact of the Senate trial on the country, the handling of possible international crises, the economic situation here at home, and the marked slowdown in the decision-making process within the federal government were all factors to be considered, and were discussed.

General Haig wanted my views on the various courses of action as well as my attitude on the options of resignation. However, he indicated he was not advocating any of the options. I inquired as to what was the President's pardon power, and he answered that it was his understanding from a White House lawyer that a President did have the authority to grant a pardon even before any criminal action had been taken against an individual, but obviously, he was in no position to have any opinion on a matter of law.

As I saw it, at this point the question clearly before me was, under the circumstances, what course of action should I recommend that would be in the best interest of the country.

I told General Haig I had to have time to think. Further, that I wanted to talk to James St. Clair. I also said I wanted to talk to my wife before giving any response. I had consistently and firmly held the view previously that in no way whatsoever could I recommend either publicly or privately any step by the President that might cause a change in my status as Vice President. As the person who would become President if a vacancy occurred for any reason in that office, a Vice President, I believed, should endeavor not to do or say anything which might affect his President's tenure in office. Therefore, I certainly was not ready even under these new circumstances to make any recommendations about resignation without having adequate time to consider further what I should properly do.

Shortly after 8:00 o'clock the next morning James St. Clair came to my office. Although he did not spell out in detail the new evidence, there was no question in my mind that he considered these revelations to be so damaging that impeachment in the House was a certainty and conviction in the Senate a high probability. When I asked Mr. St. Clair if he knew of any other new and damaging evidence besides that on the June 23, 1972, tape, he said "no." When I pointed out to him the various options mentioned to me by General Haig, he told me he had not been the source of any opinion about Presidential pardon power.

After further thought on the matter, I was determined not to make any recommendations to President Nixon on his resignation. I had not given any advice or recommendations in my conversations with his aides, but I also did not want anyone who might talk to the President to suggest that I had some intention to do so.

For that reason I decided I should call General Haig the afternoon of August 2nd. I did make the call late that afternoon and told him I wanted him to understand that I had no intention of recommending what President Nixon should do about resigning or not resigning, and that nothing we had talked about the previous afternoon should be given any consideration in whatever decision the President might make. General Haig told me he was in full agreement with this position.

My travel schedule called for me to make appearances in Mississippi and Louisiana over Saturday, Sunday, and part of Monday, August 3, 4, and 5. In the previous eight months, I had repeatedly stated my opinion that the President would not be found guilty of an impeachable offense. Any change from my stated views, or even refusal to comment further, I feared, would lead in the press to conclusions that I now wanted to see the President resign to avoid an impeachment vote in the House and probable conviction vote in the Senate. For that reason I remained firm in my answers to press questions during my trip and repeated my belief in the President's innocence of an impeachable offense. Not until I returned to Washington did I learn that President Nixon was to release the new evidence late on Monday, August 5, 1974.

At about the same time I was notified that the President had called a Cabinet meeting for Tuesday morning, August 6, 1974. At that meeting in the Cabinet Room, I announced that I was making no recommendations to the President as to what he should do in the light of the new evidence. And I made no recommendations to him either at the meeting or at any time after that.

In summary, I assure you that there never was at any time any agreement whatsoever concerning a pardon to Mr. Nixon if he were to resign and I were to become President.

The first question of H. Res. 1367 asks whether I or my representative had "specific knowledge of any formal criminal charges pending against Richard M. Nixon." The answer is: "no."

I had known, of course, that the Grand Jury investigating the Watergate break-in and cover-up had wanted to name President Nixon as an unindicted co-conspirator in the cover-up. Also, I knew that an extensive report had been prepared by the Watergate Special Prosecution Force for the Grand Jury and had been sent to the House Committee on the Judiciary, where, I believe, it served the staff and members of the Committee in the development of its report on the proposed articles of impeachment. Beyond what was disclosed in the publications of the Judiciary Committee on the subject and additional evidence released by President Nixon on August 5, 1974, I saw on or shortly after September 4th a copy of a memorandum prepared for Special Prosecutor Jaworski by the Deputy Special Prosecutor, Henry Ruth.* Copy of this memorandum had been furnished by Mr. Jaworski to my Counsel and was later made public during a press briefing at the White House on September 10, 1974.

* Tab B attached.

I have supplied the Subcommittee with a copy of this memorandum. The memorandum lists matters still under investigation which "may prove to have some direct connection to activities in which Mr. Nixon is personally involved." The Watergate cover-up is not included in this list; and the alleged cover-up is mentioned only as being the subject of a separate memorandum not furnished to me. Of those matters which are listed in the memorandum, it is stated that none of them "at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon."

This is all the information I had which related even to the possibility of "formal criminal charges" involving the former President while he had been in office.

The second question in the resolution asks whether Alexander Haig referred to or discussed a pardon with Richard M. Nixon or his representatives at any time during the week of August 4, 1974, or any subsequent time. My answer to that question is: not to my knowledge. If any such discussions did occur, they could not have been a factor in my decision to grant the pardon when I did because I was not aware of them.

Questions three and four of H. Res. 1367 deal with the first and all subsequent references to, or discussions of, a pardon for Richard M. Nixon, with him or any of his representatives or aides. I have already described at length what discussions took place on August 1 and 2, 1974, and how these discussions brought no recommendations or commitments whatsoever on my part. These were the only discussions related to questions three and four before I became President, but question four relates also to subsequent discussions.

At no time after I became President on August 9, 1974, was the subject of a pardon for Richard M. Nixon raised by the former President or by anyone representing him. Also, no one on my staff brought up the subject until the day before my first press conference on August 28, 1974. At that time, I was advised that questions on the subject might be raised by media reporters at the press conference.

As the press conference proceeded, the first question asked involved the subject, as did other later questions. In my answers to these questions, I took a position that, while I was the final authority on this matter, I expected to make no commitment one way or the other depending on what the Special Prosecutor and courts would do. However, I also stated that I believed the general view of the American people was to spare the former President from a criminal trial.

Shortly afterwards I became greatly concerned that if Mr. Nixon's prosecution and trial were prolonged, the passions generated over a long period of time would seriously disrupt the healing of our country from the wounds of the past. I could see that the new Administration could not be effective if it had to operate in the atmosphere of having a former President under prosecution and criminal trial. Each step along the way, I was deeply concerned, would become a public spectacle and the topic of wide public debate and controversy.

As I have before stated publicly, these concerns led me to ask from my own legal counsel what my full right of pardon was under the Constitution in this situation and from the Special Prosecutor what criminal actions, if any, were likely to be brought against the former President, and how long his prosecution and trial would take.

As soon as I had been given this information, I authorized my Counsel, Philip Buchen, to tell Herbert J. Miller, as attorney for Richard M. Nixon, of my pending decision to grant a pardon for the former President. I was advised that the disclosure was made on September 4, 1974, when Mr. Buchen, accompanied by Benton Becker, met with Mr. Miller. Mr. Becker had been asked, with my concurrence, to take on a temporary special assignment to assist Mr. Buchen, at a time when no one else of my selection had yet been appointed to the legal staff of the White House.

The fourth question in the resolution also asks about "negotiations" with Mr. Nixon or his representatives on the subject of a pardon for the former President. The pardon under consideration was not, so far as I was concerned, a matter of negotiation. I realized that unless Mr. Nixon actually accepted the pardon I was preparing to grant, it probably would not be effective. So I certainly had no intention to proceed without knowing if it would be accepted. Otherwise, I put no conditions on my granting of a pardon which required any negotiations.

Although negotiations had been started earlier and were conducted through September 6th concerning White House records of the prior administration, I did not make any agreement on that subject a condition of the pardon. The circumstances leading to an initial agreement on Presidential records are not covered by the Resolutions before this Subcommittee. Therefore, I have mentioned discussions on that subject with Mr. Nixon's attorney only to show they were related in time to the pardon discussions but were not a basis for my decision to grant a pardon to the former President.

The fith, sixth, and seventh questions of H. Res. 1367 ask whether I consulted with certain persons before making my pardon decision.

I did not consult at all with Attorney General Saxbe on the subject of a pardon for Mr. Nixon. My only conversation on the subject with Vice Presidential nominee Nelson Rockefeller was to report to him on September 6, 1974, that I was planning to grant the pardon.

