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Abzug
Fish*
Cohen
Koch

Congress*
Butler

Gene

456-2140

Present
just to
listen

Democrats

Holtzman

Mann

Edwards

Kastenmier

Hungate - Chm.

Congers (joined)*

Republicans

Hogan

Mayne

Dennis

Smith - Ranking

Fish (joined)*

Mike Bloomer

Counsel

- Witness: Cong. Guide -

Kastenmier

How get tapes from Jaworski & White House to
make public? Other material & evidence?

Is there a legislative vehicle for obtaining
these items? Don't know.

Smith

Does Jaworski have now the authority to make
rept. to American people releasing E on
both sides of case? Even w/out legis.?

Don't know but would take longer to
go thru cts. - Would Jaworski make a
fair rept.? Yes.

Edwards

What about representation of Nixon by
counsel in the making of a rept. by
Jaworski? Edwards thinks Nixon should
be represented by attys while rept.
being made so that no one could
say he wasn't given a fair shake.



Dennis

Does not Jaworski already have authority to make public rept.? Why need legis.? Are we left w/ any possibility of further criminal or ~~impeachable~~ impeachment proceedings against Nixon? No - Then only thing that rept. would do would be to make public the facts, is that true? Yes -

Mann

Would you respect the rept., a finding of a group of atlys, as final? Yes - Isn't a 90 day release of E premature?

Wayne

Do not prosecutors seek mostly to convict & not to prove innocence? How could a group of prosecutors present an assurance of accuracy & fairness? Feels that this is a possible problem but still is the best way -

Holtzman

Would the proposed res. be a barrier to any criminal proceedings that may evolve in the future? No - Should E that has not yet been obtained be included in rept.? Yes -



Hogan

Why is it necessary to instruct Jaworski to make a rept. sooner than he would normally do so? Hogan does not believe that legis. is necessary. Isn't the issue moot now? Hogan would want an amend. to the proposed bill that would allow defense attys to file dissenting views in the rept. He also doesn't feel that the rept. would be of any real value to the American people, since they
Many of them feel Nixon was hounded out of office by the news media instead of the true facts anyway.

surprise

Hungate

No questions.

Fish

No questions.

— Witness: ^{Cong.} Mc Kinney —

Kastner

What would Cong. do w/ documents once received?
Cong. should publish them & make public
all obtained materials — ~~why~~ When should
this be done? As soon as there is no
danger of prejudicing a criminal case —
Mc Kinney prefers all documents in lieu
of a Jaworski rept.

Smith

Why are you limiting (by amend.) the
making public of only Jaworski E & not
Grand Jury testimony? Isn't Jaworski E
testimony of witnesses also? Yes, but
there's a difference —

Dennis

What good would it do to make all E
public? So people will know facts &
so Cong. can know how to legislate
to keep such from happening again —
What about rts of Grand Jury witnesses
not to have their test. made public?
This should be protected —

Mann

When should material be released to
Cong. from Jaworski? Should be an on-
going process —



Mayne

No questions.

Holtzman

No questions.

Edwards

No questions.

Hogan

Surprise { Would there be ample time & space for rebuttal in the rept.? Hogan concerned that scurrilous, uncorroborated E would be included in the rept. by Jaworski against the character of Nixon. McKinney not objectionable to an amend. to assure the former Pres. a rt. to rebut all accusatory E.

Fish

No questions.

Conyers

No questions.



— Witness: Cong. Abzug —

[Privileged Res. to challenge the pardon of Nixon — a res. of inquiry from a legal standpoint]

Edwards

Thought letter from Ford to Hungate was disrespectful of the House & unsatisfactory. Does Bella agree? Yes — Are you questioning the Const. rt. to pardon or the abuse of the President's abuse of his rt. to pardon? The legality of his pardon — (whatever that means) —

Smith

Do you not feel that many of the questions asked in the Hungate letter were answered in the press releases sent by the White House? Maybe so but the response should have directly answered the questions posed & not just by sending indirect press releases.

