The original documents are located in Box 34, folder "Nixon Pardon Hungate Subcommittee – General" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Meeting w/Pres. 7:30 AM Thurs.

(1) Prepare Addl. Background { (a) latest HJ. letter w/ resig.
(b) Time article previously quoted
+ left side of ACCBE file { (c) All Hungate Cases.
(d) latest Hungate letter

(2) Prepare 16 copies w/ tabs for committee

(3) Press Copies - do in early morning
no tabs just attach w/ letter on top

20 sets of tabs - A-B-C-D

20 cover folders - 2 hole punched

Need from files

Redo - Add'l Background - merge of date for first Nixon item

1 loose leaf book of Add'l Background
for Pres. make 5
J-M.

2. legal size binder

3. Categories - in
(1) Corresp. w/ subc - get latest letter
(2) Materials furnished subcomm - w/ date submitted
on tab
Lost (3) ~~Lagares Memo~~ - Legal Memorandum
For Hearing (first 19 pages)
(4) Letter accompanying Jaworski Resig
(5) Statement by RN ~~& date~~
(6) Press Conf No. 1 8/28/74

7. Time interview with Gen Haig - Late
8. Wall St. J. interview w/ L. T,

Prior to the Hungate hearing, we put together a book of various press conferences

President's on 8/28/74
Mr. Buchen's after the pardon

Also wants a full transcript of the Hungate hearing, including Q & A's.

Mr. B. has our file

Attached file is Barrujo, from which I pulled the transcript, which Mr. B has.

When Mr. B
is finished,
I will put this
away and
return Barry's
file to him.

Is the Pardon Explained By the Ford-Nixon Tapes?

By Frank Fox and Stephen Parker

"...On November 14, 1973, Buzhardt obtained the Ford-Nixon tapes. On the 15th, Ford began testifying at his confirmation hearings..."

Richard Nixon is out of office but not out of power. We believe that the source of this power resides in over 5,000 hours of secretly taped, candid conversations between Nixon, his aides, and the leaders of both political parties. These tapes lie, for the moment, in a well-guarded room in a government building in downtown Washington, D.C. Among the many voices on these tapes, the most celebrated, aside from Nixon's, is the Midwestern voice of President Gerald R. Ford, who recently granted Nixon a full, free, and absolute pardon.

Even some of Ford's most patient observers were outraged and mystified, not only by the fact of the pardon and its timing, but by the accompanying deal that ensured Nixon's ultimately regaining control of the White House tapes. The available explanations—Ford's simple Christian charity, or his stupidity, or both—have left even the most gullible among us unpersuaded. We believe the doubts will continue until those in a position to pursue the truth—notably the Congress and Special Prosecutor Leon Jaworski—get around to the most obvious source of information on reasons for the pardon—the hours of tapes between Nixon and Ford, and between Nixon and powerful politicians in both parties. It may be that nothing less, and nothing else, will explain the mystery.

When Congressman Gerald Ford made one of his frequent visits to the Oval Office, he was meeting not only Richard M. Nixon, president of the United States, his friend for over 25 years, but, more important, the titular head of the Republican party, whose creation Gerald Ford is. It was through the Republican party that Gerald Ford had been able to achieve rewards for his abilities as a lawyer and a legislator. Nixon was the embodiment of everything that Ford was in awe of, or felt indebted to. For a man whose political ambitions were already satisfied, working as a minority leader under Nixon gave Ford an opportunity to demonstrate his loyalty and his gratitude—both to his party and to the president. No assignment which Nixon described as essential to the interests of the country or the party was too demanding or too distasteful.

It was Ford who, in November, 1969, threatened the impeachment of Justice William O. Douglas, with the administration's blessings. (At the same time, Nixon's nomination of Clement Haynsworth to the Supreme Court was under severe attack by liberals.) After Haynsworth's defeat, Ford delivered one of the ugliest attacks on a sitting justice ever made by an American politician, suggesting that Douglas represented international gambling interests, political radicals, and "Mr. Ralph Ginzburg and his friends in the pornographic publishing trade."

It was to Gerald Ford that Nixon turned to head off the threatened investigation of the break-in at the Democratic National Committee headquarters by the House Committee on Banking and Currency, chaired by Congressman Wright Patman of Texas. Patman told us on September 9, 1974, that "Gerald Ford was asked by the president to get with Connally to get something on me." When Ford was questioned about this by the House Committee on the Judiciary, during his confirmation hearings last November, he admitted that he had worked to forestall the investigation, but he denied any impropriety.

Ford also had frequent telephone conversations with Nixon. It was not unusual for Ford to speak with Nixon at least once a week, and one of Ford's White House aides considers this a modest estimate. Pages from President Nixon's "Daily Diary" for April, 1973, show that Nixon did not hesitate to place telephone calls to Ford at a time when the Watergate problem was growing in intensity. In fact, during his confirmation hearings, Ford admitted having discussed with President Nixon the break-in at the Democratic National Committee, after it occurred: "I cannot remember whether it was one or more [occasions], but we have discussed the burglary of the Democratic Party . . ." Ford went on to say that both he and Nixon called it a "stupid, naïve operation." What is important is not how Ford chose to characterize the conversation in hindsight, but the fact that such conversations took place, that they exist and are retrievable from the White House tapes. Furthermore, Ford admitted during the same hearings that he may have had discussions both in person and by phone with Nixon on the question of support payments for the Watergate burglars. If so, these are also on tape.

Ford, according to one of his long-time assistants, regularly attended the Tuesday meetings at the White House between Republican leaders and Nixon. Ford's appointment log for other meetings with Nixon is not available, but his aide says they were not infrequent. During the 29-month taping period, Gerald Ford met with Nixon on at least 85 separate occasions; during the same period, Ford spoke to Nixon over the phone well over a hundred times. By the most conservative estimate, the White House tape recordings contain over twenty hours of candid conversation between Gerald Ford and Richard Nixon.

The last thing that Gerald Ford would have suspected, as he sat with the president in the Oval Office or the Executive Office Building office, or in the Cabinet Room, or chatted with him on the phone, was that his every word was being secretly tape-recorded.

"...Haldeman's plan required the preservation of the White House tapes, a presidential pardon for Nixon, a pardon for himself..."

The secret White House taping system, which was installed on the orders of H. R. Haldeman, Nixon's chief of staff, was in operation between February, 1971, and July, 1973. At Haldeman's direction, hidden microphones were placed in Nixon's Oval Office, in the Cabinet Room, in his private office in the E.O.B., and in his quarters and office at Camp David. An entirely separate automatic system recorded all of Nixon's telephone conversations. With the exception of the Cabinet Room's, all the concealed microphones were voice-activated. The microphones in the Cabinet Room were activated only at the request of Nixon or Haldeman, and this was frequently done, as court evidence indicates.

Senators Hugh Scott, Robert Griffin, Robert Dole, Edward Gurney, Roman Hruska, Norris Cotton, Howard Baker, John Tower, Carl Curtis, John McClellan, Russell Long, James Eastland, Strom Thurmond, John Stennis. Congressmen John Rhodes, Leslie Arends, John Anderson, F. Edward Hébert, Otto Passman, Carl Albert, Thomas "Tip" O'Neill. These, and others, are all on tape.

Could any of these men remember precisely what he said during a particular discussion with Nixon? Of course not; the tapes are the sole precise record. But these men could not show any public concern by complaining about it. They would have to look for protection to the very man who had made the tapes.

What must have been even more disquieting was not Nixon's knowledge—by and large they could trust him, if only because many of their interests coincided with his; it was Haldeman whom they feared. Most of what Nixon knew, and what was on tape, was known to Haldeman. They were in the hands of a man who owed them nothing and to whom they could offer nothing.

Since politicians *never* reduce their questionable dealings to writing, only the White House tapes have the essential characteristics of retrievability and independent verification necessary to transform them into a potent political weapon.

Comprehensive as they are, though, the tapes are not a totally efficient instrument for the retrieval of politically damaging information. The sheer quantity of tape, over 5,000 hours, which would take one man, listening for eight hours a day, a year and eight months to review, prevents ready access to specific material. Recorded and stored chronologically, the reels of tape, identified by date and location, offer only random, if interesting, information. Even President Nixon's "Daily Diary," a log which records every waking minute of Nixon's day, regardless of significance ("Phone call: 12:32 to 12:33, The President Talked to His Daughter Tricia"), does not describe the subject of conversations. Haldeman's personal logs, however, describe the subject of almost every one of Nixon's conversations, as well as the time, place, and parties involved. It is also necessary to know what one is listening for before one can know where to listen. Only Nixon and Haldeman have such knowledge; but by August 7 of this year, only Haldeman, in a telephoned blackmail threat to Alexander Haig at the White House, had the desperate courage to use it.

Once Nixon was out of office, Haldeman's plan for avoiding punishment would have three sequential stages: an arrangement which ensured the preservation of the White House tapes and access to their indexes; a presidential pardon for Nixon; a presidential pardon for himself.

Even though Haldeman (along with Ehrlichman) was regretfully let go by Nixon on April 30, 1973, he had remained at the White House through July, using a guest office in the E.O.B. Haldeman, who had originally selected Alexander Haig to be a National Security Adviser aide for Kissinger, must surely have had a primary role in the selection of Haig as his successor, and in the selection of the lawyer who would advise the president on Watergate matters, J. Fred Buzhardt. Haig became the White House chief of staff on May 4; Buzhardt came to the White House six days later.

The pardon which was finally implemented by Ford on September 8, 1974, was a copy of a plan submitted by Haldeman shortly before Nixon resigned his office. Haldeman's plan coupled amnesty for Vietnam war evaders with a pardon for Nixon's chief aides and urged the president to pardon himself—"You can do it!" This plan was not implemented by Nixon before he resigned, of course; it was Gerald Ford who carried out the plan shortly after taking office by first floating a trial balloon on amnesty before the Veterans of Foreign Wars convention, and finally by the pardon itself. The only plan change—and it is a significant one—was that in the aftermath of the Nixon pardon, Ford had to retreat from an immediate pardon for Mr. Nixon's aides in general and particularly for Haldeman.

A Washington-based reporter covering the Watergate story recently described J. Fred Buzhardt as an "interesting, complex person who likes to maneuver." Harry Dent, a long-time political associate of Nixon's, is more to the point: "If you ever need the dirtiest deed done without a trace, Fred's your man."

Buzhardt made two pre-pardon attempts to transfer the White House tapes to San Clemente. The first occurred on August 10 and was stopped by Ford's attorney, Benton L. Becker. On August 14, Buzhardt lied in announcing that with the concurrence of Special Prosecutor Jaworski, he (Buzhardt) and James St. Clair, President Nixon's attorney, had determined that the White House tapes and documents belonged to Nixon and would be immediately returned to San Clemente. On August 15, Jaworski denied that he had been consulted, and President Ford, just learning of the decision, countermanded the order.

J. Fred Buzhardt resigned on August 15, but contrary to published reports, he is still at the White House. The newly minted press secretary, Ron Nessen, told us that Buzhardt is showing the new presidential counsels "how the legal offices operate, and bringing them up to date on pending legal matters." When asked whether this has to do with Watergate or Watergate-related subjects, Nessen said no, that the White House has a lot of other legal work. As far as it is known, Buzhardt was hired to work only on Watergate or Watergate-related matters and would hardly be in position to render advice on concerns he knows nothing or next to nothing about. So the question remains: what is Buzhardt doing at the White House, and why isn't anybody talking about him?

It is important to understand how necessary Buzhardt and Haldeman were to each other as the investigation into presidential participation in Watergate and Watergate-related crimes became more intense. Haldeman's dismissal had been a cosmetic one, with both he and Ehrlichman praised by Nixon as "two of the finest public servants" he had ever known. But Haldeman had seen how readily Nixon sacrificed Mitchel

—a friend, a partner in his law firm, and twice manager of Nixon's campaigns—"when the going got tough." He could never rule out entirely the possibility that *he* might be offered up when the going got tougher. It would be vital for Haldeman to keep the incriminating tapes and documents out of the prosecutors' hands. With Haig and Buzhardt on the scene, men who had no way of knowing which evidence was more or less incriminating to Haldeman and Nixon, Haldeman's guidance in determining whether or not to answer the subpoenas of the special prosecutor, the Senate Watergate committee, and the House Judiciary Committee was absolutely essential. Since Buzhardt, as special counsel to the president on Watergate, had nominal responsibility for conducting the White House defense on a day-to-day basis, and since Buzhardt was the one to give orders in regard to the tapes or documents, Haldeman had to work through Buzhardt to protect both his and Nixon's interests. Buzhardt's power at the White House increased as time passed, but even with the aid of Haldeman's logs, only Haldeman knew precisely *where* to listen for the most damaging evidence, and therefore which evidence to suppress.