Special Prosecutor Jaworski was contacted on my instructions by my Counsel, Philip Buchen. One purpose of their discussions was to seek the information I wanted on what possible criminal charges might be brought against Mr. Nixon. The result of that inquiry was a copy of the memorandum I have already referred to and have furnished to this Subcommittee. The only other purpose was to find out the opinion of the Special Prosecutor as to how long a delay would follow, in the event of Mr. Nixon's indictment, before a trial could be started and concluded.

At a White House press briefing on September 8, 1974, the principal portions of Mr. Jaworski's opinion were made public. In this opinion, Mr. Jaworski wrote that selection of a jury for the trial of the former President, if he were indicted, would require a delay "of a period from nine months to a year, and perhaps even longer." On the question of how long it would take to conduct such a trial, he noted that the complexities of the jury selection made it difficult to estimate the time. Copy of the full text of his opinion dated September 4, 1974, I have now furnished to this Subcommittee.*

I did consult with my Counsel, Philip Buchen, with Benton Becker, and with my Counsellor, John Marsh, who is also an attorney. Outside of these men, serving at the time on my immediate staff, I consulted with no other attorneys or professors of law for facts or legal authorities bearing on my decision to grant a pardon to the former President.

Questions eight and nine of H. Res. 1367 deal with the circumstances of any statement requested or received from Mr. Nixon. I asked for no confession or statement of guilt; only a statement in acceptance of the pardon when it was granted. No language was suggested or requested by anyone acting for me to my knowledge. My Counsel advised me that he had told the attorney for Mr. Nixon that he believed the statement should be one expressing contrition, and in this respect, I was told Mr. Miller concurred. Before I announced the pardon, I saw a preliminary draft of a proposed statement from Mr. Nixon, but I did not regard the language of the statement, as subsequently issued, to be subject to approval by me or my representatives.

The tenth question covers any report to me on Mr. Nixon's health by a physician or psychiatrist, which led to my pardon decision. I received no such report. Whatever information was generally known to me at the time of my pardon decision was based on my own observations of his condition at the time he resigned as President and observations reported to me after that from others who had later seen or talked with him. No such reports were by people qualified to evaluate medically the condition of Mr. Nixon's health, and so they were not a controlling factor in my decision. However, I believed and still do, that prosecution and trial of the former President would have proved a serious threat to his health, as I stated in my message on September 8, 1974.

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*Tab C attached

H. Res. 1370* is the other resolution of inquiry before this Subcommittee. It presents no questions but asks for the full and complete facts upon which was based my decision to grant a pardon to Richard M. Nixon.

I know of no such facts that are not covered by my answers to the questions in H. Res. 1367. Also:

Subparagraphs (1) and (4): There were no representations made by me or for me and none by Mr. Nixon or for him on which my pardon decision was based.

Subparagraph (2): The health issue is dealt with by me in answer to question ten of the previous resolution.

Subparagraph (3): Information available to me about possible offenses in which Mr. Nixon might have been involved is covered in my answer to the first question of the earlier resolution.

In addition, in an unnumbered paragraph at the end, H. Res. 1370 seeks information on possible pardons for Watergate-related offenses which others may have committed. I have decided that all persons requesting consideration of pardon requests should submit them through the Department of Justice.

Only when I receive information on any request duly filed and considered first by the Pardon Attorney at the Department of Justice would I consider the matter. As yet no such information has been received, and if it does I will act or decline to act according to the particular circumstances presented, and not on the basis of the unique circumstances, as I saw them, of former President Nixon.

By these responses to the resolutions of inquiry, I believe I have fully and fairly presented the facts and circumstances preceding my pardon of former President Nixon. In this way, I hope I have contributed to a much better understanding by the American people of the action I took to grant the pardon when I did. For having afforded me this opportunity, I do express my appreciation to you, Mr. Chairman, and to Mr. Smith, the Ranking Minority Member, and to all the other distinguished Members of this Subcommittee; also to Chairman Rodino of the Committee on the Judiciary, to Mr. Hutchinson, the Ranking Minority Member of the full Committee, and to other distinguished Members of the full Committee who are present.

In closing, I would like to re-emphasize that I acted solely for the reasons I stated in my proclamation of September 8, 1974, and my accompanying message and that I acted out of my concern to serve the best interests of my country. As I stated then: "My concern is the immediate future of this great country...My conscience tells me it is my duty, not merely to proclaim domestic tranquility, but to use every means that I have to insure it."

*Tab D attached

# # # #

WASHINGTON STAR
JUL 15 1973

EXCEPTION TO THE 'PRECEDENT'

Roosevelt Testified

By Taylor Pensoneau
St Louis Post-Dispatch

An almost forgotten incident undermines President Nixon's argument for refusing to testify before the Senate Watergate committee.

Sixty-one years ago, former President Theodore Roosevelt agreed to testify before a Senate subcommittee that was investigating contributions to his 1904 campaign.

His appearance on Oct. 4, 1912 either has not been brought to the attention of Nixon or, if it was, has been ignored. But it would seem to have relevance for some of the controversies connected with the current Watergate scandal.

President Nixon has based his decision against testifying on separation-of-powers grounds. He relies partly on the precedent mentioned some years ago by former President Harry S. Truman when, after leaving office, he refused to honor a subpoena to testify before the House Un-American Activities Committee.

The doctrine of separation of powers would be shattered, Truman held, if a president or former president could be questioned by congressional committees on matters that took place during their terms of office.

Truman told the committee in a letter that, beginning with George Washington and continuing through the years, many presidents, including Theodore Roosevelt, declined to respond to subpoenas or demands for information by congressional bodies.

HOWEVER, TRUMAN apparently was not aware of the Roosevelt appearance.

Roosevelt, 3½ years after leaving the White House, appeared before the panel to discuss matters that took place in 1904 during his term in office. (Roosevelt in 1904 was completing the term of the assassinated William McKinley. In November 1904 he won a term on his own.)

The events Roosevelt discussed had some similarity to matters at issue this year: Like Nixon, Roosevelt was embroiled in a controversy caused in part by the raising of presidential campaign funds.

Prior to Roosevelt's appearance at the hearing, a number of witnesses had questioned the propriety of certain corporate contributions to the Roosevelt campaign eight years before.

ALTHOUGH IT IS NOT KNOWN whether or not Roosevelt appeared in response to a summons, there is little doubt, according to available records, that he described himself as eager to testify at the hearings. Documents on this matter at the National Archives quote Roosevelt as telling the panel members that "I should have very strongly objected if you had kept me waiting any longer. I am very glad to come here."

Nixon, though, contends that an appearance before the Watergate committee would violate what he terms his "constitutional responsibility to defend the office of the presidency against encroachment by other branches." In a letter Saturday that set out his position, the President said he had "concluded that if I were to testify . . . irreparable damage would be done to the constitutional principle of separation of powers."

Nixon then emphasized that his stand was supported by "ample precedents," and he specifically mentioned Truman.

In the 1953 incident, Truman had been out of office 10 months. The un-American activities panel had issued a subpoena to Truman in an effort to question him in connection with a committee inquiry at the time on Harry Dexter White, a Treasury Department official who was accused of having Communist sympathies.

TRUMAN'S EXPLANATION for refusing to appear was put so well, Nixon says, that it would be "difficult to improve upon . . ." To enforce this view, Mr. Nixon sent a copy of the Truman letter along with the letter that he sent last week to Sen. Sam J. Ervin Jr., the Watergate committee chairman.

Ervin, in expressing disappointment with the President's stance, noted that President Abraham Lincoln testified at least twice before congressional committees. Ervin did not cite the Roosevelt appearance.

Roosevelt's long-forgotten appearance was before a five-member subcommittee of the old Senate Committee on Privileges and Elections.

Not unlike the present situation, the 1912 congressional inquiry on campaign financing threatened to cast a shadow over Roosevelt's overwhelming victory eight years earlier.

OF SOME SIGNIFICANCE may well be the fact that Roosevelt's appearance came while he was at the peak of an unsuccessful effort to regain the presidency, following four years out of power. And the campaign-financing issue was plainly hurting him.

As one Roosevelt biographer, Henry F. Pringle, noted, "Either Roosevelt closed his eyes to the facts deliberately, or elaborate precautions were taken to keep him in ignorance of the forces that worked for his election in 1904."

Despite some talk here and there, widespread knowledge of these so-called forces —corporate donations— had not come about until 1912. Then, it was brought out that at least 70 percent of the more than $2,000,000 collected for Roosevelt and some other major Republicans in 1904 had come from corporations.