Mamm

No questions.



Dennis

Doesn't Mr. Buchen's press release answer the questions? Not in ~~that~~ satisfactory form. Can a Pres. issue a pardon prior to conviction? Should be an indictment ~~at least~~ or at least an admission of guilt? What about Garlan decision in statement? There a differing legal interpretations on the subject of pardons —

crux

RECESS TIL 1:30



UP-147

(PARDON)

WASHINGTON (UPI) -- THE CHAIRMAN OF A HOUSE SUBCOMMITTEE INVESTIGATING PRESIDENT FORD'S PARDON OF PREDECESSOR RICHARD NIXON SAID TUESDAY HE MAY CALL A WHITE HOUSE AIDE TO EXPAND ON FORD'S EXPLANATION OF THE ACTION.

AT LEAST TWO MEMBERS OF THE JUDICIARY SUBCOMMITTEE, REPS. BELLA ABZUG, D-N.Y., AND DON EDWARDS, D-CALIF., SAID THEY CONSIDERED FORD'S RESPONSE TO THE PANEL'S INQUIRY INADEQUATE AND EVEN INSULTING.

IN VIEW OF THAT, SUBCOMMITTEE CHAIRMAN WILLIAM HUNGATE, D-MO., SAID HE WAS CONSIDERING A REQUEST FOR TESTIMONY BY EITHER PHILIP BUCHEN OR JOHN MARSH, THE PRESIDENT'S TOP LEGAL ADVISERS.

IN RESPONSE TO A REQUEST BY HUNGATE LAST WEEK, FORD SENT THE SUBCOMMITTEE A LETTER SAYING THAT EITHER HE OR BUCHEN HAD ANSWERED ALL OUTSTANDING QUESTIONS ABOUT THE PARDON AT NEWS CONFERENCES, TRANSCRIPTS OF WHICH WERE ENCLOSED WITH THE LETTER.

REP. ABZUG, AUTHOR OF A RESOLUTION OF INQUIRY WHICH PROMPTED HUNGATE'S REQUEST, SAID FORD'S REPLY "REVEALS A NON-SERIOUS AND TRIFLING ATTITUDE THAT DEMEANS THE AUTHORITY AND DIGNITY OF THIS COMMITTEE AND THIS PARLIAMENTARY PROCEDURE."

"IT IS TOTALLY INADEQUATE FOR MR. FORD TO RESPOND BY SENDING A BATCH OF WHITE HOUSE PRESS RELEASES AND AN ACCOMPANYING LETTER," SHE SAID.

"I, TOO," SAID EDWARDS, "FIND HIS RESPONSE NOT ONLY CAVALIER BUT VERY CLOSE TO BEING DISRESPECTFUL OF THE HOUSE AND THIS COMMITTEE."

HUNGATE HAD ASKED FORD TO EXPLAIN THE REASONING BEHIND THE PARDON, THE NAMES OF THE PERSONS WITH WHOM HE CONFERRED ABOUT IT, WHETHER THE ATTORNEY GENERAL OR THE SPECIAL WATERGATE PROSECUTOR WERE CONSULTED, AND WHETHER FORD HAD KNOWLEDGE OF ANY CRIMINAL CHARGES WHICH MIGHT HAVE BEEN BROUGHT AGAINST NIXON.

FORD'S LETTER SAID IN REPLY:

"REGARDLESS OF ANY BACKGROUND INFORMATION OR ADVICE I MAY HAVE RECEIVED, I AM RESPONSIBLE FOR THE PARDON DECISION. I AM SATISFIED THAT IT WAS THE RIGHT COURSE TO FOLLOW IN ACCORD WITH MY OWN CONSCIENCE AND CONVICTION."

HUNGATE DECLINED TO CHARACTERIZE FORD'S RESPONSE, BUT SAID "IT SEEMS TO ME IT MAY MAKE IT DESIRABLE THAT SOME LIVING PERSON AT THE WHITE HOUSE COME UP AND RESPOND TO THE COMMITTEE." HE SAID HE MAY ASK BUCHEN OR MARSH TO APPEAR NEXT TUESDAY.