As Bernstein and Woodward record in *All the President's Men*, "for more than six months, he [Haig] and Henry Kissinger had been urging the president to cut his ties with the three former aides who had been closest to him and were now the primary targets of the special prosecutor's investigation—Haldeman, Ehrlichman, and Colson. Instead, the president had built his legal defense in concert with the three and had continued to meet with them and talk with them on the telephone." This was the situation in January, 1974, and although Colson was to defect in early June, 1974, the defection made Haldeman's presence, if only through Buzhardt, all the more necessary. The White House was moving toward the most critical juncture in Watergate. Jaworski was taking his demands for evidence to the Supreme Court; the House Committee on the Judiciary, which had subpoenaed scores of tapes, was drafting its articles of impeachment. Buzhardt's heart attack on June 13, then, was a blow to everyone around Nixon. For Haldeman, Buzhardt's absence must have been intolerable. As if responding to these needs, Buzhardt, who had had a serious heart attack, returned to the White House within four weeks.

So, through the summer of 1974, the Nixon and Haldeman defenses remained linked ideologically, politically, and perhaps criminally.

Access to the White House tapes was limited to Nixon and Haldeman and later to Nixon, Haldeman, Fred Buzhardt, and Rose Mary Woods. Each time a tape was removed from the vault, an entry was made in a lending file by John Bennett or Raymond C. Zumwalt, noting the time of the request for a specific tape, the person who requested it, the length of time the tape was kept out, and the time and day the tape was returned. Additionally, the recipient of a tape had to sign a receipt for it.

On Thursday, November 15, 1973, Gerald Ford was scheduled to begin testifying before the House Committee on the Judiciary hearings into his nomination to be vice-president of the United States. At the hearings, Ford was questioned about his past contacts with President Nixon, including discussions with the president. His answers were brief and general. The hearings went from November 15 through November 26.

On November 14, 1973, Fred Buzhardt had obtained from John Bennett tapes of meetings which President Nixon had held 32 months before, in early March, 1971. On November 19, Buzhardt returned these tapes to the vault, according to Bennett's lending file. On Friday, November 30, Fred Buzhardt obtained the same tapes at 1:25 P.M. He returned [illegible] The next day, December 1, Buzhardt requested and received nine tapes for the same period. Gerald Ford met President Nixon on days which correspond to at least two and possibly more of the tapes requested for review by Buzhardt. (John Barker, spokesman for the special prosecutor's office, told us that his office was aware that Buzhardt had reviewed these tapes, which were never subpoenaed, but he declined to comment on the implications. It has been reported, however, that the Watergate prosecutors regard the ultimate tapes agreement as a *quid pro quo* for the pardon.)

Now, therefore, I, Gerald R. Ford, President of the United States . . . have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon, for all offenses against the United States which, he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969, through August 9, 1974."

Rarely have so few presidential words accomplished so much. President Ford not only pardoned Nixon for federal crimes which he did commit, and which are known, or suspected, but for crimes which he may have committed but which are still unknown. Attorneys for Haldeman, Ehrlichman, and Mitchell can now argue with some justification that their clients shouldn't be convicted when Nixon, their leader, can't be brought to trial.

If these subtle but serious considerations escaped Ford, a Yale Law School graduate, they certainly would not have escaped the notice of the lawyers advising Haldeman or of the two attorneys who negotiated the pardon: President Ford's personal attorney, Benton L. Becker, and Herbert J. Miller Jr., Nixon's attorney.

Benton L. Becker, a former Justice Department lawyer under Attorney General John Mitchell, is currently under investigation for income tax evasion, for which the Justice Department has just recommended his indictment. Becker has an interesting history. In 1970, he was retained by Ford and several other congressmen to handle the legal matters in their attempt to impeach Justice Douglas. One of Becker's jobs was to develop evidence damaging to Douglas. To that end, Becker sought to interview Louis Wolfson, who was connected to the Parvin Dohrmann Co., which was in serious legal difficulties, and whose founder, Albert Parvin, was a casual acquaintance of Justice Douglas. The implicit thrust of Becker's letter requesting an interview with Louis Wolfson was that in exchange for information damaging to Justice Douglas, Becker would seek to help Wolfson out of his legal difficulties.

Herbert Miller, Nixon's attorney, has the dubious distinction of being the lawyer who defended former Attorney General Richard Kleindienst, and who succeeded not only in negotiating a plea to a misdemeanor when Kleindienst's crime of perjury was actually a felony, but in managing to have sentence passed by a judge who suspended Kleindienst's meager 30-day sentence and then praised him as "a dedicated public servant." Miller has the further distinction of having represented William O. Bittman. Bittman, who was the attorney for Watergate burglar Howard Hunt, had received $75,000 in a Manila envelope secretly left by Anthony Ulasewicz next to a phone booth in the lobby of Bittman's office building. Bittman claimed that he saw nothing suspicious in this method of fee collection and, represented by Miller, was never even indicted.

With the nation's finest and most highly respected constitutional lawyers willing to render public service, with the entire Justice Department certainly available for such a historic and delicate task, these two men, Benton L. Becker and Herbert J. Miller Jr., working in secret with Richard Nixon, Ronald Ziegler, and Gerald Ford, negotiated the details of the pardon.

"...When Haldeman told Haig he 'could send Nixon to jail,' h intention was to frighten Haig rather than to blackmail Nixon...

In order for Nixon to secure a full, free, and absolute pardon before he was indicted, without having to admit any criminal guilt, at a time when over 56 per cent of the public was opposed to a pardon, and at a time when a pardon would gravely injure the Republican party in the coming November elections and severely handicap Ford's attempt to win a full term in 1976, Nixon and Haldeman would have had to possess an immensely powerful weapon. If such a weapon existed anywhere, it would exist in the White House tapes—conversations which could be politically fatal to Ford, or to other Republican and possibly even Democratic leaders.

So, before a pardon could be or would be granted, it would be necessary for Ford and Nixon to reach an agreement on the disposition of the tapes which offered sufficient security to both Ford and Nixon. In fact, the tapes agreement *was* negotiated and accepted by both parties before the details of the pardon were settled. By Friday, August 6, the agreement was signed by Nixon. The negotiations were conducted by the same men who would settle the details surrounding the pardon: Becker, Miller, and Ziegler.

The tapes agreement is the *quid pro quo* in the pardon deal, and the key to understanding the real significance of the tapes agreement is in the language of paragraph ten:

> *the administrator [Arthur Sampson, head of the General Services Administration] may upon receipt of an appropriate written authorization from the counsel to the President [Ford] provide for a temporary redeposit of certain of the materials to a location other than the existing facility . . . provided however that no diminution of the administrator's responsibility to protect and secure the materials from loss, destruction, unauthorized copying, or access by unauthorized persons is affected by said temporary redeposit.*

This provision, should Ford choose to exercise it, would give him effective control over any tapes and documents which could prove politically injurious to himself or to other public officials. Under the terms of this provision, Ford may retain any tapes he wishes, and, "temporarily redepositing" them, keep them in the White House or other secure location, although he may not alter or destroy them. At the president's request, Buzhardt—with Haldeman's help—would be able to locate and segregate any tapes which he did not want to return to Nixon. Perhaps just as important from Ford's point of view, this provision does not clearly provide for Nixon's continued access to tapes which are "temporarily redeposited" by Ford; it only guards such tapes against destruction, unauthorized access, or unauthorized copying. It does not specify just who has access to them under conditions of "temporary redeposit"—a term so vague as to cover one day to ten years. (When asked to comment on this interpretation of paragraph ten, the special prosecutor's office said it "would not dispute it.")

The balance of the agreement is intended to provide Nixon and his agents with continued control of materials which do not affect Ford. But even a subpoena for this material would be subject to Ford's compliance, as well as Nixon's.

This single provision—paragraph ten—can have the effect of making the entire arrangement for controlling the tapes a standoff, a carefully controlled stalemate in which the vital interests of each man would be protected. Not surprisingly, this agreement is to continue in force for not less than five nor more than ten years, a period which coincides with the longest possible incumbency of President Ford.

Once an agreement on the tapes was concluded, a pardon for Nixon and Haldeman could be granted.

No one should underestimate the courage born desperation or the fear that the prospect of a lo prison term generates. For those who are servi sentences, and particularly for those who have be indicted and face prison sentences from Judge Sirica's co —especially Haldeman, who faces a possible 25-year s tence—Watergate is practically a life and death matt Given the resources still remaining to Haldeman—the tap their indexes, and his knowledge—no one should dot Haldeman's determination to convert a defeat into victo

Haldeman's August 7 telephone call to Nixon, dema ng a pardon, was taken by Haig. During their conver tion Haldeman said he could "send Nixon to jail" if didn't get it—a tactic designed to frighten Haig rather th to blackmail Nixon. If Haig was to convey to Nixon Hal man's request for pardon with the proper urgency, H would have to understand what a powerful figure Hal man was. Nothing would convey this to Haig more eff tively than the kind of power Haldeman had—a pov based on knowledge which could be fatal. (The first rep of this conversation came from Alexander Haig one mo after Gerald Ford took office; a day later, the White Ho denied that a "blackmail" attempt had been made.)

Haig was frightened, and he refused to continue the c versation until Nixon's attorney James St. Clair got on line (a fact the White House did not deny). Haldema threat alerted Haig, and presumably others, to the very r menace a desperate Haldeman posed to Nixon and to a one else who might have had questionable dealings w Nixon, conceivably including Gerald Ford.

At the very least, Haldeman's request for a pardon v ill timed. Nixon's responses in the month preceding his r ignation were passive and deeply ambivalent. On the eve his resignation, it is doubtful that Nixon could have ac aggressively enough to pardon Haldeman and the others, even himself, as Haldeman had urged him to do.

Moreover, a Nixon pardon of Haldeman, given the cumstances under which Nixon was leaving office, mi conceivably have been contested. Friends of Halden say that Nixon refused to grant Haldeman a pardon beca "he didn't want to queer his own pardon deal."

The problem, then, was how to defuse Haldeman. To t end, St. Clair, in the early afternoon of August 9, telepho Haldeman's attorney, John Wilson, and said, "I underst you have some papers for us." Wilson said that he did, asked if two hours would be too long to take in sending th over. St. Clair said that was all right, and Haldeman's p don request was sent to the White House.

St. Clair's request for the papers can be seen only as attempt to pacify Haldeman, since pardon for Haldeman others had already been rejected in the aftermath of Ha man's telephone conversation with Haig. And, w Nixon went on television that night, he, of course, resig without mentioning pardon for anyone.

When, shortly after assuming office, Gerald Ford lear from Haig the details of the Haldeman call, the significa of Haldeman's threat—in view of his own past dealings v Nixon and in terms of his own future—could not have caped him. Although there were calls between Ford Nixon prior to Nixon's pardon, it was Buzhardt who t to San Clemente and back on August 20. If Ford felt thr ened by Haldeman and Nixon he would have to hold ou both of them the possibility of a pardon. At Camp D on April 29, 1973, Haldeman had had such private as ances—from Nixon, who had reneged on them. Pri

assurances, therefore, would no longer satisfy Haldeman, nor protect Ford. Only a public statement on a pardon could be trusted to placate him.

If Ford wanted to give Haldeman and Nixon a public assurance, showing that an important shift from his earlier position on pardon had occurred ("The American people wouldn't stand for it"), he could not have chosen a better vehicle than his press conference of August 28, during which he said that he would consider a pardon for Nixon, but only after legal action had been taken. For obvious political reasons, Ford had to take a somewhat moderate position on pardon, one which had at least had some consistency with his earlier statement; at the same time he had to give a very clear public signal to Haldeman and Nixon. It was a necessary balance of minimums. Ford must have hoped this would suffice. But if Nixon had to wait to be indicted and possibly convicted before he could be pardoned, what could Haldeman expect? Moreover, an indictment of Nixon penetrated Nixon's bottom line, which was to avoid, at all costs, a legal pronouncement of guilt.

Nixon would go to any lengths to avoid a historical verdict of guilt based on conclusions of law. One has only to look at Nixon's resignation speech, his "triumphant" departure from the White House, his statement in accepting Ford's pardon, and his attempts to resign from both the California and the New York state bar associations before they could disbar him, to understand this.

If Ford intended his statement to be a signal which would assure Haldeman and Nixon on the matter of pardon, Haldeman and Nixon, each for somewhat different reasons, could only have received it with shock, outrage, and fear.

Shortly after Ford's press conference on August 28, the message must have been delivered: if Haldeman had to face a conviction, he would no longer feel obligated to protect anybody. And if anyone, other than Nixon, was in a position to strike a deal with Jaworski in return for immunity or a reduced or suspended sentence, it was Haldeman. On Friday, August 30, Ford asked his counsel, Philip Buchen, to undertake the legal research that would have to precede a pardon for Nixon.

The agreement on the tapes and the pardon were separate but linked: in return for an arrangement for controlling the tapes, which would protect Ford's vital interests, Ford would grant an immediate pardon to Nixon and Haldeman.