This raised eyebrows in view of the Roosevelt administration's suits and other trust-busting operations against big corporations.

On the day that Roosevelt went before the Senate panel in the crowded hearing room, he was questioned repeatedly about contributions totaling $125,000 from the Standard Oil Co. Panel members tried hard to knock down Roosevelt's denial of an assertion that the money was requested by the GOP with the consent or knowledge of Roosevelt. The insinuation was made by John D. Archbold, who had been a Standard vice president in 1904.

THE COMMITTEE'S INTEREST and Roosevelt's own testimony also focused on a relationship that had gotten substantial public attention even before the 1912 election campaign—the 1904 fund-raising activity of the controversial E. H. Harriman, a railroad tycoon and father of W. Averell Harriman. Harriman said that he had proceeded at the request of Roosevelt to donate $50,000 and raise another $200,000 for the Republican campaign. Roosevelt denied it.

Harriman's break with Roosevelt over the issue was chronicled in a 1922 biography of Harriman by the late George Kennan, who was an uncle of George Kennan, former ambassador to the Soviet Union. It is one of the few publications to record the unusual fact that Roosevelt testified before a congressional body.

THROUGH THE LOOKING GLASS BRIGHTLY:

NOTES ON INSTANCES OF PRESIDENTIAL RECOGNITION OF THE INVESTIGATIVE AUTHORITY OF CONGRESS AND THE COURTS

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THROUGH THE LOOKING GLASS BRIGHTLY: NOTES ON INSTANCES OF PRESIDENTIAL RECOGNITION OF THE INVESTIGATIVE AUTHORITY OF CONGRESS AND THE COURTS

At the moment the Nation is peering into the looking glass, examining itself. Scandals involving some of the principal officers of the Federal Government and complications involving the constitutional separation of powers concept attendant upon investigation of their misdeeds have thrust the American public into a dark mood. The gloom would be entirely unrelieved were the citenzry content to trust to instincts alone. The people, fortunately, continue to support the guarantees according due process to the accused, and remain confident that historical precedent will guide the tripartite system in reconciling information exchange to a sufficiency that will permit the just conclusion of legislative inquiries and court proceedings.

The conflict currently complicating congressional and judicial investigations of alleged wrongs by those within or tangentially attached to the Executive stems from a dispute of long standing: the propriety of the President withholding information sought by another branch of the government. President Washington addressed the matter in 1792 on the occasion of a request from a special committee of the House of Representatives seeking documents regarding an ill-fated military expedition under the command of Gen. Arthur St. Clair. A troop of approximately 1500 men had set out in September of 1791 to explore a

region of northwestern Ohio and to establish defenses against Indian attacks. The expedition from the first was sorely vexed by dissension, desertion, and dereliction of leadership, and ultimately suffered a crushing defeat at the hands of an Indian band markedly inferior only in number. Constitutionally charged with the task of raising and supporting an army, Congress had a vital interest in these events.

When Secretary of War Henry Knox received a committee request for original letters and instructions pertaining to the St. Clair expedition, he deferred to the judgment of President Washington on the question of their surrender to the legislative branch. The Chief Executive, in turn, called a Cabinet meeting on the last day of March, 1792, whereupon it was decided that additional time for pondering the matter was necessary.[1] The Cabinet--consisting of Secretary of State Thomas Jefferson, Secretary of the Treasury Alexander Hamilton, Attorney General Edmund Randolph, and Knox--met again on April 2. The decision, according to notes kept by Jefferson, was premised as follows:

> We had all considered, and were of one mind 1. that the house was an inquest, & therefore might institute inquiries. 2. that they might call for papers generally. 3. that the Executive ought to communicate such papers as the public good would permit, & ought to refuse those the disclosure of which would injure the public. Consequently were to exercise a discretion. 4. that neither the committee nor House had a right to call on the Head of a deptmt, who & whose papers were under the Presidt alone, but that the committee shd instruct their chairman to move the house to address the President...Note; Hamilt. agrd with us in all these points except as to the power of the house to call on heads of departmts.[2]

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[1]Paul Leicester Ford, ed., The Writings of Thomas Jefferson, Vol. I (New York: G.P. Putnam's Sons, 1892), p. 189.

[2]Ibid., pp. 189-190.

Consequentially, "It was agreed in this case, that there was not a paper which might not be properly produced; that copies only should be sent, with an assurance, that if they [the Committee] should desire it, a clerk should attend with the originals to be verified by themselves."[3] Thus agreed, the documents requested were transmitted.

The occasion for refusing papers to Congress came a short time later, in 1796, when the House again requested documents possessed by the Executive. The matter prompting the demand was the so-called Jay Treaty normalizing various controversies left over from the settlement of the Revolution. Obligated to appropriate funds in order that the agreement might be implemented, the House sought to obtain the instructions to Jay for negotiating the treaty, together with the correspondence and documents relative to it as well. Washington refused to provide the requested material, his stated reasons being that

> it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light, and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request.[4]

This was the first instance of a document denial to Congress by the Executive. The Senate, however, had received certain of the papers sought by the House. The justification for this distinction

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[3]Ford, The Writings of Thomas Jefferson, Vol, I, p. 189.

[4]James D. Richardson, ed., A Compilation of the Messages and Papers of the Presidents, Vol. I (New York: Published by Bureau of National Literature, Inc., 1897), p. 188.

was, apparently, that the upper chamber was duly recognized by the President as requiring such materials in order to carry out its treaty ratification function.

Thus established, the practice of the Executive refusing information to Congress began to be refined. In 1877 the Secretary of the Treasury, John Sherman, declined to testify before a congressional committee.[5] The refusal doctrine thereby came to include not only document denial but testimony as well. When Deputy Attorney General William P. Rogers, late Secretary of State in the Nixon Administration, referred, in a 1956 memorandum on the withholding practice, to the President's "undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy,"[6] the press coined the term "Executive privilege" as a referent for the withholding of information. By that time a variety of executive branch officials were asserting a right to deny the public and/or other entities of the Federal Government requested material.

But what of the other dimension of this situation? When have Presidents cooperated with the other branches, particularly when duly

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[5]A copy of Secretary Sherman's response is found in: U.S., Congress, Senate, Congressional Record, 49th Cong., 1st sess., 1886, 17, pt. 3: 2332.

[6]U.S., Congress, House, Committee on Government Operations, Availability of Information from Federal Departments and Agencies, Hearings, 84th Cong., 2d sess., 20 and 22 June 1956, p. 2892; see also U.S., Congress, Senate, Committee on Judiciary, Freedom of Information and Secrecy in Government, Hearing before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate on S. 921 and the Power of the President to withhold Information from the Congress, 85th Cong., 2d sess., 6 March 1958, pp. 62-146.

authorized investigators, empowered with subpoena authority, have sought Executive information? Although the 1807 treason trial of Aaron Burr is often cited as the principal precedent involving judicial solicitation of presidential documents, other historical bench marks in this policy area are equally as important and noteworthy. At least four other Presidents or former Presidents--James Monroe, John Tyler, Harry S. Truman, and Richard M. Nixon--have been served a subpoena, and three of the four so served responded, if only partially, to the order.[7]

In addition, President Washington met during the first session of the First Congress with a select committee of the Senate on two different occasions to impart information. Former President John Quincy Adams forwarded a deposition to a select committee of the House investigating misconduct by a member of the Cabinet. President Grant filed a deposition in a court case involving criminal action by his confidential secretary. Theodore Roosevelt, as a former Chief Executive, gave testimony before two congressional panels. President Harding transmitted a signed report to the legislature on the matter of naval oil leases at issue in the Teapot Dome investigation.

Yet, ironically, perhaps the two most often cited instances of presidential cooperation--Jefferson's response to the Burr subpoena and the alleged appearances of Lincoln before congressional inquisitors--have not been accurately portrayed. A closer examination of those occasions when a Chief Executive or former President has been willing

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[7]Of the four Presidents or former Presidents who have been subpoenaed only John Tyler refused to respond at least partially. For a copy of the text of his refusal see: New York Times, 13 November 1953: 14.

to accommodate congressional or judicial inquiries is now warranted, both for reasons of clarifying the historical record and obtaining guidance in constitutional disputes among the three Federal branches when information surrender is at issue.

George Washington

President Washington's cooperation in the investigation of the ill-fated St. Clair expedition of 1791, discussed above, was a significant occasion in relations between the Executive and Congress. It should be noted, however, that this instance was not the first such gesture on his part.