On September 3, Ford's personal attorney, Benton Becker, met with Herbert Miller, Nixon's attorney, to work out an agreement for control of the tapes. When Benton Becker was dispatched by Ford to San Clemente on Thursday, September 5, his instructions were to tell Nixon and Miller, with whom he traveled, that an immediate pardon was "probable," not certain. In the laundered language of lawyers, the inference would be unmistakable: a pardon would be forthcoming as soon as, but no sooner than, the tapes agreement was signed by Nixon. The tapes agreement was not just the first item on the agenda at the San Clemente meeting; from Ford's and Becker's point of view, it was the *only* item of consequence. What would remain to be discussed was not the pardon but the nature of the statement that Nixon would make in accepting the pardon. An admission of guilt by Nixon would obviously help Ford with congressional and public reaction. It is doubtful that Ford really expected to get it. With the tapes agreement still unsigned, Nixon could and did resist any attempt to elicit from him a public admission of guilt. Becker and Ford gave in. Nixon signed the tapes agreement on Friday, September 6, and Becker flew back to Washington with it the next morning. On Sunday morning, September 8, Ford pardoned Nixon. The wording of Nixon's statement remained unknown to Becker and Ford until Nixon issued it.

Ford, nurtured on consultation and compromise, consulted with no one in granting the pardon—not even Jaworski. His aides were not asked for advice so much as told what he intended to do—most of them only shortly before he went to face the cameras. His old friends in Congress received only last-minute notice. Ford could *not* consult with anybody; for Ford to listen to compelling arguments against the pardon at this time—and then to reject them—would only raise suspicions about his motives.

When Ford's Press Secretary Jerald terHorst was informed of Ford's intentions, a day before the pardon, he let Ford know that he would have to resign. A terHorst resignation over the pardon would be a severe blow to Ford's new administration, but Ford could not afford to compromise on the smallest detail; what he was about to do was Nixon's and Haldeman's irreducible minimum.

On Friday, Ford concluded the tapes agreement. Ford pardoned Nixon on Sunday. A pardon for Haldeman was all that was left undone.

It was obvious that the best way to pardon Haldeman would be to include him in a general pardon for all the Watergate offenders. But that would have to be tested for public and political reaction. On Monday, September 9, Jack Hushen, who had temporarily replaced terHorst as press secretary, announced that the administration had under study a general pardon for all those involved in Watergate. The congressional and public outcry that this proposal engendered rivaled the criticism which accompanied the Nixon pardon. It must have become clear to Ford and to Haldeman that to proceed to issue a general pardon for all the Watergate offenders would risk the undoing of the plan which had been carried out so successfully thus far. The alternative hit upon was not a retreat from a general pardon, it was a change in rhetoric. Instead of pardoning all those who were involved in Watergate, the White House would now consider pardons for Watergate offenders on a case-by-case basis. To have retreated any further would have been unacceptable to Haldeman, who had to be satisfied at all costs. That is where the matter stands now.

The question is, when will the political atmosphere permit Haldeman to receive his pardon? Before the trial? Unlikely. After the trial but before sentencing? Probable. After sentencing and before appeal? Most probable.

Since Nixon's "triumphant" departure from the White House, few changes have taken place at San Clemente and Key Biscayne. Nixon's staff of 21, which is paid for by Ford out of his own White House maintenance fund, is roughly equal in size to President Johnson's staff when he was in office. He has the use of government transport, helicopters and jets, and free lodging at American embassies and consulates throughout the world. All this in addition to his total annual $97,000 governmental pension, $96,000 for his staff, and $100,000 worth of free office space. He has begun writing letters to heads of foreign governments.

If Haldeman is indeed pardoned, the dimensions of Nixon's and Haldeman's power will become clear. The steady procession of clients to the Western White House will begin in earnest, particularly for those who have large problems which call for large and expensive solutions. We will witness brokerage at the national level on a scale never before thought possible; and if the concerns of politics are national, the claims of commerce are global.

At Key Biscayne, which Nixon has not yet visited since his departure from office, nothing of consequence has been altered. The detail of Secret Service men is still present, as it is at San Clemente. Even the sophisticated presidential worldwide communications system is being maintained. Everything is in readiness. ■

Gort's brief in U.S. v. Nixon

> the utmost security measures for the secrecy of our deliberations and records. Yet I have little doubt as to the inherent power of the Court to protect the confidentiality of its internal operations by whatever judicial measures may be required.

Although Professor Arthur Selwyn Miller and a collaborator have recently argued to the contrary, Miller & Sastri, *Secrecy and the Supreme Court: On The Need For Piercing the Red Velour Curtain,* 22 Buff. L. Rev. 799 (1973), it has always been recognized that judges must be able to confer with their colleagues, and with their law clerks, in circumstances of absolute confidentiality. Justice Brennan has written that Supreme Court conferences are held in "absolute secrecy for obvious reasons." Brennan, *Working at Justice,* in *An Autobiography of the Supreme Court* 300 (Westin ed. 1963). Justice Frankfurter had said that the "secrecy that envelops the Court's work" is "essential to the effective functioning of the Court." Frankfurter, *Mr. Justice Roberts,* 104 U. Pa. L. Rev. 311, 313 (1955).

Congress, too, has seen fit to hold to such a privilege. It is a long established practice of each House of Congress to regard its own private papers as privileged. No court subpoena is complied with by the Congress or its committees without a vote of the House concerned to turn over the documents. *Soucie* v. *David,* 448 F. 2d 1067, 1081–1082 (D.C. Cir. 1971). This practice is insisted on by Congress even when the result may be to deny relevant evidence in a criminal pro-

ceeding either to the prosecution or to the accused person.[49]

Similarly, when President Kennedy refused to disclose to a Senate Subcommittee the names of Defense Department speech reviewers, the Subcommittee,

[49] See e.g., 108 Cong. Rec. 3626 (1962), showing Senate adoption of a resolution permitting staff members and former staff members of a Senate Committee to appear and to testify in a criminal proceeding against James Hoffa but forbidding them from taking any documents or records in the custody of the Senate and from testifying about information that they gained while employed in the Senate. In explaining the resolution to the Senate, Senator McClellan said in part: "The Senate recognizes it has certain privileges as a separate and distinct branch of Government, which it wishes to protect." *Id.* at 3627.

On July 16, 1970, counsel for 1st Lt. William L. Calley, Jr., moved in his court-martial proceeding for production of testimony concerning the My Lai incident that had been presented to a subcommittee of the House Committee on Armed Services in executive session. Calley claimed that his testimony would be exculpatory of him and would help him establish his defense in the court-martial. The subcommittee Chairman, Rep. F. Edward Hebert, refused to make the testimony available, advising defense counsel on July 17, 1970, that Congress is "an independent branch of the Government, separate from and equal to the Executive and Judicial branches," and that accordingly only Congress can direct the disclosure of legislative records. He concluded from this that the material requested by the defense was not within the rule of *Brady* v. *Maryland*, 373 U.S. 83 (1963), nor subject to the requirements of the Jencks Act, 18 U.S.C. 3500. Subsequently the military court issued a subpoena to the Clerk of the House of Representatives. The Speaker laid this before the House on November 17, 1970, 116 Cong. Rec. 37652 [1970] but to date the House has taken no action nor given any indication that it will supply the information sought.

On October 4, 1972, the United States Senate bluntly refused, via Senate Resolution, a judicial subpoena for *inter alia*, documentary evidence in the criminal case of *United States* v. *Brewster*, then pending in the federal district court, District of Columbia. 118 Cong. Rec. S. 16, 766 (92d Cong., 2d Sess.).

speaking through Senator Stennis, relied on the privilege of confidentiality Congress enjoys in upholding the President's claim of privilege:

> We now come face to face and are in direct conflicts with the established doctrine of separation of powers * * *.
>
> I know of no case where the Court has ever made the Senate or the House surrender records from its files, or where the Executive has made the Legislative Branch surrender records from its files—and I do not think either one of them could. So the rule works three ways. Each is supreme within its field, and each is responsible within its field. (Committee on Armed Services, U.S. Senate, *Military Cold War Escalation* and *Speech Review Policies,* 87th Congress, 2d Sess., 512 [1962].).

On June 12, 1974, the United States Senate emphatically reiterated its position on privilege by deed, as well as by word. Senator Eastland, Chairman of the Judiciary Committee, urged, at the request of the Special Prosecutor, passage of a resolution permitting a staff attorney to file a trial affidavit with the Special Prosecutor. Without objection, S. Res. 338 was passed. It reads in part:

> *Resolved,* That by the privilege of the Senate of the United States 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.
>
> * * * (Sections 2–4) * * *

> SEC. 5. The said Peter Stockett, Junior, may provide information with respect to any other matter material and relevant for the purposes of identification of any document or documents in such case, if any such document has previously been made available to the public, but he shall respectfully decline to provide information concerning any and all other matters that may be based on knowledge acquired by him in his official capacity either by reason of documents and papers appearing in the files of the Senate or by virtue of conversations or communications with any person or persons.

The considerations of public policy that required the deliberations of the Constitutional Convention be held in confidence for half a century [50] and made it imperative that judges and members of Congress be permitted to work under conditions of absolute confidentiality are particularly compelling when applied

[50] The Framers understood perfectly well that enlightened decision-making requires the kind of frank and free discussion that can only be had when confidentiality is absolutely assured. On May 29, 1787, one of the first acts of the Constitutional Convention was the adoption of the following rule: "That nothing spoken in the House be printed, or otherwise published, or communicated without leave." 1 *Farrand* XV. It was not until 1819, that the Journal of the Convention, a mere skeleton of motions and votes, was made public. The fullest record of the proceedings of the Convention is in Madison's *Notes*. As late as 1831, 44 years after the Convention, Madison thought it was not yet appropriate for those *Notes* to be made public, 3 *Farrand* 497, and they were not published until 1840, four years after his death. 1 *Farrand* xv. President Madison thus anticipated the view of the most distinguished modern student of the Constitution, Paul Freund, who has said: "I sometimes wonder irreverently whether we would have had a Constitution at all if the Convention had been reported by daily columnists." Hughes, *The Living Presidency* 33n. (1973).

to presidential communications with his advisers. As stated by the President on July 6, 1973, in his letter to Senator Sam J. Ervin:

> No President could function if the private papers of his office, prepared by his personal staff, were open to public scrutiny. Formulation of sound public policy requires that the President and his personal staff be able to communicate among themselves in complete candor, and that their tentative judgments, their exploration of alternatives, and their frank comments on issues and personalities at home and abroad remain confidential.

This has been the position of every President in our history, and it has been specifically stated by President Nixon's immediate predecessors.

Writing his memoirs in 1955, President Truman explained that he had found it necessary to omit certain material, and said: "Some of this material cannot be made available for many years, perhaps for many generations." 1 Truman, *Memoirs* x (1955). President Eisenhower stated the point with force on July 6, 1955, in connection with the Dixon-Yates controversy:

> But when it comes to the conversations that take place between any responsible official and his advisers or exchange of little, mere slips of this or that, expressing personal opinions on the most confidential basis, those are not subject to investigation by anybody, and if they are, will wreck the Government. There is no business that could be run if there would be exposed every single thought that an adviser might have, because in the process of reaching an

comply with the reporting and disclosure sections of [FECA]."

Public disclosure and reporting of membership lists clearly cast a chilling effect upon an individual's right to associate freely and to voice personal views through organizational ties.

Title III delegates to enforcement personnel wide discretion in the administration of this piece of legislation. Its provisions, however, as they presently exist, "provide inadequate standards by which the supervisory officers are to be guided, leaving open the possibility that these administrators * * * may * * * interpret Title III so as to require disclosure statements from groups and organizations whose regulation is beyond the purview of [FECA]."

A declaration of unconstitutionality is a serious matter. Accordingly, it is incumbent upon this court "to avoid unnecessary confrontations by attaching to the statute in question, if at all possible, a construction which is compatible with its plain language, consistent with the underlying rational and free from constitutional deficiency." It is our opinion "that the contested operational language of Title III is susceptible to a limited and narrow construction which will at once remove any chilling effects * * * as well as obviate the necessity of this court having to invalidate the title. Indeed, one circuit court has so held."

In U.S. v. National Committee for Impeachment, 469 F.2d 1135 (2nd Cir. 1972) the court avoided ruling upon an acknowledged serious constitutional question surrounding the language of Title III by holding that an advertisement, strikingly similar to the one with which we are here concerned, was in and of itself insufficient to classify the sponsor as a political committee. "Noting that the legislative history surrounding [FECA] revealed that '[c]ongressional concern was with political campaign financing, not with the funding of movements dealing with national policy,' * * * the court promulgated a dual statutory test limiting the reach of Title III: (1) the determinative phrase 'made for the purpose of influencing,' is to include only those expenditures 'made with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate or his agents,' and (2) Title III is applicable 'only to committees soliciting contributions or making expenditures the major purpose of which is the nomination or election of candidates.'"

This court fully agrees with the Second Circuit's reading of Title III. Such a construction is in accord with the primary concern of FECA.—Parker, J.

—USDC DistCol (three-judge court); American Civil Liberties Union, Inc. v. Jennings, 11/14/73.

Government Personnel

ATTORNEYS—

Acting Attorney General's discharge of Watergate Special Prosecutor, without finding of "extraordinary improprieties on his part," is illegal.

[Text] [The Acting Attorney General] suggests that the instant case has been mooted by subsequent events and that the court as a discretionary matter should refuse to rule on the legality of the Cox discharge. This view of the matter is more academic than realistic, and fails to recognize the insistent demand for some degree of certainty with regard to these distressing events which have engendered considerable public distrust of Government. There is a pressing need to declare a rule of law that will give guidance for future conduct with regard to the Watergate inquiry.

While it is perfectly true that the importance of the question presented cannot alone save a case from mootness, the congressional plaintiffs before the court have a substantial and continuing interest in this litigation. It is an undisputed fact that pending legislation may be affected by the outcome of this dispute and that the challenged conduct of the defendant could be repeated with regard to the new Watergate Special Prosecutor if he presses too hard, an event which would undoubtedly prompt further congressional action. This situation not only saves the case from mootness, but forces decision. **[End Text]**

The Department of Justice regulation that set forth the duties and responsibilities of the Office of Watergate Special Prosecutor provided that he was to remain in office until a date mutually agreed upon between the Attorney General and himself. It also provided that he "will not be removed from his duties except for extraordinary improprieties on his part." Less than four months after the appointment of the Special Prosecutor, he was fired, not for an extraordinary impropriety, but for insisting upon White House compliance with a court order that was no longer subject to judicial review. Three days after the Special Prosecutor was dismissed, the Acting Attorney General rescinded the underlying Watergate Special Prosecutor regulation. The issues presented are whether the prosecutor was lawfully discharged while the regulation was still in existence, and, if not, whether the subsequent cancellation of the regulation lawfully accomplished his discharge.

[Text] It should first be noted that Mr. Cox was not nominated by the President and did not serve at the President's pleasure. As an appointee of the Attorney General, Mr. Cox served subject to congressional rather than Presidential control. The Attorney General derived his authority to hire Mr. Cox and to fix his term of service from various Acts of Congress. Congress therefore had the power directly to limit the circumstances under which Mr. Cox could be discharged and to delegate that power to the Attorney General. Had no such limitations been issued, the Attorney General would have had the authority to fire Mr. Cox at any time and for any reason. However, he chose to limit his own authority in this regard by promulgating the Watergate Special Prosecutor regulation previously described. It is settled beyond dispute that under such circumstances an agency regulation has the force and effect of law, and is binding upon the body that issues it. * * *

Even more directly on point, the Supreme Court has twice held that an executive department may not discharge one of its officers in a manner inconsistent with its own regulations concerning such discharge. See Vitarelli v. Seaton, 359 U.S. 535 (1959); Service v. Dulles, 354 U.S. 363 (1957). The firing of Archibald Cox in the absence of a finding of extraordinary impropriety was in clear violation of an existing Justice Department regulation having the force of law and was therefore illegal.

Defendant suggests that, even if Mr. Cox's discharge had been unlawful on October 20, the subsequent abolition of the Office of Watergate Special Prosecutor was legal and effectively discharged Mr. Cox at that time. This contention is also without merit. It is true that an agency has wide discretion in amending or revoking its regulations. However, we are once again confronted with a situation in which the Attorney General voluntarily limited his otherwise broad authority. The instant regulation contains within its own terms a provision that the Watergate Special Prosecutor (as opposed to any particular occupant of that office) will continue to carry out his responsibilities until he consents to the termination of that assignment. This clause can only be read as a bar to the total abolition of the Office of Watergate Special Prosecutor without the Special Prosecutor's consent, and the court sees no reason why the Attorney General cannot by regulation impose such a limitation upon himself and his successors.

Even if the court were to hold otherwise, however, it could not conclude that the defendant's Order of October 23 revoking the regulation

was legal. An agency's power to revoke its regulations is not unlimited—such action must be neither arbitrary nor unreasonable. In the instant case, the defendant abolished the Office of Watergate Special Prosecutor on October 23, and reinstated it less than three weeks later under a virtually identical regulation. It is clear that this turnabout was simply a ruse to permit the discharge of Mr. Cox without otherwise affecting the Office of the Special Prosecutor—a result which could not legally have been accomplished while the regulation was in effect under the circumstances presented in this case. Defendant's Order revoking the original regulation was therefore arbitrary and unreasonable, and must be held to have been without force or effect.

Plaintiffs have emphasized that over and beyond these authorities the Acting Attorney General was prevented from firing Mr. Cox by the explicit and detailed commitments given to the Senate, at the time of Mr. Richardson's confirmation, when the precise terms of the regulation designed to assure Mr. Cox's independence were hammered out. Whatever may be the moral or political implications of the President's decision to disregard those commitments, they do not alter the fact that the commitments had no legal effect. Mr. Cox's position was not made subject to Senate confirmation, nor did Congress legislate to prevent illegal or arbitrary action affecting the independence of the Watergate Special Prosecutor.

The Court recognizes that this case emanates in part from congressional concern as to how best to prevent future Executive interference with the Watergate investigation. Although these are times of stress, they call for caution as well as decisive action. The suggestion that the judiciary be given responsibility for the appointment and supervision of a new Watergate Special Prosecutor, for example, is most unfortunate. Congress has it within its own power to enact appropriate and legally enforceable protections against any effort to thwart the Watergate inquiry. The courts must remain neutral. Their duties are not prosecutorial. If Congress feels that laws should be enacted to prevent Executive interference with the Watergate Special Prosecutor, the solution lies in legislation enhancing and protecting that office as it is now established and not by following a course that places incompatible duties upon this particular court. [End Text]—Gesell, J.

—USDC DistCol; Nader v. Bork, 11/14/73.

Insurance

UNINSURED MOTORISTS—

Michigan law requiring automobile accident victim to give notice within six months after accident of intent to make claim against uninsured motorist fund is unenforceable against victim who files claim against such fund and fails to give such notice unless state official who administers fund can show prejudice by such failure.

The Michigan Motor Vehicle Accident Claims Act requires that the Michigan Secretary of State be notified within six months after the accrual of a cause of action that an automobile accident victim intends to make a claim against the Michigan uninsured motorist fund. The victim in this case filed a claim but failed to give such notice, and the Michigan Secretary of State's motion for accelerated judgment was granted.

[Text] [E]ven though some notice requirement may be permitted, a particular provision may still be constitutionally deficient. We must consider the time specified in the notice for an extremely short period may be unreasonable. What period is reasonable in part depends on what purpose the notice serves. Because we cannot say with certainty what purpose the legislature had in mind in providing for this notice, we are not prepared to say that the six month period provided by this statute is unreasonable as a matter of law.

The failure to give notice may result in prejudice to the fund according to whatever reason justifies the notice requirement. Whenever the Secretary claims to have been prejudiced by the lack of notice, he should be afforded the opportunity to show such prejudice.

While we decline to declare that the notice requirement of § 18 is constitutionally defective, we hold that only upon a showing of prejudice by failure to give such notice, may the claim against the fund be dismissed. [End Text]—Kavanagh, J.

Brennan and Coleman, JJ., dissent.

—Mich SupCt; Carver v. McKernan, 10/17/73.

Master and Servant

RESPONDEAT SUPERIOR—

Attorney's client is not liable, unc theory of respondeat superior, injuries resulting from automob accident that occurred while att ney, in intoxicated condition, v driving home after representing cli at trial.

The client employed the attorr to represent him at a trial being cc ducted some 150 miles away from t attorney's office. Pursuant to t employment, the attorney drove own automobile to the site of trial where, during the morning, tried the case. What the attorney that afternoon is not known, but is agreed that he performed no ot services for the client. That eveni while returning to his home, the torney was involved in the accid out of which the present controve arose.

The relationship between an att ney and his client is, under Kar law, one of agency to which the g eral rules of agency apply. Thus, th was a principal and agent relati ship between the client and the torney wherein the attorney was client's agent in matters respec the litigation. However, the fact t there was an agency relationship tween the attorney and the cl does not necessarily lead to the c clusion that, under the doctrine respondeat superior, the client is cariously liable for the attorr tortious conduct toward the inj parties. The liability of a principle his agent's negligence is contrc by a determination as to whethe the time of the negligent act, agent was engaged in furthering principal's business to such a de that the principal had the "righ direct and control" the agent's ac ities. If there was no right to d and control, the principal is not cariously liable for his agent's tious conduct.

At the time of the accident, attorney was not engaged in the therance of his client's busines such a degree that it could be that the client has the right to d and control the attorney's phy conduct. The client, according to stipulation of fact, had no righ direct or control the attorney's cc room activities; if he had no to direct the attorney's court activities, even less did he ha right to direct or control the a ney's homeward journey. The a ney was free to go where he de by whatever means he chose. Ac ingly, the client is not vicari liable for the consequences of th torney's misconduct.—McWillian

—CA 10; Brinkley v. Farmers vator Mutual Insurance Co., 10/

Taxation

NONRECOGNITION TREATMENT—

Sums business received under insurance contract that provided for fixed per diem payments whenever specified causes suspended business operations, and also provided that insurer could reduce payments whenever business' per diem net profits plus fixed charges, for preceding 12 months, fell below fixed amount are ordinary income not eligible for Internal Revenue Code Section 1033 nonrecognition treatment.

[Text] An insurance contract provides for per diem payments of 35x dollars whenever specified causes suspend business operations. The contract also provides that the insurer can reduce the per diem coverage whenever the insured's per diem net profits plus fixed charges, for the preceding twelve months, fall below 35x dollars.

Section 1033 of the Internal Revenue Code of 1954 provides, in general, for the nonrecognition of gain when all of the proceeds of an involuntary conversion of property are used to purchase qualified replacement property.

Treas. Reg. Sec. 1.1033(a)-2(c)(8) provides as follows: "The proceeds of a use and occupancy insurance contract, which by its terms insured against actual loss sustained of net profits in the business, are not proceeds of an involuntary conversion but are income in the same manner that the profits for which they are substituted would have been."

If an insurance contract insures against a lost property right (i.e., the right to use property), nonrecognition treatment under Section 1033 of the Code is available with respect to the proceeds if the requirements of Section 1033 are otherwise satisfied. Flaxlinum Insulating Co., 5 B.T.A. 676 (1926), acq., 1942-2 C.B. 7, Piedmont-Mt. Airy Guano Co., 3 B.T.A. 1009 (1926), acq., 1942-2 C.B. 15. But, if the insurance contract insures against lost profits and fixed charges, the proceeds are ordinary income, and nonrecognition treatment under Section 1033 is not available. Maryland Shipbuilding and Drydock Co. v. U.S., 409 F.2d 1363 (CtCls 1969); International Boiler Works Co., 3 B.T.A. 283 (1926), acq., V-2, C.B. 2 (1926).

In the situation described above, the insurance contract insures against lost profits and fixed charges because it permits a reduction of the coverage based on profits and fixed charges experience. Thus, the insurance is designed to reimburse the taxpayer for a loss of net profits and fixed charges.

Accordingly, under the policy described above, insurance proceeds will be ordinary income, and nonrecognition treatment under Section 1033 of the Code will not be available.

The Service does not follow the decision of the United States Court of Appeals for the Sixth Circuit in the case of Shakertown Corp. v. Comr., 277 F.2d 625 (CA6 1960), reversing T.C. Memo 1959-22, which held that the nonrecognition provisions of Section 1033 of the Code were available with respect to the proceeds of an insurance contract similar to the one described above. **[End Text]**

—IRS; Rev.Rul. 73-477, 11/5/73.

United States

ATTORNEYS—

Office of Watergate Special Prosecution Force, directed by Special Prosecutor appointed by Attorney General, is established.

The Office of Watergate Special Prosecution Force shall be under the direction of the Special Prosecutor. The Special Prosecutor is assigned the following specific functions: to conduct any kind of legal proceeding, civil or criminal, that U.S. Attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings; to approve or disapprove the production or disclosure of information relating to matters within his cognizance in response to court orders; and, to exercise the authority vested in the Attorney General relating to immunity of witnesses in congressional proceedings. The above listing is illustrative, and is not intended to limit the authority of the Special Prosecutor in any manner.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses arising out of the unauthorized entry into the Democratic National Committee Headquarters at the Watergate, offenses arising out of the 1972 presidential election, allegations involving the President, the White House staff, or presidential appointees, and any other matters that he consents to have assigned to him by the Attorney General.

[Text] In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the majority and the minority leaders and chairmen and ranking minority members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action. **[End Text]**

—Justice Dept., Order No. 551-73, 11/7/73.