Earlier in Washington's initial term, only a few months after Congress first convened in 1789, Senators Ralph Izard, Rufus King, and Charles Carroll were appointed to "be a committee to wait on the President of the United States, and confer with him on the mode of communication proper to be pursued between him and the Senate, in the information of treaties, and making appointments to offices."[8] Through this forum a precedent-setting discussion of the proper manner of communication between the President and the Senate was undertaken. President Washington's letter book under the dates of August 8,[9] and August 10, 1789[10] indicates his thinking as expressed at two conferences

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[8]U.S., Congress, Senate, Journal of the Executive Proceedings of the Senate, 1st Cong., 1st sess., 6 August 1789, p. 16.

[9]John C. Fitzpatrick, ed., The Writings of George Washington from the Original Manuscript Sources 1745-1799, Vol. XXX: June 20, 1788 - January 21, 1790 (Washington: U.S. Government Printing Office, 1939, pp. 373-374.

[10]Ibid., pp. 377-379.

with the Senate Committee on Treaties and Nominations. In a persuasive compendium Washington proposed that:

> ...the Senate should accommodate their rules to the uncertainty of the particular mode and place that may be preferred, providing for the reception of either oral [or] written propositions, and for giving their consent and advice in either the presence or absence of the President, leaving him free to use the mode and place that may be found eligible and accordant with other business which may be before him at the time.[11]

On August 21, 1789, a Senate resolution sanctioned the President's suggested procedure.

The following day the Chief Executive accompanied by Secretary of War Henry Knox, entered the Senate Chamber to obtain the advice and consent of the Senate on the terms of a treaty to be negotiated with the Southern Indians. However, only after meeting with the Senate on that Saturday and the following Monday was the President finally able to obtain approval for the first treaty under the Constitution.[12] Initially the Upper Chamber, in deliberating the matter, refused to commit themselves to any agreement in Washington's presence. Moreover they disliked having to rely solely on information supplied by his Secretary of War. Although Washington agreed to return two days later and the Senate subsequently gave its advice and consent to the treaty, the experience convinced him that personal consultation with the Senate on treaties was ill-advised.[13] Thereafter, discussions

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[11]Fitzpatrick, The Writings of George Washington, Vol. XXX, pp. 378-379.

[12]U.S., Congress, House, Annals of Congress, 1st Cong., 24 August 1789, pp. 69-71.

[13]Louis Fisher, President and Congress (New York: The Free Press, 1972), p. 43.

between the President and the Senate on treaty negotiations were conducted by written communication, rather than by personal consultation.

Thomas Jefferson

The Richmond, Virginia trial of Aaron Burr on charges stemming from his plan to withdraw the Western States from the Union, and to make war on the Spanish territories, had entered its third week when Burr shocked the courtroom with a request that the court issue a subpoena for certain papers held by the President.[14] It was Burr's intention to secure as evidence in his behalf a letter and other papers which the President had received from General James Wilkinson, under date of October 21, 1806, and documents containing instructions for the army and navy "to destroy" Burr's "person and property."[15]

On June 13, 1807, after considerable debate, Burr's motion was granted. Chief Justice John Marshall, sitting as the trial judge, held that the President was as subject to a subpoena as any other citizen.[16] But if the President's duties required his full attention, Marshall conceded that he could submit the papers instead of personally appearing before the court.[17]

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[14]David Robertson, Reports of the Trials of Colonel Aaron Burr for Treason and for a Misdemeanor, Vol. I (Philadelphia: Published by Hopkins and Earle. Fry and Krammer, Printers, 1808), pp. 113-114.

[15]Ibid., p. 114.

[16]Ibid., p. 181.

[17]Ibid., p. 182; see also Thomas Perkins Abernethy, The Burr Conspiracy (Gloucester, Massachusetts: Peter Smith, 1968), p. 238; and Robert K. Faulkner, "John Marshall and the Burr Trial," The Journal of American History, v. 53, no. 2, September 1966: 257.

Marshall's decision did not catch the President by surprise. On the same day that Burr introduced his motion, John Hay, the chief government prosecutor at the trial, wrote to Jefferson of the proceedings in Richmond.[18] Subsequent correspondence between Jefferson and Hay reveals at least two separate communications in which papers relevant to the trial were forwarded to Hay.[19]

In an explanatory letter to Hay of June 17, 1807, Jefferson presumed that these documents and those carried to Richmond the previous March by Attorney General Caesar A. Rodney "substantially fulfilled the objective of a subpoena from the District Court of Richmond." If, however, additional information was deemed necessary by the defendant, the President stated that he and the Heads of the Departments would be willing to submit a deposition "through any persons whom the court shall authorize to take our testimony at this place [Washington]."[20] He felt this was a suitable alternative to a personal appearance at the trial.

The October 21, 1806 letter from General Wilkinson to President Jefferson, however, did not turn up for some time. On three separate occasions, twice in letters to Hay and once in a letter to Wilkinson, Jefferson explained that the subpoenaed letter could not be found.

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[18]George Hay to Thomas Jefferson, June 9, 1807, Thomas Jefferson Papers, Manuscript Division, Library of Congress.

[19]Thomas Jefferson to George Hay, June 12 and June 17, 1807, Ford, The Writings of Thomas Jefferson, Vol. IX, pp. 55-57.

[20]Both quotes are from a letter: Thomas Jefferson to George Hay, June 17, 1807, Ford, The Writings of Thomas Jefferson, Vol. IX, pp. 56-57.

The President thought that perhaps the letter was contained in the collection of documents he had turned over to Caesar A. Rodney in March of 1807. In any event, Jefferson declared, in a letter of June 23, 1807, to Hay that "No researches shall be spared to recover this letter, and if recovered, it shall immediately be sent to you."[21] The question then emerges at this point--does the case of the missing letter really reflect an exercise in executive privilege?

Although such rationale is plausible, the historical evidence does not support such reasoning. A three-volume work by T. Carpenter, a stenographer at the trial, refutes any such contention. Carpenter's report, entitled The Trial of Aaron Burr, published in 1808, contains the only complete account of Burr's second trial (a misdemeanor trial), and it cites testimony before the court wherein emerges the little-known fact that a complete and authenticated copy of the October 21st letter was given to the Grand Jury prior to Burr's treason trial[22] and was submitted to the court by Hay during the subsequent misdemeanor trial.[23] Although it is not

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[21]Thomas Jefferson to George Hay, June 23, 1807, Ford, The Writings of Thomas Jefferson, Vol. IX, p. 61.

[22]General Wilkinson testified on September 29, 1807 that a copy of his October 21, 1806 letter to President Jefferson had been given to the Grand Jury. For the text of that disclosure see: T. Carpenter, The Trial of Col. Aaron Burr on an Indictment for Treason before the Circuit Court of the United States, held in Richmond, (Virginia) May Term 1807: Including the Arguments and Decisions on all Motions and Trial, and on the Motions for an Attachment Against Gen. Wilkinson, Vol. III (Washington City: Printed by Westcott and Co., 1808), p. 254.

[23]Carpenter, The Trial of Col. Aaron Burr, Vol. III, pp. 38-46. For a complete copy of the letter see: James Wilkinson to Thomas Jefferson, October 21, 1806, U.S. Department of State: Letters in Relation to Burr's Conspiracy 1806-1808, Manuscript Division, Library of Congress.

clear how Hay managed to acquire the letter, in his testimony before the court on September 4, 1807 Hay stated that "[h]e had a copy of the letter of the 21st of October."[24]

Apparently, misconceptions have arisen over the Wilkinson letter of October 21, 1806 because of two basic research failings. First, the work most frequently consulted in reviewing the Burr trials--stenographer David Robertson's Reports of the Trials of Colonel Aaron Burr--does not examine in totality Burr's second trial on a misdemeanor charge, and thus fails to note the recovery of the letter of October 21.[25] Second, most studies of the trials have omitted mention of Burr's demand on September 4, 1807, during the course of the second trial, for another letter from Wilkinson to Jefferson, dated November 12, 1806;[26] consequently, data and assertions appropriate to one letter have been attributed mistakenly to the other.

Almost immediately after Burr's motion for the November 12th letter, District Attorney Hay argued that the President had devolved upon him the authority, which constitutionally belonged to the President, to withhold those portions of the correspondence not relevant to the case now being tried.[27]

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[24]Carpenter, The Trial of Col. Aaron Burr, Vol. III, p. 39.