News Note

JUDICIAL CIRCUITS

The Commission on Revision of the Federal Appellate System, in its preliminary report, recommends the addition of two new federal judicial circuits. Under the commission's proposal, the Ninth Circuit, which today includes nine western states and extends from Alaska to the Mexican border and from Hawaii to Idaho and Montana, would be split into two new circuits. Arizona, Nevada, and the two southern judicial districts of California, which include Los Angeles and San Diego, would be placed in a new Twelfth Circuit, while the new Ninth Circuit would include the northern and eastern districts of California as well as the other states in the present Ninth Circuit.

The present Fifth Circuit, which includes Florida, Alabama, Georgia, Mississippi, Louisiana and Texas, will also be fashioned into two new circuits. Three different plans for realignment remain under active consideration. Under the first plan, one circuit would include Florida, Alabama, and Georgia, and the other would include Texas, Louisiana, Mississippi and the Canal Zone. The second plan would put Mississippi with Florida, Alabama and Georgia, thereby creating a two-state circuit of Louisiana and Texas. The third plan is similar, except that Arkansas, which is presently in the Eighth Circuit, would be placed in the Louisiana-Texas Circuit.

Senator Roman L. Hruska, Chairman of the Commission, requests that any comments and suggestions be addressed to the Executive Director of the Commission, Professor A. Leo Levin at 209 Court of Claims Building, 717 Madison Place, N.W., Washington, D.C., 20005.

Effective date.—This order shall become effective on October 25, 1973.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 348(c)(1)).)

Dated October 16, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-22609 Filed 10-24-73;8:45 am]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SANITIZING SOLUTIONS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 3H2923) filed by West Chemical Products, 42-16 West St., Long Island City, N.Y. 11101, and other relevant material, concludes that the food additive regulations (21 CFR Part 121) should be amended, as set forth below, to provide for the use of isopropyl alcohol as an optional adjuvant, rather than as a required ingredient, for sanitizing food-processing equipment and utensils that contact food.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))), and under the authority delegated to the Commissioner (21 CFR 2.120), § 121.2547 is amended in paragraph (b)(5) to read as follows:

§ 121.2547 Sanitizing solutions.

* * * * *

(b) * * *

(5) An aqueous solution containing elemental iodine, hydriodic acid, α-(*p*-nonylphenyl) - *omega*-hydroxypoly(oxyethylene) (complying with the identity prescribed in § 121.2541(c) and having a maximum average molecular weight of 748) and/or polyoxyethylene-polyoxypropylene block polymers (having a minimum average molecular weight of 1,900). Additionally, the aqueous solution may contain isopropyl alcohol as an optional ingredient.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before November 26, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date.—This order shall become effective on October 25, 1973.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 348(c)(1)).)

Dated October 16, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-22611 Filed 10-24-73;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 546-73]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Abolishment of Office of Watergate Special Prosecution Force

This order abolishes the Office of Watergate Special Prosecution Force. The functions of that Office revert to the Criminal Division.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, the Office of Watergate Special Prosecution Force is abolished. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1 of Subpart A, which lists the organizational units of the Department, is amended by deleting "Office of Watergate Special Prosecution Force."

2. Subpart G-1 is revoked.

Order No. 517-73 of May 31, 1973, Order No. 518-73 of May 31, 1973, Order No. 525-73 of July 3, 1973, and Order No. 531-73 of July 31, 1973, are revoked.

This order is effective as of October 21, 1973.

Dated October 23, 1973.

ROBERT H. BORK,
Acting Attorney General.

[FR Doc.73-22824 Filed 10-24-73;8:45 am]

[Order No. 547-73]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart W—Additional Assignments of Functions and Designation of Officials To Perform the Duties of Certain Offices in Case of Vacancy, or Absence Therein or in Case of Inability or Disqualification To Act

DESIGNATING OFFICIALS TO ACT AS ATTORNEY GENERAL

This order amends the Department regulations designating officials of the Department of Justice to act as Attorney General in case of a vacancy in that Office.

By virtue of the authority vested in me by 28 U.S.C. 508, paragraph (a) of § 0.132 of Subpart W of Part 0 of Chapter I of Title 28, Code of Federal Regulations is amended, to read as follows:

§ 0.132 Designating officials to perform the functions and duties of certain offices in case of vacancy therein.

(a) In case of vacancy in the office of Attorney General, the Deputy Attorney General shall, pursuant to 28 U.S.C. 508, perform the functions and duties of and act as Attorney General. In case of vacancy in both the office of Attorney General and the Office of Deputy Attorney General, the following officials shall perform the functions and duties of and act as Attorney General, in the following order of succession:

(1) Solicitor General

(2) Assistant Attorney General, Criminal Division

(3) Assistant Attorney General, Antitrust Division

(4) Assistant Attorney General, Civil Rights Division

(5) Assistant Attorney General, Office of Legal Counsel

(6) Assistant Attorney General, Tax Division

(7) Assistant Attorney General, Land and Natural Resources Division

Dated October 23, 1973.

ROBERT H. BORK,
Acting Attorney General.

[FR Doc.73-22825 Filed 10-24-73;8:45 am]

Title 32—National Defense

CHAPTER XIV—RENEGOTIATION BOARD

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1472—CONDUCT OF RENEGOTIATION

Hours of Business

Section 1472.6(e)(2) *Hours of business* is amended by deleting the phrase "8:30 a.m. to 5:00 p.m." and inserting in lieu thereof the phrase "8:00 a.m. to 4:30 p.m."

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219.)

Dated October 19, 1973.

W. S. WHITEHEAD,
Chairman.

[FR Doc.73-22712 Filed 10-24-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-3—PROCUREMENT BY NEGOTIATION

Miscellaneous Amendments

Chapter 3, Title 41, Code of Federal Regulations, is amended as set forth below. The purpose of these amendments is to establish policies and procedures relative to the issuance of letter contracts.

It is the general policy of the Department of Health, Education, and Welfare

Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action.

STAFF AND RESOURCE SUPPORT

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable departmental policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

[FR Doc.73-23693 Filed 11-6-73;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER G—BOARDS

PART 865—PERSONNEL REVIEW BOARDS

SUBPART A—AIR FORCE BOARD OF CORRECTION OF MILITARY RECORDS

This amendment is added to show the delegation of authority to the Air Force Board for the Correction of Military Records to correct certain military records.

Subpart A, Part 865, Subchapter G of Chapter VII of Title 32 of the Code of Federal Regulations is amended by adding a new paragraph (a) (5) to § 865.12, to read as follows:

§ 865.12 Action by the Board.

(a) * * *

(5) *Delegation of authority to correct certain military records.*

(i) The Air Force Board for the Correction of Military Records is authorized to take final action on behalf of the Secretary of the Air Force, under 10 U.S.C. 1552, in approving the correction of military records, provided such action: (*a*) Has been recommended by the Air Staff; (*b*) is agreed to by the Board; and (*c*) falls into one of the following categories:

(*1*) Restoration of leave unduly charged to applicants.

(*2*) Promotion of applicants retroactively, who would have been promoted during regular promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(*3*) Promotion of applicants to grades held immediately prior to reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(*4*) Awards of basic allowance for subsistence to applicants entitled thereto.

(*5*) Authorizing participation under the Retired Serviceman's Family Protection Plans and the Survivors Benefits Plan where failure to elect to participate was through no fault of the applicants.

(ii) The Executive Secretary of the Board, after assuring compliance with the above conditions, will announce the final action on applications processed under this subdivision.

* * * * *

(10 U.S.C. 1552)

By order of the Secretary of the Air Force.

STANLEY L. ROBERTS,
Colonel, USAF, Chief, Legislative Division, Office of the Judge Advocate General.

[FR Doc.73-23675 Filed 11-6-73; 8:45 am]

Title 32A—National Defense, Appendix

CHAPTER XIII—ENERGY POLICY OFFICE

EPO REG. 1—MANDATORY ALLOCATION PROGRAM FOR MIDDLE DISTILLATE FUELS

Removal of Limitation Imposed by Term "Customs Territory of the United States"

EPO Reg. 1 for the Mandatory Allocation Program for Middle Distillate Fuels was published in the FEDERAL REGISTER of October 16, 1973 (38 FR 28660) which became effective November 1, 1973. The purpose of this amendment is to amend the definition of the term "State office" and the reference in the section entitled "Coverage of Program" in those regulations to remove the limitation imposed by the term "customs territory of the United States." Under the meaning assigned that phrase by general headnote 2 to the Tariff Schedules of the United States (19 U.S.C. 1202), the Virgin Islands are excluded from coverage under the Program.

Because of the emergency nature of this regulation due to the possibility of present and prospective shortages of middle distillates, it has been determined that this amendment shall become effective on November 7, 1973.

EPO Regulation 1 (38 FR 28660) is amended as follows:

1. In Section 2 *Definitions* the term "State office" is amended by deleting the phrase "within the Customs Territory" which follows the word "territories" so as to make the definition read as follows:

"State office" means, with respect to each of the 50 States, the District of Columbia,

or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., January 3, 1974.

This amendment is made under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued at Kansas City, Missouri, on October 16, 1973.

A. I. COULTER,
Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

SPENCER, IOWA

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Spencer, Iowa Municipal Airport (latitude 43°09'45" N., longitude 95°11'30" W.); and within three miles each side of the Spencer VOR 320° radial, extending from the 5-mile radius zone to 8 miles northwest of the VOR; within 3.5 miles each side of the Spencer VOR 129° radial, extending from the 5-mile radius zone to 15 miles southeast of the VOR; and that airspace extending upward from 1,200 feet above the surface within 4.5 miles northeast and 9.5 miles southwest of the Spencer VOR 320° radial, extending from 6.5 miles southeast of the VOR to 13.5 miles northwest of the VOR; and within 5 miles northeast and 9.5 miles southwest of the Spencer VOR 129° radial, extending from 6.5 miles northwest of the VOR to 22.5 miles southeast of the VOR.

[FR Doc.73-23600 Filed 11-6-73;8:45 am]

[Airspace Docket No. 73-CE-22]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Transition Area; Alteration

On Page 23338 of the FEDERAL REGISTER dated August 29, 1973, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of the Federal Aviation Regulations so as to alter the transition area at St. Louis, Missouri.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., January 3, 1974.

This amendment is made under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Missouri, on October 16, 1973.

JOHN R. WALLS,
Acting Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

ST. LOUIS, MISSOURI

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Lambert St. Louis International Airport (latitude 38°44'50" N., longitude 90°21'55" W.); within 5 miles southeast and 8 miles northwest of the Lambert St. Louis International Airport runway 24 ILS localizer northeast course, extending from the 10-mile radius area to 12 miles northeast of the runway 24 OM; within 5 miles southwest and 9 miles northeast of the Lambert St. Louis International Airport runway 12R ILS localizer northwest course; extending from the runway 12R OM to 12 miles northwest of the OM; within a 7-mile radius of St. Charles Smartt Airport, St. Charles, Missouri (latitude 38°56'00" N., longitude 90°-26'00" W.); within an 8-mile radius of Civic Memorial Airport, Alton, Illinois (latitude 38°53'30" N., longitude 90°03'00" W.); and that airspace extending upward from 1,200 feet above the surface within a 33-mile radius of St. Louis International Airport; within 6 miles southwest and 9 miles northeast of the St. Louis VORTAC 328° radial, extending from the 33-mile radius area to 36 miles northwest of the VORTAC; within 5 miles northwest and 8 miles southeast of the Maryland Heights VORTAC 243° radial, extending from the 33-mile radius area to 19 miles southwest of the VORTAC; within the area bounded on the west and northwest by the east and southeast edge of V-14S, on the northeast by the 33-mile radius area, on the southeast by the northwest edge of V-238° and on the south by the north boundary of V-88; within a 40-mile radius of Scott AFB (latitude 38°33'30" N., longitude 39°51'05" W.); excluding the portion overlying the State of Illinois; that airspace extending upward from 2,500 feet MSL within the area bounded on the northeast by the southwest edge of V-335, on the east by the Missouri-Illinois boundary, on the south by the north edge of V-190 and on the west by the east edge of V-9; and that airspace extending upward from 4,500 feet MSL within the area bounded on the north by the south edge of V-83, on the northeast by the southwest edge of V-9W, on the south by the north edge of V-72, on the west by a line 5 miles west of and parallel to the St. Louis VORTAC 200° radial, and on the northwest by the southeast edge of V-238; within the area bounded on the north by the south edge of V-12, on the southeast by the northwest edge of V-14N, on the southwest by the northeast edge of V-175, and on the northwest by a line 5 miles southeast of and parallel to the Jefferson City, Missouri VOR 041° radial, and within the area bounded on the northeast by the southwest edge of V-52 and the Missouri-Illinois boundary, on the south by the north edge of V-4N, and on the northwest by the southeast edge of V-63.

[FR Doc.73-23606 Filed 11-6-73;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order 551-73]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Establishing the Office of Watergate Special Prosecution Force

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part O of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1(a) which lists the organization units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of Criminal Justice."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

Subpart G-1—Office of Watergate Special Prosecution Force

Sec.
0.37 General functions.
0.38 Special functions.

AUTHORITY: 28 U.S.C. 509, 510, and 5 U.S.C. 301.

Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 General functions.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix below which is incorporated and made a part hereof.

§ 0.38 Specific functions.

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities.

Dated: November 2, 1973.

ROBERT H. BORK,
Acting Attorney General.

APPENDIX—DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee headquarters at the

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

Robert W. Kastenmeier (D.-Wis.), Chairman

MAJORITY: (5 D.) Representatives Kastenmeier, Danielson, Drinan, Owens and Mezvinsky.
MINORITY: (4 R.) Representatives Railsback, Smith (N.Y.), Sandman, and Cohen.

		Bldg.	Room	Ext.
Fuchs, Herbert	Counsel	RHOB	2137	3926
Mooney, Thomas E.	Associate Counsel	RHOB	2137	6504

SUBCOMMITTEE ON CRIME

John Conyers, Jr. (D.-Mich.), Chairman

MAJORITY: (5 D.) Representatives Conyers, Sarbanes, Rangel, Thornton, and Owens.
MINORITY: (4 R.) Representatives Cohen, Fish, Froehlich, and Maraziti.

		Bldg.	Room	Ext.
Barboza, Maurice A.	Counsel	RHOB	2137	1695
Gekas, Constantine	Associate Counsel	RHOB	2137	6906

SUBCOMMITTEE ON CRIMINAL JUSTICE

William L. Hungate (D.-Mo.), Chairman

MAJORITY: (5 D.) Representatives Hungate, Kastenmeier, Edwards (Calif.), Mann, and Holtzman.
MINORITY: (4 R.) Representatives Smith (N.Y.), Dennis, Mayne, and Hogan.

		Bldg.	Room	Ext.
Hoffman, Herbert E.	Counsel	RHOB	2137	6406
Pauley, Roger A.	Associate Counsel	RHOB	2137	7195

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND INTERNATIONAL LAW

Joshua Eilberg (D.-Pa.), Chairman

MAJORITY: (5 D.) Representatives Eilberg, Waldie, Flowers, Seiberling, and Holtzman.
MINORITY: (4 R.) Representatives Fish, Railsback, Wiggins, and Hogan.

		Bldg.	Room	Ext.
Cline, Garner J.	Counsel	RHOB	2137	5727
Cook, Alexander B.	Associate Counsel	RHOB	2137	5259

SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW

Peter W. Rodino (D-N.J.), Chairman

MAJORITY: (6 D.) Representatives Rodino, Brooks, Flowers, Seiberling, Jordan (Texas), and Mezvinsky.
MINORITY: (4 R.) Representatives Hutchinson, McClory, Sandman, and Dennis.

		Bldg.	Room	Ext.
Zeifman, Jerome M.	Counsel	RHOB	2137	7709
Polk, Franklin G.	Associate Counsel	RHOB	2137	6906

ADVISORY GROUP ON IMPEACHMENT

Peter W. Rodino, Jr., (D.-N.J.), Chairman

MAJORITY: (8 D.) Representatives Rodino, Eilberg, Donahue, Kastenmeier, Edwards (Calif.), Conyers, Hungate, and Brooks (Texas).
MINORITY: (7 R.) Representatives Hutchinson, McClory, Smith (N.Y.), Sandman, Railsback, Wiggins, and Dennis.

IMPEACHMENT INQUIRY STAFF

		Bldg.	Room	Ext.
Doar, John Michael	Special Counsel	RHOB	2137	9046
Jenner, Albert E.	Minority Counsel	RHOB	2137	9046

JAMES LAWRENCE MILLER

ATTORNEY-AT-LAW

SUITE 734 CIRCLE TOWER • 5 EAST MARKET STREET • INDIANAPOLIS, INDIANA 42604 • TEL. (317) 638-8240

October 6, 1974

Honorable Philip W. Buchen
Counsel To The President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20600

Dear Mr. Buchen:

The attached Memorandum is submitted with the thought it might be of assistance to President Ford in his forthcoming appearance before the Congressional Committee and in future dealings with the media on the subject of Ex-President Nixon's pardon.

Sincerely,

JAMES L. MILLER

Trial Staff, U.S.Attorney Southern District, Indiana; 1955-1961;

Instructor, Criminal Procedure, School of Law Indiana University (1946);

Prosecuting Attorney, 51st. Judicial Circuit Peru, Miami County, Indiana, Two terms (1938-40; 1941-42);

Executive Director, Commission - Judicial and Congressional Salaries, Washing- D.C. (1953-54);

Legal Staff, U.S.Senate Judiciary Committee, 1953-1955;

Administrative Assistant U.S. Senator, Wm.E. Jenner (Indiana), 1952 Campaign.

*****Don't let this mislead you. - I'm just another "Country Lawyer" practicing in a big city.

M E M O R A N D U M

I. PURPOSE:

The media has blown Watergate completely out of proportion by its unrelenting drumfire of propaganda.

Hatreds have been enflamed in too many hearts to a degree seldom recorded in American history.

A strong antidote of simplification is in order.

II. THE REASONS FOR CRIMINAL PROSECUTION:

There are only four reasons why anyone should be subjected to criminal prosecution:

1. To punish the individual in event he is convicted;

2. By so doing, to discourage him from committing subsequent crimes;

3. To deter other from committing criminal offenses; and

4. To protect Society from harm to person and property by the criminal's incarceration.

III. THE OBJECTIVES OF CRIMINAL PROSECUTION HAVE BEEN ACHIEVED:

Punishment:

Richard Nixon is the only President in this Country's history forced to resign the Presidency. - He has suffered emotionally to the point his health is impaired even perhaps to the point of fatality.

Deterrent To Self:

If Richard Nixon has committed a crime or criminal offenses it was solely because the office of the President afforded him this opportunity. He will never occupy this post again. Therefore the opportunity to commit future crimes of this category have been denied him in perpetuity.

Deterrent To Others:

If any future President is foolhardy enough to risk the plight of shame and humiliation Richard Nixon has already suffered, then neither would the possibility of criminal prosecution deter him.

Protection of Society By Incarceration:

Crimes generally may be divided into two types of offenses:

- Against the person; and
- Against property.

Richard Nixon has committed no offense against the person. No one has been injured. No life has been taken.

His removal from office has stripped him forever of the power to commit any further offenses against property through the use of Presidential power.

IV. THE PEOPLE HAVE A RIGHT TO KNOW THE WHOLE TRUTH:

In the present Watergate Trials the Special Prosecutor representing the Department of Justice has ample opportunity to reveal the whole truth to the American People.

Coupled with this, Judge Sirica has almost unlimited latitude to make personal inquiry of each witness so long as the rights of the Defendants are not prejudiced.

President Ford's pardon of Ex-President Nixon did not embrace perjury committed if he is a witness in these Watergate proceedings.

If these avenues of information are not sufficient to enable those interested in revealing the WHOLE truth, then nothing would be gained by the independent prosecution of Richard Nixon.

V. IN CONCLUSION:

Every objective for which Criminal Prosecution of an individual has been designed has been achieved, even without resort to the process.

If another crime had been committed which in every aspect save one was identical to the Watergate episode, the media would scarcely have given it passing attention.

The one differentiating element was the position of power held by those who perpetrated the crime. This one element enabled the media to blow the offense entirely out of proportion.

President Ford does not need to apologize to anyone for his action in pardoning Nixon.

When an issue as controversial as this arises, it is impossible to satisfy every segment of Society. Therefore, the President should stand firm by the position his conscience originally dictated, and place this episode in its proper perspective and get on with the more important problems of the Nation.

Respectfully Submitted

JAMES L. MILLER

10-6-74

October 8, 1974

MEMORANDUM FOR: JACK MARSH

FROM: WILLIAM E. TIMMONS

SUBJECT: Hungate Subcommittee

Sen. Hugh Scott (R-Pa) urges the President put off his appearance before subject committee until after the election. He argues jury selection and congressional recess present ample reason to defer this hearing. He feels you can negotiate this with Mr. Hungate.

cc: Phil Buchen

October 8, 1974

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cc: Phil Buchen

THE WHITE HOUSE
WASHINGTON

10/8/74

Phil
FYI

Has seen
Talk w/
Hungate

Bill Casselman

THE WHITE HOUSE
WASHINGTON

Jack:
Should we call
Hugh on this.
Obviously it
doesn't seem possible.
P.

October 8, 1974

Noted

MEMORANDUM FOR: JACK MARSH

FROM: WILLIAM E. TIMMONS

SUBJECT: Hungate Subcommittee

Sen. Hugh Scott (R-Pa) urges the President put off his appearance before subject committee until after the election. He argues jury selection and congressional recess present ample reason to defer this hearing. He feels you can negotiate this with Mr. Hungate.

cc: Phil Buchen

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

October 12, 1974

Honorable William B. Saxbe
The Attorney General
U. S. Department of Justice
Washington, D. C.

Dear Mr. Saxbe:

Along with my letter of resignation, I beg to hand you herewith a copy of our latest interim report which reflects the principal activities of the Special Prosecutor's office to date.

Two of the results achieved relate to the mandate directed to this office to investigate allegations involving the President. Both are without precedent.

One is the extensive grand jury report on the involvement of Richard M. Nixon in Watergate cover-up activities, prepared for the grand jury by this office and sent to the House Judiciary Committee last March, after successful litigation through the trial and appellate courts. While the grand jury report, which presented the chain of evidence in detail, has not been published, I am informed that it served as a major guide for the staff and members of the Committee in the development of the presentation leading to the Articles of Impeachment.

The second involved the successful litigation of a trial subpoena for tape recorded evidence in the hands of the President of the United States. The Supreme Court's unanimous decision supporting the subpoena of the Special Prosecutor compelled the former President to release, among others, the tape recording of June 23, 1973, which served as a forerunner to his resignation.

Although not appropriate for comment until after the sequestering of the jury in United States v. Mitchell, et al., in view of suggestions that an indictment be returned against former President Richard M. Nixon questioning the validity of the pardon granted him, I think it proper that I express to you my views on this subject to dispel any thought that there may be some relation between my resignation and that issue.

As you realize, one of my responsibilities, not only as an officer of the court, but as a prosecutor as well, is not to take a position in which I lack faith or which my judgment dictates is not supported by probable cause. The provision in the Constitution investing the President with the right to grant pardons, and the recognition by the United States Supreme Court that a pardon may be granted prior to the filing of charges are so clear, in my opinion, as not to admit of doubt. Philip Lacovara, then Counsel to the Special Prosecutor, by written memorandum on file in this office, came to the same conclusion, pointing out that:

> "...the pardon power can be exercised at any time after a federal crime has been committed and it is not necessary that there be any criminal proceedings pending. In fact, the pardon power has been used frequently to relieve federal offenders of criminal liability and other penalties and disabilities attaching to their offenses even where no criminal proceedings against the individual are contemplated."

I have also concluded, after thorough study, that there is nothing in the charter and guidelines appertaining to the office of the Special Prosecutor that impairs or curtails the President's free exercise of the constitutional right of pardon.

I was co-architect along with Acting Attorney General Robert Bork, of the provisions some theorists now point to as inhibiting the constitutional pardoning power of the President. The additional safeguards of independence on which I insisted and which Mr. Bork, on former President Nixon's authority, was willing to grant were solely for purposes of limiting the grounds on which my discharge could be based and not for the purpose of enlarging on the jurisdiction of the Special Prosecutor.

Hearings held by the Senate Judiciary Committee subsequent to my appointment make it clear that my jurisdiction as Special Prosecutor was to be no different from that possessed by my predecessor.

There was considerable concern expressed by some Senators that Acting Attorney General Bork, by supplemental order, inadvertently had limited the jurisdiction that previously existed. The hearings fully developed the concept that the thrust of the new provisions giving me the aid of the Congressional "consensus" committee were to insulate me from groundless efforts to terminate my employment or to limit the jurisdiction that existed. It was made clear, however, that there was no "redefining" of the jurisdiction of the Special Prosecutor as it existed from the beginning. There emerged from these hearings the definite understanding that in no sense were the additional provisions inserted in the Special Prosecutor's Charter for the purpose of either enlarging or diminishing his jurisdiction. I did stress, as I argued in the Supreme Court in U. S. v. Nixon, that I was given the verbal assurance that I could bring suit against the President to enforce subpoena rights, a point upheld by the Court. This, of course, has no bearing on the pardoning power.

I cannot escape the conclusion, therefore, that additional provisions to the Charter do not subordinate the constitutional pardoning power to the Special Prosecutor's jurisdictional rights. For me now to contend otherwise would not only be contrary to the interpretation agreed upon in Congressional hearings -- it also would be, on my part, intellectually dishonest.