[25]Neither Robertson's Reports of the Trials of Colonel Aaron Burr, nor the records of the Burr trial held by the Virginia State Library of Richmond, Virginia accurately describe events after September 9, 1807. Only the out-of-print three-volume work by T. Carpenter, The Trial of Col. Aaron Burr, details the events of Burr's misdemeanor trial into October of 1807.

[26]Robertson, Reports of the Trials of Colonel Aaron Burr, Vol. II, p. 504.

[27]Ibid., p. 514.

This contention Burr's attorneys did not accept. They argued that the President's power of discretion could not be passed to another individual.[28] Shortly thereafter Chief Justice Marshall upheld the position the defense had assumed on the issue. Marshall stated that "In this case...the president had assigned no reason whatever for withholding the paper [the letter of November 12] called for. The propriety of withholding it must be decided by himself, not by another for him."[29] Four days later, after corresponding with the President, Hay provided the court with a copy of the letter of November 12, 1806 as prepared by Jefferson.[30] Submitted with the letter was a certificate in which Jefferson stated that he was transmitting a correct copy of all those portions of General Wilkinson's letter which he felt could be made public. "Those parts not communicated..." he explained were "in nowise material for the purposes of justice on the charges of treason or misdemeanor depending against Aaron Burr...."[31]

Shortly thereafter Marshall concluded consideration on the letter with the following words: "After the president had been consulted, he could not think of requiring from General Wilkinson the exibition of those parts of the letter [of November 12] which the president was unwilling to disclose."[32]

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[28]Robertson, Reports of the Trials of Colonel Aaron Burr, Vol. II, p. 512.

[29]Ibid., p. 536.

[30]Carpenter, The Trial of Col. Aaron Burr, Vol. III, p. 46.

[31]Thomas Jefferson to George Hay, September 7, 1807, Ford, The Writings of Thomas Jefferson, Vol. IX, pp. 63-64.

[32]Carpenter, The Trial of Col. Aaron Burr, Vol. III, p. 254.

Jefferson, like many of our Chief Executives, believed it was "the necessary right of the President to decide independently of all authority, what papers coming to him as President, the public interest permits to be communicated."[33] But in the Burr trials he did assist the court materially in its pursuit of justice. Although a complete record of the papers he forwarded to Richmond apparently is not extant, it is incontestable that Jefferson willingly submitted a number of papers to the court, and a majority of these were received intact.

James Monroe

In November of 1817, Dr. William P. C. Barton, a navy surgeon, was appointed to the Philadelphia Naval Hospital.[34] Shortly after Dr. Barton's assignment, Dr. Thomas Harris, who had been displaced by Barton's appointment, brought charges of intrigue and misconduct in the matter. Dr. Harris accused Barton of planning his removal, and alleged President Monroe's cooperation had been obtained in the intrigue.[35] Barton counteracted the charges by explaining that he had met with the President in early November regarding the appointment, but in their conversations he had at no time attempted to state his case under false pretenses.

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[33]Thomas Jefferson to George Hay, June 7, 1807, Ford, The Writings of Thomas Jefferson, Vol. IX, p. 55.

[34]Benjamin W. Crowinshield to William P. C. Barton, November 7, 1817, Records of General Court Martials and Courts of Inquiry of the Navy Department, 1799-1867 (May 13, 1817 - February 10, 1818) Microfilm M273, roll 10, Records of the Office of Judge Advocate General (Navy), Record Group 125, National Archives Building (hereafter cited as Records of the Office of Judge Advocate General (Navy), RG__, NA).

[35]Thomas Harris to Benjamin W. Crowinshield, December 3, 1817, Records of the Office of the Judge Advocate General (Navy), RG 125, NA.

President Monroe was subsequently summoned on January 3, 1818, to appear at a Naval Court Martial in Philadelphia as a witness in behalf of the defendent in order that Dr. Barton might "have every opportunity to vindicate himself,"[36] and clarify the facts surrounding his appointment. On January 12, 1818, Secretary of State John Quincy Adams at the direction of the President, forwarded a copy of the subpoena to Attorney General William Wirt for an opinion so "that a return may be made upon the summons such as shall be proper in the case."[37]

Attorney General Wirt returned his opinion to Secretary Adams on the following day stating that a general "subpoena may be properly awarded to the President of the U.S."[38] His reasons for this opinion, he explained, "are those stated by the Chief Justice of the U.S. in the case of Aaron Burr." The remaining and major portion of Wirt's opinion was devoted to the concept that the President could submit a written endorsement as a substitute for a personal appearance at the court martial. Wirt wrote that:

> If the presence of the chief magistrate be required at the seat of government by his official duties, I think those duties paramount to any claim which an individual can have upon him, and that his personal attendance [at] the court ought to be, and must, of necessity, be dispensed with....[39]

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[36]George M. Dallas to Benjamin W. Crowinshield, January 18, 1818, Records of the Office of the Judge Advocate General (Navy), RG 125, NA.

[37]John Quincy Adams to William Wirt, January 12, 1818, Attorney General's Papers: Letters received from the State Department, Record Group 60, National Archives Building (hereafter cited as Attorney General's Papers, RG__, NA).

[38]William Wirt to John Quincy Adams, January 13, 1818, Opinions, Attorney General's Office, Vol. A, November 17, 1817 to June 19, 1821, Record Group 60, NA (hereafter cited as Opinions, Attorney General's Office, RG__, NA).

[39]Ibid.

This position he explained was based upon Jefferson's response to the subpoena issued by Mr. Marshall in the Burr case, and earlier responses by three members of the Cabinet to similar subpoenas issued during the trials of William S. Smith and Samuel G. Ogden in New York. Wirt continued by arguing that in neither the Burr trial nor the trials of Smith and Ogden had the courts expressed an opinion "on their power to compel the attendance of the President or the officers of the executive departments to give evidence."[40]

Realizing, however, that the dilema facing the President was "a question of great delicacy and importance and one rather of constitutional than municipal law," Wirt suggested to the President that a written response would be appropriate. Although he realized that Chief Justice Marshall, in the Burr decision, had inferred that a sworn oath by the President regarding his inability to be present in court was a prerequisite for nonattendance, he contended such a formality was unnecessary "when the excuse is written on the face of the Constitution and founded on the fact that Mr. Monroe is the President of the U.S. and that Congress is now holding one of its regular sessions, during which his presence is so peculiarly necessary at the seat of government."[41]

On January 21, 1818, President Monroe, in a manner similar to that suggested in his Attorney General's opinion, returned the summons to Judge Advocate Dallas with an endorsement. On the back of the

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[40]William Wirt to John Quincy Adams, January 13, 1818, Opinions, Attorney Generals Office, RG 60, NA.

[41]Ibid.

summons the President stated: "My official duties render it impracticable, for me to attend the naval court martial at the navy yard in Phil; I shall however be ready & willing, to communicate, in the form of a deposition any information which I may possess, relating to the subject matter in question."[42]

By the 14th of February 1818, a list of eleven interrogatories had been received by the President and returned to the court martial. President Monroe's answer's, however, arrived after the court had dismissed the case against Dr. Barton.[43] An explanation as to why the court did not delay its decision until receiving the President's reply is not evident in the surviving records of the court martial,[44] however, the fact that the President did respond is significant in and of itself.

John Adams and John Tyler

On April 27, 1846 Congressmen Robert Cushing Schenck and John Pettit in a unique demonstration of parliamentary procedure utilized the authority of one resolution to establish two distinct select committees to investigate one incertitude.[45] Although unusual, this imaginative legislation seemingly met the needs of the House as it

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[42]President James Monroe to George M. Dallas, January 21, 1818, Records of the Office of Judge Advocate General (Navy), RG 125, NA.

[43]William Paul Crillion Barton to Secretary of the Navy, Samuel L. Southland, October 4, 1823, Records of the Judge Advocate General (Navy), RG 125, NA.

[44]Although there was some discussion at the court martial concerning the propriety of awaiting the President's response prior to reaching a verdict, the court arrived at a decision on February 11, 1818, without benefit of President Monroe's answers, Records of the Office of Judge Advocate General (Navy), RG 125, NA.

[45]U.S. Congress, House, Congressional Globe, 29th Cong., 1st sess., 1846, 15, pt. 1: 733-735.

sought to determine the authenticity of Representative Charles J. Ingersoll's claim that he could furnish proof of Daniel Webster's "fraudulent misapplication and personal use of public funds" while Secretary of State.

Initially the House had passed a resolution calling upon President James K. Polk to produce information relative to his predecessor's administration of the State Department foreign intercourse fund known as the "Secret Service Fund." But the President considered it inappropriate to respond to a request that would require him to produce the public papers of his predecessor. He explained that: "An important question arises, whether a subsequent President, either voluntarily or at the request of one branch of Congress, can without a violation of the spirit of the law revise the acts of his predecessor and expose to public view that which he had determined should not be 'made public.'"[46]

The action of Representatives Schenck and Pettit apparently evolved from the unsuccessful attempt to obtain information from the President that would have clarified Representative Ingersoll's charges against Mr. Webster. Schenck proposed that a select committee be appointed to investigate how Ingersoll obtained the information which he communicated to the House. Pettit amended the resolution by providing for another select committee of five members to inquire into the validity of the charges made by Ingersoll. The resolution, as amended, was agreed to and adopted.[47]

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[46]Richardson, A Compilation of the Messages and Papers of the Presidents, Vol. V, p. 2283.

[47]Congressional Globe, 29th Cong., 1st sess., 1846, 15, pt. 1: 735.

Former President John Tyler as the officer having ultimate responsibility for the "Secret Service Fund" during Webster's service as Secretary of State, was by implication, a party to Ingersoll's attack on Webster. Against this setting Tyler was subpoenaed by the Select Committee (the Committee proposed by Pettit and chaired by Samuel Vinton) appointed to investigate the Ingersoll charges.[48] Initially the Schenck Committee merely intended to examine the former President through interrogatories, but on May 25, 1846 learned of the subpoena that had already been issued by the other Committee and "concluded to await his arrival, and until he should be through with the [Vinton] Committee, so as to have him personally present before this [Committee]."[49] Shortly thereafter former President Tyler was examined by both of the Select Committees.[50] Secretary of State James Buchanan, who himself would be President within a decade also was subpoenaed and subsequently appeared before the Schenck Committee.[51] Former President John Quincy Adams filed a deposition with the same panel.[52]

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[48]Allan Nevins, ed., Polk the Diary of a President (New York: Longmans, Green and Co., 1952), pp. 105-106. (Wednesday, 27 May 1846 entry)

[49]U.S. Congress, House, Select Committee appointed to inquire into the violation of "the seal of confidence" of the State Department, and how information was obtained by Charles J. Ingersoll from secret papers and accounts in that department, which the President had declined to communicate to the House, in answer to a resolution and request of the House, Violation of the Seal of Confidence of the State Department, 29 Cong., 1st sess., 1846 (?), H. Rept. 686, pp. 22-23.

[50]For examination by Schenck Committee see: Ibid., pp. 24-25. For examination by the Vinton Committee see: U.S., Congress, House, Select Committee, of the House of Representatives appointed to investigate certain charges made by the Honorable Charles J. Ingersoll against the Honorable Daniel Webster, for official misconduct while he held the office of Secretary of State of the United States, Official Misconduct of the Late Secretary of State, 29 Cong., 1st sess., 1846 (?), H. Rept. 684, pp. 8-11.

[51]House, Select Committee of the House..., Official Misconduct of the Late Secretary of State, 29th Cong., 1st sess., 1846 (?), H. Rept. 684, pp. 4-7.

[52]Ibid., pp. 27-29.

With the conclusion of testimony, the Vinton Committee reported that it was satisfied that Mr. Webster was innocent of any wrongdoing. The Schenck Committee report, issued three days later, "expressed no opinion at all as to Mr. Ingersoll's method of obtaining his information, but spoke of the implication of one or more of the subordinate officers of the State Department with Mr. Ingersoll and recommended the publication of the evidence which they had taken. This report was also voted to the table, and there the whole matter rested."[53]

Abraham Lincoln

In December of 1861 the New York Herald published long and verbatim excerpts from President Abraham Lincoln's forthcoming message to Congress, a document that was supposed to be secret until its delivery.[54] Almost immediately, suspicions arose that "Chevalier" Henry Wikoff, a charming, unprincipled adventurer and social dilettante, and the President's wife were co-conspirators in the premature release of the message. Mrs. Lincoln had supposedly given the document to Wikoff, a paid informer for the Herald, who in turn sent it by telegraph to New York for publication in that newspaper.[55]

Within two months the controversy over the Herald's disclosure reached the House Judiciary Committee, and encompassed the White House. Upon his appearance before the House Committee on February 4, 1862, Wikoff admitted that he had telegraphed the printed portions of the

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[53]George Ticknor Curtis, The Life of Daniel Webster, Vol. II (New York: D. Appleton and Company, 1870), p. 283.

[54]Justin G., and Linda Levitt Turner, Mary Todd Lincoln: Her Life and Letters (New York: Alfred A. Knopf, 1972), pp. 97-98.

[55]Ibid.

President's message to the Herald, but was unwilling to divulge the source of his information. There upon he was arrested by the Sergeant-at-Arms for contempt and placed under lock and key in the Capitol.[56]

The events following his arrest and subsequent release are unauthenticated. The New York Tribune of February 14, 1862 reported that "President Lincoln today (the 13th) voluntarily appeared before the House Judiciary Committee and gave testimony in the matter of the premature publication in the Herald of a portion of his last annual message. Chevalier Wikoff was then brought before the committee and answered the question which he refused to answer yesterday, stating, as is rumored, that the stolen paragraph was furnished to the Herald by Watt, the President's gardener...."[57] Ben "Perley" Poore, a Washington correspondent of the period, states in his two-volume work, entitled Perley's Reminiscences of the National Metropolis, that President Lincoln "visited the Capitol and urged the Republican members of the Committee to spare him disgrace...." Wikoff shortly afterwards was released and the improbable Watts story was accepted.[58]

Mr. Poore indicates that President Lincoln met informally with the Republican members of the Committee. The New York Tribune and at least four other contemporary newspapers[59] suggest that the President appeared

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[56]Philadelphia Inquirer, 14 February 1862: 2.

[57]New York Tribune, 14 February 1862: 1.

[58]Ben: Perley Poore, Perley's Reminiscences of Sixty Years in the National Metropolis, Vol. II (Philadelphia: Hubbard Brothers, Publisher, 1886), pp. 142-143.

[59]The other newspapers were: New York Times, 17 February 1862: 8; Philadelphia Inquirer, 14 February 1862: 1; New York Herald, 14 February 1862: 1; and Boston Morning Journal, 18 February 1862: 4.

before the whole committee. From a historical viewpoint, the basic discrepancy between the two versions, plus the lack of primary documentation through diaries, letters, memoirs, or detailed newspaper accounts, leaves unanswered the question of exactly whom Lincoln met with. A review of the unpublished hearings of the 37th Congress does not clarify the authenticity of either side of the argument.[60] However, Mr. Poore did appear before the Committee on February 7, 1862[61] and against this background his version seems plausible, though inconclusive. As Carl Sandburg aptly wrote in recalling an account of President Lincoln defending his wife before another Congressional committee -- "So the story goes, though vaguely authenticated."[62]

At least ten other accounts have placed President Lincoln before Congressional committees. Although each appearance has been cited at least as a historical precedent, primary sources reveal that each is without firm foundation. In chronological order these accounts follow: December 31, 1861. It has been stated that on this date President Lincoln conferred for an hour and a half with the Joint Committee on the Conduct of War. Actually, the Committee met with the Cabinet and the President on this date. The Cabinet and the President did not

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[60]The unpublished volume of the original hearings before the House Judiciary Committee of the 37th Cong., 3d sess., are found in: Manuscript Hearings Judiciary Committee. Record Group 233, National Archives Building.

[61]Ibid.