Thus, in the light of these conclusions, for me to procure an indictment of Richard M. Nixon for the sole purpose of generating a purported court test on the legality of the pardon, would constitute a spurious proceeding in which I had no faith; in fact, it would be tantamount to unprofessional conduct and violative of my responsibility as prosecutor and officer of the court.

Perhaps one of the more important functions yet to be discharged relates to our final report. It is contemplated that this report will be as all-encompassing as the authority granted this office permits, consistent with the prosecutorial function as delineated by the American Bar Association Standards for Criminal Justice. While this report will be cast in final form subsequent to my term as Special Prosecutor, I will be available to the authors for such contributions and consultations as they deem advantageous.

You are aware, of course, of the position this office has taken regarding access to former President Nixon's White House materials for all remaining investigations and prosecutions. Legislation now pending, if enacted, will solve the problem. If not enacted, I shall continue to be available, to whatever extent my successor desires, for counseling on reaching a solution to this problem so that all relevant materials will be forthcoming.

My Deputy, Henry Ruth, and most of the other members of the staff have worked together since the creation of the office. Mr. Ruth has a familiarity with all matters still under investigation as well as those still to be tried. He has been in charge of all "milk fund" matters, in view of my recusal. I trust that you will not mind my offering the suggestion that he be given consideration to serve as my successor, thus permitting the unfinished matters to continue without interruption.

Sincerely,

LEON JAWORSKI
Special Prosecutor

Tuesday 10/15/74

5:50 Howard Kerr called again.

Regarding the 21-page opening statement for the President's testimony ---- Mr. Marsh believes the President would probably want Mr. Hartmann to have a look at it (Hartmann is at home ill ---- so Cdr. Kerr wondred if you'd want a copy sent outto him)

Washington Star-News
Wednesday, October 16, 1974

Ford to Testify On Haig's Role In Nixon Pardon

By Aldo Beckman
Chicago Tribune

President Ford will tell a House subcommittee tomorrow that eight days before President Nixon's resignation one of Nixon's top aides asked whether Ford would pardon Nixon if he resigned, according to White House sources.

The sources said yesterday that the approach was made by Alexander M. Haig Jr., Nixon's chief of staff, who posed a hypothetical question to the then-vice president. If Nixon decided to resign, could he count on a full pardon and escape criminal prosecution, Haig asked Ford.

Ford will tell the House Judiciary subcommittee, chaired by Rep. William Hungate, D-Mo., that he made no promises to Haig, and refused to be part of any deal that would trade a promise of pardon for a presidential resignation.

NIXON RESIGNED on Aug. 8, effective at noon the next day. On Sept. 8, Ford announced he was granting Nixon a full pardon for any crimes he might have committed as president.

Ford also is prepared to testify that James St. Clair, Nixon's Watergate attorney, approached him on Aug. 2, the day after his conversation with Haig, to tell him of the damaging conversations on tapes the Supreme Court had ordered turned over to the Watergate special prosecutor.

St. Clair told him, Ford will testify, that the conversations were so damaging that Nixon was certain to be impeached, convicted, and removed from office, if he didn't resign first.

THE FOLLOWING day, Ford left Washington on a speaking trip through the South. Although Ford softened his defense of Nixon, he did declare on several occasions that he believed that Nixon was innocent of any impeachable offenses.

In his subcommittee appearance Ford is not expected to discuss those statements or tell why he made them after receiving St. Clair's information.

Ford's appearance before the Hungate subcommittee, now set for 10 A.M. tomorrow, will be carried live on network television. It was delayed for one week, until after the jury in the Watergate cover-up trial was sequestered, so that his testimony would not prejudice jury members.

The hearing was called after the Ford pardon of Nixon prompted repeated accusations that a deal had been made before the resignation — a charge that Ford has denied.

[ca. 10/16/74]

Ford Pardon Testimon

By Richard L. Lyons
Washington Post Staff Writer

President Ford's historic appearance before a congressional subcommittee Thursday will take place in a room that has seen a lot of history this past year.

It is Room 2141 of the Rayburn House Office Building, the meeting room of the House Judiciary Committee.

It was in this room that Mr. Ford appeared nearly a year ago at the first confirmation hearing for a Vice President.

And it was in this room that the Judiciary Committee met for three months for deliberations that led to recommendations that President Nixon be impeached.

It is not a large room. There is space for about 200 chairs, tightly squeezed together after the television cameras have been put in place. Judiciary Chairman Peter Rodino (D-N.J.) refuses to move to a larger room.

Television will be there to record the event live. The President is scheduled to appear before the subcommittee at 10 a.m. and is expected to spend two or three hours reading a statement and answering questions on the factors that went into his decision to pardon Mr. Nixon for any crime he may have committed while President.

A spokesman said the subcommittee, headed by Rep. William L. Hungate (D-Mo.), is trying hard to keep the event just like any other subcommittee hearing. But the fact is it will be the first time in at least a century—and some authorities believe the first time ever—that a sitting President has testified before a congressional committee.

The President will sit at a witness table before the two-tiered committee bench and look up at 11 congressmen, two staff members and two television cameras—one directly in front of him and one to the side rear.

Witnesses usually are provided with a pitcher of water and a stack of paper cups. Mr. Ford may get a glass.

Hungate's nine-member subcommittee will be joined by Committee Chairman Rodino and the senior Republican, Edward Hutchinson (R-Mich.). The 11 members will be permitted to question the President. Subcommittee counsel, who usually question, will not.

The President is testifying because Rep. Bella Abzug (D-N.Y.), in her efforts to end the Indochina war, rediscovered an ancient means of obtaining information called the resolution of inquiry.

By Bob Burchette—The Washington Post

Rep. Bella Abzug (D-N.Y.), who discovered an old procedure to get Mr. Ford to testify, has 10 questions.

A resolution of inquiry directs questions to an official of the executive branch. It is referred to committee, which may invite the official to come up and answer the questions. If the committee takes no action (the House Armed Services Committee did not act on Rep. Abzug's resolutions) the author may after seven days call for a House vote on the resolution. House approval would direct the official to reply.

Rep. Abzug's resolution asking 10 questions of Mr. Ford, and another by Rep. John Conyers (D-Mich.) asking four more, are before Hungate's subcommittee. Mr. Ford offered to appear in person to answer them. He will not be under oath, just as members of Congress are not sworn in when testifying on Capitol Hill.

The text of the resolution submitted by Rep. Abzug and co-signed by 13 other House members:

Resolved, that the President of the United States is hereby requested to furnish the House, within 10 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 Mr. Nixon with Mr. Nixon or his representatives at any time during the week of Aug. 4 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 Mr. Nixon first referred to or discussed with Mr. Nixon, or Nixon representatives, by you or your representatives or aides, including the period when you were a mem-

print as his son, Bradley, holds bottle of

ıy Set in Historic Room

ber of Congress or Vice President?

4. Who participated in these and subsequent discussions or negotiations with Mr. 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 Mr. 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 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 and, if so, what facts or legal authorities did they give to you?

8. Did you or your representatives ask Mr. 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 Mr. 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 Mr. Nixon was in other than good health? If so, please provide such reports.

Here is the text of the resolution submitted by Conyers:

Resolved, that the President is directed to furnish to the House the full and complete information and facts on which was based the decision to grant a pardon to Mr. Nixon, including:

1. Any representations made by or on behalf of Mr. Nixon to the President.

2. Any information or facts presented to the President with respect to the mental or physical health of Mr. Nixon.

3. Any information in possession or control of the President with respect to the offenses which were allegedly committed by Mr. Nixon and for which a pardon was granted.

4. Any representations made by or on behalf of the President to Mr. Nixon in connection with a pardon for alleged offenses against the United States.

The President is further directed to furnish to the House the full and complete information and facts in his possession or control 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.

The Pardon of Nixon Was Timely, Legal, Jaworski Believes

• • •

He Says Nixon's Acceptance Clearly Shows His Guilt And More Evidence Is Due

By KAREN J. ELLIOTT
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Special Watergate Prosecutor Leon Jaworski sees nothing wrong with President Ford's decision last month to pardon Richard Nixon.

Mr. Jaworski, talking publicly about the controversy for the first time, concedes that the pardon prevented an indictment and trial of Mr. Nixon. But he believes that sufficient evidence has, or soon will, become public to show conclusively that the former President was guilty of obstruction of justice.

"The evidence will show he's guilty, just as much as a guilty plea," the special prosecutor declared during an interview yesterday in his sparsely furnished office here. Next week, Mr. Jaworski is leaving the job he has held for 11 months and is returning to Houston to resume the practice of law.

The special prosecutor believes, furthermore, that both the offering of a pardon and Mr. Nixon's acceptance of it clearly signify his guilt:

"A pardon isn't just a beautiful document to frame and hang on the wall. You are offered a pardon only because it is believed you can be charged and convicted. You accept it only if you want to be cleared."

An All-Out Defense

Mr. Jaworski's attitude about the pardon has been a subject of intense speculation here for weeks. Many have assumed that the special prosecutor, who has gained a reputation in Washington for toughness and integrity, objected to the decision. It even has been suggested in recent days that his supposed anger over the pardon is what prompted him to resign his post.

In fact, his statements yesterday amount to an all-out defense of the most controversial aspect of the pardon: its timing prior to a Nixon indictment and trial. Thus, the Jaworski position could have significant political benefit for President Ford, whose popularity with the public has dropped dramatically since he granted the pardon.

The special prosecutor said he has kept silent on the pardon and on Mr. Nixon's role in the Watergate cover-up for two reasons: He wanted to wait until a jury was chosen and sequestered for the trial of five of Mr. Nixon's former top aides, and he wanted to wait until he had announced his resignation. All that has happened, and now Mr. Jaworski is talking: There will be more newspaper interviews, and on Sunday he is scheduled to appear on NBC's "Meet the Press" program.

Mr. Jaworski denies that the pardon prompted his resignation. He said in the interview yesterday that he decided three weeks ago to resign because he had completed what he has always considered to be his primary task—outlining Mr. Nixon's role in the cover-up.

His own departure, he said, won't slow the investigations that the prosecutor's office is conducting into the milk-fund scandal and into illegal political contributions by corporations. Action is expected soon against other companies, he said.

"The Best-Prepared Case"

The special prosecutor said that evidence to be presented during the current Watergate trial will further enmesh the former President in the cover-up. Mr. Jaworski, who won't be participating in the prosecution, called it "the best-prepared case I've been associated with."

Mr. Jaworski's attitude about the controversial pardon rests on the assumption drawn from an early Ford news conference that President Ford always intended to pardon Mr. Nixon eventually. Thus, to Mr. Jaworski, all that is at issue is the timing of the pardon.

Mr. Jaworski insists that if Mr. Nixon's case had been allowed to proceed to indictment and trial, the public would have learned nothing more about the former President's role than will come out in the trial of his former aides. "It's a mistake to believe there would have been more evidence for the public if he had been tried," the special prosecutor said.

"If he had been pardoned after indictment, the public would have no new information. If he had gone to trial, he could have invoked his Fifth Amendment guarantees against self-incrimination, pleaded nolo contendere, or even pleaded guilty, and we wouldn't have learned any new details," Mr. Jaworski said.

The special prosecutor wouldn't say whether he would have prosecuted the former President if Mr. Ford hadn't pardoned him. "Nothing is served by talking about hypothetical situations now," he declared.

But Mr. Jaworski said that if the former President had been charged, his trial wouldn't have come for many months. "We gave no consideration to doing anything with the former President until after the cover-up jury was sequestered," he said.

A major task still facing the special prosecution force is a report to Congress on the Nixon investigation and on other aspects of the Watergate case. That report will exclude much evidence against the former President unless Congress specifically authorizes its inclusion. Without such authority, Mr. Jaworski believes, a prosecutor can't ethically disclose evidence against a man who hasn't been charged; Mr. Jaworski has asked Congress for authority to include such material in the report.

"We can paint a very full picture of Mr. Nixon's role in obstructing justice, but the difficulty arises in other areas where we didn't bring charges," he said. The Watergate grand jury named Mr. Nixon as an unindicted coconspirator in the obstruction of justice for which his former aides are being tried.

Mr. Jaworski is turning philosophical as he prepares to leave for a rest at his Texas ranch, where he will "watch the deer and birds and think about something besides Watergate for the first time in a year." Watergate, he believes, has shown that the American governmental system works. "Here are top men in government who haven't been spared from investigation, exposure and conviction," he said.

But he isn't sorry to be leaving. "The whole thing is a tragedy," he said. "And I don't get any satisfaction from being involved in a national tragedy."

THE WHITE HOUSE

WASHINGTON

October 17, 1974

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: Supplemental Statement by the President to the Hungate Subcommittee

As you know, the most damaging aspects of this morning's hearing before the Hungate Subcommittee were the unanswered questions posed by Ms. Holtzman and the likely adverse public reaction to them.