[62]Carl Sandburg, Abraham Lincoln the War Years, Vol. II (New York: Harcourt, Brace and Company, 1939), p. 199.

appear before the Committee.[63]

January 6, 1862. The Joint Committee on the Conduct of the War met with the Cabinet and the President on this date. The Cabinet and the President did not appear before the Committee.[64]

January 25, 1862. A subcommittee (of two members) of the Joint Committee on the War met with the President apparently at the White House. Understandably, this does not constitute an official appearance of the President before a committee of Congress.[65]

February 15, 1862. The Committee on the Conduct of the War merely requested an 8:00 p.m. interview with President Lincoln. If the meeting did take place, and there is no indication that it did, it was obviously the Committee meeting with the President, not the President meeting with the Committee.[66]

March 4, 1862. The Philadelphia Daily News of March 5, 1862 stated that "The President [Lincoln] and General [David] Hunter appeared before the Committee on the Conduct of the War, this morning, to answer inquiries about Kansas affairs."[67] The Report of the Committee

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[63]Roy P. Basler, ed., The Collected Works of Abraham Lincoln, Vol. V (New Brunswick, New Jersey: Rutgers University Press, 1953), p. 88; see also U.S., Congress, Senate, Joint Committee on the Conduct of the War, Report of the Joint Committee on the Conduct of the War, Vol. I, 37th Cong., 3d sess., 1863, Rep. Com. 108, p. 72.

[64]T. Harry Williams, Lincoln and the Radicals (Madison, Wisconsin: University of Wisconsin Press, 1941), p. 83.

[65]Senate, Joint Committee on the Conduct of the War, Report of the Joint Committee on the Conduct of the War, Vol. I, 37th Cong., 3d sess., 1863, Rep. Com. 108, p. 78.

[66]Benjamin F. Wade to Abraham Lincoln, February 14, 1862, Robert Todd Lincoln Collection of the Papers of Abraham Lincoln, Manuscript Division, Library of Congress.

[67]Philadelphia Daily News, 5 March 1862: 2.

on the Conduct of the War, however, shows that only General Hunter appeared before the Committee on the date mentioned.[68] The Journal of the Committee shows that the Committee actually met with Mr. Lincoln the previous evening.[69]

April 4, 1862. It was reported that the President received Senator Benjamin F. Wade and made an appointment for the Joint Committee on the Conduct of the War to meet with the President that evening. The Journal of the Committee indicates, however, that the meeting was not in any way an official appearance.[70]

May 28, 1862. Edwin McMasters Stanton, President Lincoln, and other officials are reported to have examined a 400-foot bridge built across the Potomac by Col. Herman Haupt with nothing but cornstalks and beanpoles. The biography which cites this story is actually vague as to who if anyone appeared before the Joint Committee to describe this feat.[71] Neither the Journal nor the Report of the Committee makes any reference to the story.

Late 1862 or early 1863. Carl Sandburg in his popular volumes on President Lincoln recounts both the premature publication of the President's message in 1862 (see Wikoff account), and an account of the President appearing before the Joint Committee on the War to defend

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[68]Senate, Joint Committee on the Conduct of the War, Report of the Joint Committee on the Conduct of the War, Vol. III, 37th Cong., 3d sess., 1863, Rep. Com. 108, pp. 234-238.

[69]Ibid., Vol. I, p. 88.

[70]Ibid., Vol. I, p. 93.

[71]Frank Abial Flower, Edwin McMasters Stanton (Akron, Ohio: The Saalfield Publishing Company, 1905), p. 225.

his wife on a spy charge late in 1862 or early in 1863. As Mr. Sandburg himself asserts, the account is of a questionable nature.[72] A review of the Report and Journal of the Joint Committee has failed to verify the story. Likewise a review of the unprinted records of the Committee at the National Archives Building left the documentation for the story unsubstantiated.

April 4, 1863. On this date the Evening Star (Washington) reported that the President "was waited on this morning by several members of the Committee on the Conduct of the War." The very language of this news release eliminates this occasion as a possible formal meeting.[73]

March 3, 1864. President Lincoln is said to have conferred with the Joint Committee on the Conduct of the War on this date. The Report of the Committee, however, shows that only two members of the Committee met with the President and Secretary of War.[74]

Until documentation to the contrary is discovered, it would seem that Lincoln made no formal appearances before any congressional committees. While he may have conferred informally with some segment of a panel, such a consultation was not original with Lincoln and, of course, has no precedence in terms of an Executive response to a claim by another branch upon information possessed by the President.

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[72]Sandburg, Abraham Lincoln the War Years, Vol, II, p. 200.

[73]The Evening Star (Washington, D.C.), 4 April 1863: 2.

[74]Senate, Joint Committee on the Conduct of the War, Report of the Joint Committee on the Conduct of the War, Vol. I, 38th Cong., 2d sess., 1865, S. Rept. 142, p. XIX.

Ulysses S. Grant

Under the direction of Treasury Secretary Benjamin Bristow and his assistant, a force of Department agents, on May 10, 1875, seized the records and operations of more than thirty distilleries and rectifying houses. It had been suspected for years that a number of distilleries working together in combinations had been defrauding the Federal Government of millions of dollars. But "until Secretary Bristow entered the Treasury there had been no real effort to apprehend the criminals...."[75]

Bristow's dramatic action uncovered corruption in Milwaukee, St. Louis, and Chicago. "Most important of these rings, however, both from the amount of its stealings and the extent of its political influence, was that in St. Louis."[76] The disclosures which followed led to the indictments of two of President Grant's closest friends. General John McDonald, "head and center of all the frauds"[77] while advantageously employed as collector of internal revenue in St. Louis, was subsequently convicted of conspiring to defraud the government. The President's confidential secretary, General Orville E. Babcock, however, was acquitted.

According to testimony given by Attorney General Edwards Pierrepont before the House Select Committee probing the whiskey frauds, he personally heard President Grant on at least five or six occasions state

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[75]William B. Hesseltine, Ulysses S. Grant: Politician (New York: Frederick Ungar Publishing Co., 1957), p. 378.

[76]Ibid., p. 380.

[77]Ibid.

that "if Babcock is guilty, there is no man who wants him so much proven guilty as I do, for it is the greatest piece of traitorism to me that a man could possibly practice."[78] Yet, thanks to Babcock's persuasive tongue President Grant became convinced on insufficient grounds of Babcock's innocence.[79]

President Grant sought first to get Babcock's trial transferred from a civil to a military tribunal, and then later announced to his Cabinet on the day Babcock's trial opened that he proposed to go to St. Louis to testify in person in behalf of his secretary. Dissuaded by the St. Louis grand jury in the first instance and by his Cabinet in the second,[80] he settled upon a legal deposition. This deposition, given four days later before Chief Justice of the Supreme Court Morrison R. Waite, Secretary of the Treasury Bristow, Attorney General Pierrepont, the counsel, and stenographers, occupied three hours and was strongly in favor of General Babcock. President Grant stated that Babcock had never talked to him about the whiskey frauds, and had not seen or heard anything in any way connecting General Babcock with the whiskey rings.[81]

> Whether or not Babcock would have been found guilty without Grant's deposition is a debatable point. It is perfectly possible that there was insufficient evidence for conviction. Still, for the President of the United

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[78]U.S., Congress, House, Select Committee Concerning the Whiskey Frauds, Whiskey Frauds: Hearings, 44th Cong., 1st sess., 22 May 1876, p. 11.

[79]Hesseltine, Ulysses S. Grant: Politician, pp. 384-386.

[80]John A. Carpenter, Ulysses S. Grant (New York: Twayne Publishers, Inc., 1970), p. 152.

[81]New York Times, February 13, 1876:1; and February 14, 1876:1.

> States to go so far in injecting himself into a legal proceeding such as this must have had some bearing on the outcome.[82]

Theodore Roosevelt

On two separate occasions after leaving the office of the presidency, Theodore Roosevelt testified before congressional committees. In 1911 he appeared before a special House panel conducting an investigation of the United States Steel Corporation, and in 1912 he came before a Senate Subcommittee that was investigating contributions to his 1904 campaign.

Roosevelt had been out of the presidency for two years when called to the witness stand on August 5, 1911 to give testimony regarding the circumstances involving the questionable acquisition of the Tennessee Coal and Iron Company by the United States Steel Corporation in 1907. As Senator Augustus O. Stanley, Chairman of the Special Committee on the Investigation of the United States Steel Corporation, stated, President Roosevelt had "not been subpoenaed to appear before the committee, and as far as the chairman is concerned, would not have been subpoenaed."[83] Advised that his appearance would be appreciated, Roosevelt immediately responded in a positive manner. The ensuing cross-examination covers 24 pages concluding with the following exchange between the Chairman and President Roosevelt:

> The CHAIRMAN. Col. Roosevelt, I was on the point of saying that I wish to extend to you the sincere thanks of the committee for your kindness in appearing before them

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[82]Carpenter, Ulysses S. Grant, p. 152.

[83]U.S., Congress, House, Special Committee on the Investigation of the United States Steel Corporation, United States Steel Corporation, Hearings, 62d Cong., 1st sess., 5 August 1911, p. 1369.

> and in answering so fully and completely every question that has been propounded.
>
> Mr. ROOSEVELT. Mr. Stanley, an ex-President is merely a citizen of the United States, like any other citizen, and it is his plain duty to try to help this committee or respond to its invitation, just as anyone else would respond. I thank you for your courtesy, gentlemen.[84]

Thirteen months later, on October 4, 1912, President Roosevelt appeared before a Senate Subcommittee of the Committee on Privileges and Elections. His willingness to give testimony before the Committee is evident throughout the record as he reviewed the propriety of certain corporate contributions to his Presidential campaign of 1904.[85]

Interestingly Roosevelt's appearance came while he was at the peak of his unsuccessful campaign to regain the presidency only 30 days prior to the election.

However, his letter to Senator Moses Edwin Clapp, Chairman of the Subcommittee, seemingly underplays any anxiety which the investigation may have caused him personally and his election bid in general. In his letter of August 28th to Clapp he commented that: "In one sense, of course, these statements [two witnesses had specifically testified that they questioned certain corporate contributions to Roosevelt's 1904 campaign] need no answer. As far as they concern me, they are merely repetitions of what a dead man is alleged to have said about me."[86]

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[84]House, Special Committee on the Investigation of the United States Steel Corporation, United States Steel Corporation, Hearings, 62d Cong., 1st sess., 5 August 1911, p. 1392.

[85]U.S., Congress, Senate, Committee on Privileges and Elections, Campaign Contributions, Hearings on S. Res. 79 and S. Res. 386, 62d Cong., 1st sess., 16 October 1912, pp. 177-196 and pp. 469-527.

[86]Elting E. Morison, The Letters of Theodore Roosevelt, Vol. VII (Cambridge, Massachusetts: Harvard University Press, 1954), pp. 602-625.

Warren G. Harding

During the month of April 1922 the United States Senate approved two resolutions which ultimately led to the revelations of the infamous Teapot Dome scandal.

Senator John B. Kendrick's resolution of April 15, 1922 proposed that the Secretaries of the Navy and Interior Departments "inform the Senate, if not incompatible with the public interest," about "all proposed operating agreements" upon the Teapot Dome reserve. The resolution was agreed to without comment.[87]

On April 21, less than a week later, Senator Robert M. LaFollette introduced in the Senate the resolutions which authorized the Committee on Public Lands and Surveys "to investigate the entire subject of leases upon naval oil reserves," and also asked that the Secretary of the Interior be directed to send to the Senate all the facts about the leasing of Naval Oil Reserves to private citizens and corporations.[88] As with Kendrick's resolution, the Senate offered no objection.[89]

In response to LaFollette's resolution, Secretary of the Interior Albert Fall forwarded a veritable mountain of materials to the Senate Committee on Public Lands and Surveys. The degree of Secretary Fall's cooperation is manifest in his correspondence to Senator Reed Smoot, the Chairman of the Committee:

> I am sending you by special messenger in mail sacks, photostatic or other copies of all documents, papers, data, etc., called for in Senate Resolution No. 282. These documents number approximately 2,300. They are contained in separate files but each file

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[87] U.S., Congress, Senate, Congressional Record, 67th Cong., 2d sess., 1922, 62, pt. 6: 5567-5568.

[88] Ibid., 5792.

[89] Ibid., 6096-6097.

> pertaining to naval reserve No. 1, 2, or 3, as the case may be, except the fourth, which includes documents and information relative to the general subject and not contained upon the other files. My casual estimate of the number of pages being forwarded you is that the aggregate will be between ten and fifteen thousand pages. I think that possibly the more nearly accurate figure would be 12,000 pages.[90]

Skeptics might argue that Secretary Fall's willing and colossal response was self-serving and intended to confuse rather than clarify. But the fact remains that the documents were sent to the Committee. Secretary Fall's public expression of why he forwarded the documents is found in his correspondence to President Harding of the same date. In the concluding remarks of his comprehensive report to the President on the Naval Oil Reserves, Secretary Fall states that it is his "frank desire that those entitled to know, and the public generally, who are, of course so entitled to know, may have an explanation frankly and freely and fully given of the acts, policies, and motives of at least one, and speaking for the Secretary of the Navy, of two members of"[91] the President's official family. In apparent concurrence, President Harding forwarded Secretary Fall's report to the Senate under his signature. President Harding's concluding paragraph is noteworthy. He wrote:

> I am sure I am correct in construing the impelling purpose of the Secretary of the Interior in making to me this report.

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[90]U.S., Congress, Senate, Committee on Public Lands and Surveys, Leases Upon the Naval Oil Reserves, Hearings, 68th Cong., 1st sess., 15 April 1924, pp. 3142-3145.

[91]U.S., Congress, Senate, Naval Reserve Oil Leases; Message from the President of the United States transmitting in response to a Senate resolution of April 29, 1922, a communication from the Secretary of the Interior, submitting information concerning the Naval Reserve Oil Leases, 67th Cong., 2d sess., 1922, S. Doc. 210, pp. 26-27.

> It is not to be construed as a defense of either specific acts or the general policies followed in dealing with the problems incident to the handling of the naval reserves, but is designed to afford that explanation to which the Senate is entitled, and which will prove helpful to the country generally in appraising the administration of these matters of great public concern. I think it is only fair to say in this connection that the policy which has been adopted by the Secretary of the Navy and the Secretary of the Interior in dealing with these matters was submitted to me prior to the adoption thereof, and the policy decided upon and the subsequent acts have at all times had my entire approval.[92]

Overview

The Constitution of the United States establishes three coequal branches of government, with each awarded autonomy in certain areas while sharing functions of state in comprehensive divisions such as public finance and law enforcement. This was desirable, as Madison so aptly stated the case in Federalist paper No. 47, because: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointive, or elective, may justly be pronounced the very definition of tyranny." The encroachment of one branch upon another, in terms of power arrangements, was to be vigorously protested and opposed.

But when might demands of one branch upon another be honored? How might a President respond to congressional or judicial investigators probing grave matters of misconduct and impropriety? The record presented here attempts to respond to these questions with historically accurate precedents.

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[92]Senate, Naval Reserve Oil Leases; Message from the President of the United States transmitting in response to a Senate resolution of April 29, 1922, a communication from the Secretary of the Interior, submitting information concerning the Naval Reserve Oil Leases, 67th Cong., 2d sess., 1922, S. Doc. 210, pp. 26-27.

Certainly constitutional concepts have not gravely suffered as a consequence of deviations from a strict separation of powers doctrine with regard to information exchange. As Deputy Attorney General William P. Rogers' memorandum of 1956 observed, "our Presidents have established, by precedent, that they and members of their Cabinet have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy." Such a requirement might be precipitated by so-called "witch hunts," "loyalty probes," and similar such paranoid forays.

What is reflected in the instances of presidential recognition of the investigative authority of Congress and the courts as presented here is a belief that certain crisis confrontations, which contain a potential separation of powers conflict, require immediate and candid presidential resolution. During the early days of the Republic, a President's refusal to supply information in investigations of alleged criminality by incumbent or former high Executive officials might have suggested presidential complicity in the misdeeds under inquiry. Such a stigma has been attached, in many circles, to a President's decision to withhold information in similar cases today. Also, according to prevailing contemporary judicial policy, a President's refusal to release requested information for use in a court proceeding might mitigate against due process. If such information-withholding should contribute to the acquittal of a government official due to lack of evidence, justice and equity alike may be subverted. Not only is the public trust undermined by such conduct, but also the official in question is burdened with a cloud of suspicion surrounding his every act.

Perhaps it may be well to recount these instances of cooperation between the Executive and the other Federal branches if only to devise formulas employing such degrees of collaboration as would strengthen public confidence in government and otherwise promote the common good of the public and its servants. During crises of confidence arising from allegations of criminal conduct by government officials, the separation of powers doctrine, if strictly embraced, might well serve to mitigate against and otherwise despoil the larger value of the rule of law applied to all, regardless of their political station. As this record indicates, Chief Executives of the past have, on appropriate occasions, forsaken claims of privilege of office and constitutionally guaranteed independence to cooperate with congressional and judicial investigations and have, in providing requested information, elected to serve justice.