It is my opinion that a letter from the President to Chairman Hungate responding to these questions should be sent and released before 6 p.m. today in order to make the morning newspaper cycle.

These questions will be raised again and it would be in the President's best interest to have the answers available prior to any press treatment of the Holtzman questions.

A draft letter is attached.

cc: Phil Areeda
Bill Casselman

DRAFT LETTER TO HUNGATE FROM THE PRESIDENT

Dear Mr. Chairman:

Due to the press of time during today's hearing before the Subcommittee on Criminal Justice relative to the pardon of former President Nixon, I was not afforded the opportunity to respond to several questions posed by Ms. Holtzman. In order to complete the hearing record of the Subcommittee in this respect, I am taking the liberty of communicating my answers to those questions herewith.

Three of these questions involved the grant of the pardon to the former President. Why was the pardon issued without some specification of the crimes for which Mr. Nixon was pardoned? Why was the pardon granted without obtaining any acknowledgement of guilt? Did the pardon have the effect of infringing upon the public's right to know the full story about Richard Nixon's misconduct in office?

22 Op. A. G. 36 (1898) indicates that a pardon is essentially directed to the nullification of the legal consequences flowing from an offense. Such an effect is not dependent on knowledge or enumeration of the offenses involved. It is clear that the power of pardon may be granted without an investigation of a prosecutorial nature to identify the details of the specific offenses involved. Indeed, such an investigation might be an abuse of the power (See Op. A. G. 359 (1820)).

Burdick v. United States 236 U. S. 79 (1915) states that a pardon " . . . carries an imputation of guilt; acceptance a confession of it"(at 95) and 11 Op. A. G. 227, 228 (1865) states: "There can be no pardon where there is no actual or imputed guilt. The acceptance of a pardon is a confession of guilt, or of the existence of a state of facts from which a judgement of guilt would follow."

Rather than reducing the possibility of a full public airing of the facts involved in "Watergate", it is my understanding that the pardon precludes the former President from refusing to testify as a witness on Fifth Amendment grounds in any Federal trial dealing with the facts of this matter. /Murphy v. Waterfront Commission, 378 U.S. 52, 79 (1964)/

One question called for an explanation of the fact that the services of Mr. Benton Becker were utilized in conjunction with the staff support provided to me by my counsel, Mr. Philip Buchen. In this regard, I can only say that I have been acquainted with Mr. Becker for some time. I have known him to be a thoroughly professional man of considerable talent and, at the time his legal services were rendered relative to the pardon, I had no knowledge that he could be the subject of any criminal investigation whatsoever.

I would also like to address myself to the agreement between the General Services Administration and former President Nixon with respect to certain materials, including the tape recordings which have been the subject of a great deal of notoriety. Paragraph 8 of that agreement provides that the tapes " . . . shall be destroyed at the time of Mr. Nixon's death or on September 1, 1984, whichever event shall first occur." It is my understanding that this provision is intended to govern destruction only after September 1, 1979. Although certain people have misconstrued this section as a potential loophole, I can assure you that in this and every other respect, steps have been taken to eliminate any possibility of destruction or alteration of any of these materials.

Finally, I would like to respond to the unfortunate inference that was case to the effect that the intent behind the tapes agreement was to insure that any possible tape recordings between myself and the former

President would never come out in public. I have never considered myself to be a secretive individual. My life has been an open one of public service. I trust that you and the members of your Subcommittee will see no need to question my motivations in protecting these materials for reasons of the highest national interest and not out of fear of reprisals.

Let me again state my appreciation for the opportunity to appear before you and your colleagues. I trust that my appearance marked the beginning of a new and healthy period of cooperation between our respective branches of government.

would like to specify a few of them for you so that perhaps we can have some of these answered.

I think from the mail I have received from all over the country as well as my own District, I know that the people want to understand (1) how you can explain having pardoned Richard Nixon without specifying any of the crimes for which he was pardoned, and (2) how can you explain pardoning Richard Nixon without obtaining any acknowledgement of guilt from him.

(3) How do you explain the failure to consult the Attorney General of the United States with respect to the issuance of the pardon even though in your confirmation hearings you had indicated that the Attorney General's opinion would be critical in any decision to pardon the former President.

(4) How can this extraordinary haste in which the pardon was decided on and the secrecy with which it was carried out be explained and (5) how can you explain the fact that the pardon of Richard Nixon was accompanied by an agreement with respect to the tapes which in essence, in the public mind, hampered the Special Prosecutor's access to these materials and was done also in the public's mind in disregard of the public's right to know the full story about Richard Nixon's misconduct in office.

(6) And in addition, the public I think wants an explanation of how Benton Becker was used to represent the interests of

the United States in negotiating a tapes agreement when at that very time he was under investigation by the United States for possible criminal charges.

And how also can you explain not having consulted Leon Jaworski, the Special Prosecutor, before approving the tapes agreement? And I think, Mr.President, that these are only a few of the questions that have existed in the public's mind before and unfortunately still remain not resolved.

And since I have very brief time, I would like to ask you in addition to these questions one further one, and that is that suspicions have been raised that the reason for the pardon and the simultaneous tapes agreement was to insure that the tape recordings between yourself and Richard Nixon never came out in public. To alleviate this suspicion once and for all would you be willing to turn over to this Subcommittee all tape recordings of conversations between yourself and Richard Nixon.

President Ford. Those tapes under an opinion of the Attorney General which I sought, according to the Attorney General, and I might add according to past precedent, belong to President Nixon. Those tapes are in our control. They are under an agreement which protects them totally, fully, for the Special Prosecutor's Office or for any other criminal proceedings. Those tapes will not be delivered to anybody until a satisfactory agreement is reached with the Special

October 17, 1974

MEMORANDUM FOR: RON NESSEN

FROM: KEN LAZARUS

SUBJECT: Effect of the Acceptance of a Pardon

It is my understanding that questions regarding the legal effect of the acceptance of a pardon with respect to the question of guilt have been referred to you.

In response to these questions you might want to make reference to the following authorities:

> Burdick v. United States, 236 U.S. 79 (1915 states that a pardon "...carries an imputation of guilt; acceptance a confession of it." (at 95)
>
> 11 Op. A. G. 227, 228 (1865) states that "There can be no pardon where there is no actual or imputed guilt. The acceptance of a pardon is a confession of guilt, or of the existence of a state of facts from which a judgment of guilt would follow."

Cong Testimony Hungate

THE WHITE HOUSE

WASHINGTON

October 18, 1974

MEMORANDUM FOR: BOB LINDER

FROM: JACK MARSH

Would you please order one dozen copies of the report by the Subcommittee on the Committee of the Judiciary for President Ford's appearance on October 17, 1974.

cc: Bill Timmons
Phil Buchen

President's appearance 10/17/74

October 22, 1974

Dear Mr. Clayton:

Thank you very much for your thoughtful letter of October first, in which you expressed support of the President's decision to appear before the Subcommittee on Criminal Justice.

The President made this appearance on Thursday, October 17th, and I believe he forthrightly and candidly explained his reasons for granting a pardon to the former President. I appreciate the fact that you have taken time to write the President on this matter.

With appreciation,

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. George M. Clayton
1423 Forest Lane #114
Garland, Texas 75042

PWB:JF:em

Sent copy of Ron Nessen memo (10-17-74) dlm

THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: KEN LAZARUS

FROM: LIZ O'NEILL

149 EOB

Larry Speakes told me you could provide information re. acceptance of a pardon being an admission of guilt -- so I can reply to this letter.

Thank you.

President's appearance 10/17/74

Tuesday 11/13/74

11:15 Ann Patterson in Symington's office said that when the President testified on October 17th, when Rep. Holtzmann interrogated him -- it was understood that he said to her -- "Your questions are interesting and I'd like to respond to them in written form." 225-2561

They want to know if that's true.

Jay will call them and let me know the answer.

I called Symington's office and left word for Miss Patterson that Jay French would be calling.

Friday 11/22/74

11:50 Cong. Henry Smith's office called to say the sixth person in favor of the motion to report unfavorably on H. Res. 1367 and H. Res. 1370 was Cong. James Mann. I'll let Mr. Marsh know.

cc: Mr. Marsh

Noted
P.

Friday 11/22/74

10:15 Congressman Henry Smith called and said he thought the President, John Marsh and you would be interested to know that today the Hungate Subcommittee on Criminal Justice passed his motion to report unfavorably on those two privileged resolutions of inquiry. Cong. Smith moved that the Subcommittee report unfavorably on H. Res. 1367 and H. Res. 1370 without amendment and recommended that the resolutions be not agreed to. It passed 6-3. The three opposed were Holtzman (said he thought she wanted to go on with this thing for a year), Bob Kastenneier, and Don Edwards. Those in favor were Chairman Hungate, Cong. Smith, Cong. Dennis, Cong. Mayne and Hogan (by proxy). [I am checking his office now to see who the other one was since he only gave me five names.] It was adopted 6-3.

This was just the Subcommittee. There will be further full Committee action. Said he would hope the Committee would follow their action but he can't guarantee it.

cc: John Marsh

Noted
P.

For completion & hand delivery to Hill today.

P.

done 1/4/16 sc

message picked up at 9:05 am 1/4/16

THE WHITE HOUSE
WASHINGTON

Eva,

I made the notation cc to Henry P. Smith, III on the original, made a xerox, and had both sent by messenger to the Hill. You will obviously want more copies unless you already. have some.

Eleanor

12/16

Blind copy should go to Marsh.
And before delivering, we
should ask him if copy
is to go to H. Smith + show
on face.

P.

Marsh advised that "Hon. Henry P.
Smith III" should have copy &
his name should appear
as copy addressee

FYI:

Please make "Eyes Only"
copy for Jack Marsh &
return this to me.

P

Has been taken to Lisa

THE WHITE HOUSE

WASHINGTON

December 14, 1974

Dear Congressman Hungate:

This letter is in response to your letter of December 10, 1974.

My understanding is that the Subcommittee on Criminal Justice of the Committee on the Judiciary had anticipated when you wrote your letter devoting time on December 19, 1974 to an appearance by former Special Prosecutor Leon Jaworski. That appearance was intended in part, I am told, to cover events within his knowledge leading to the pardon of former President Nixon. Now I have been advised that Mr. Jaworski will not be appearing at any time during the remaining days of the 93rd Congress.

I believe it inappropriate for me to try arranging an appearance by General Alexander Haig to give testimony on the same subject prior to adjournment of this session of the Congress when without other desired testimony, no disposition can be made of current legislative proposals relating to this subject. Also, on December 15, 1974, General Haig will first assume the position of Supreme Allied Commander, Europe, and this event will undoubtedly require his immediate and, for some period, continuous attention to new responsibilities in Europe.

Your letter does suggest in the alternative that General Haig make an appearance before your Subcommittee early in the next session of Congress. Although I am not in a position to give you a definite response, I believe a determination should await a review of circumstances at that time, including what legislative proposals may then be pending before your Subcommittee.

I trust that the foregoing will serve your purposes until such time as there can be common review of the situation in January.

Sincerely,

Philip W. Buchen
Counsel to the President

Honorable William L. Hungate
Chairman
Subcommittee on Criminal Justice
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

cc: Honorable Henry P. Smith, III

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

December 10, 1974

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

Dear Mr. Buchen:

The Subcommittee on Criminal Justice of the Committee on the Judiciary has several legislative proposals pending before it requiring the full and complete disclosure of facts relating to the pardon of Richard M. Nixon, Watergate and Watergate related matters.

To assist the Subcommittee in its consideration of these proposals, the Subcommittee requests that Alexander Haig appear before it to testify on his knowledge of and involvement in the events leading to the pardon of the former President.

President Ford's testimony before the Subcommittee on October 17, 1974, was essential and of great assistance to the Subcommittee in developing the facts concerning the issuance of the pardon. President Ford's testimony, however, highlighted the significant role played by General Haig in the pardon discussions. Subcommittee Members believe, therefore, that General Haig's testimony is vital to the complete and final resolution of the pardon issue.

The Subcommittee Members are aware of the Senate Armed Services Committee's recent vote to hear the testimony of General Haig at the beginning of the 94th Congress. The Subcommittee is hopeful that General Haig's schedule will permit him to appear before the Subcommittee at some mutually convenient time during the remaining days of the 93rd Congress or in the early days of the next session of Congress.

Sincerely yours,

William L. Hungate
Chairman
Subcommittee on Criminal Justice

WLH/bts
cc: Hon. Henry P. Smith, III

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20515

OFFICIAL BUSINESS

Peter W. Rodino
M. C.

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

Hungate
Chrg.

Wednesday 12/18/74

5:55 Chairman Hungate called. Said this time he has some pleasant news for you.

Wanted you to know the Rules of Evidence code passed. Final passage -- House Conference Report --- 363 to 32.

You and Mr. Marsh were instrumental in getting it in the President's message. Wanted to say thanks for your help.