UPI 09-24 06:37 PED



WITNESS LIST

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIMINAL JUSTICE

HEARING

TOPIC: Legislation relating to: (1) the pardon of former President Richard M. Nixon; (2) the issuance of additional pardons to persons involved in Watergate related activities; (3) the ability and appropriateness of the Watergate Special Prosecution Force to make public the information it has compiled relating to the alleged criminal conduct of former President Richard M. Nixon, and (4) the public disclosure of all Watergate related documents and tapes which were in the custody of the United States between January 20, 1959 and August 9, 1974.

Tuesday, September 24, 1974
10:00 a.m.
Room 2141 - Payburn HOB

1. Honorable Gilbert Cude (R.-Md.) - H.J.Res. 1126, Joint Resolution to require the Watergate Special Prosecution Force to make available to the public a report of all information it has concerning former President Richard M. Nixon.
2. Honorable Stewart McKinney (R.-Conn) - H.P. 16619, a bill to make available to Congress the information obtained by the Special Prosecutor.
3. Honorable Edward Koch (D.-N.Y.) - H.R. 16750, a bill to provide for public access to all Watergate related facts produced by any investigation conducted by any Federal executive office. H.Con.Res. 632 - Concurrent Resolution expressing the sense of Congress with respect to certain pardons granted or which may be granted by the President.



4. Honorable Billie Azar (D.-N.Y.) - H.Res. 1367,
Resolution of inquiry requesting the President to
furnish the House with certain specified information
concerning the pardon of former President Nixon.

5. Honorable John Conyers (D.-Mich.) - H.Res. 1370,
Resolution of inquiry directing the President to
furnish the House with the full and complete story
concerning the issuance of a pardon to Richard M.
Nixon and the possible issuance of additional pardons
to persons involved in Watergate related activities.

6. Honorable Jonathan Bingham (D.-N.Y.) - H.Con.Res. 639,
Concurrent Resolution expressing the sense of the Congress
that the President should defer granting any additional
pardons until after all the facts about the Watergate
affair have been revealed by the unfettered operation
of the criminal justice system.



STATEMENT BY

HONORABLE WILLIAM L. HUNGATE

SEPTEMBER 24, 1974

Today, the Subcommittee on Criminal Justice of the Committee on the Judiciary begins hearings on bills and resolutions that seek to insure public access to information relative to Watergate and its related activities.

Within the last several days, nineteen bills and resolutions concerning Watergate-related events have been referred to this Subcommittee for its consideration. Sixty-three Members, Democrats and Republicans, have sponsored or co-sponsored one or more of these measures. Because of the importance of preserving the public's right to know the full and complete story of Watergate, and the privileged nature of certain of these resolutions of inquiry, it is necessary to proceed promptly in considering these legislative measures.

Recent events caused many responsible citizens and Members of Congress serious concern that the complete story of Watergate may never be recorded. The pardoning of former President Nixon has certainly jeopardized the opportunity for full public disclosure of information gathered by the Office of the Special Prosecutor bearing on former President Nixon's role in the Watergate affair. Moreover, the agreement entered into between the former President and the General Services Administration has caused many to fear that additional information relevant to Watergate will be forever



withheld from public scrutiny. Unless the complete story of Watergate is known, history may incorrectly record the events of these times.

The Congress has dealt responsibly with Watergate, but Watergate will not be behind us until the record of Watergate is complete.

We now proceed to review the proposals before the Subcommittee designed to guarantee that the public's right to know is protected. Before Congress and the Nation are important questions of ownership and access to tapes, materials and related documents prepared and created by public officials while on the public payroll. Many of the resolutions before us touch these problems. We must see to it that there is full public access to all information concerning Watergate, its coverup, and all related events.

Today, we hear from Members of Congress who have introduced legislation pertaining to these issues. Generally, the proposals to be considered relate to the pardon of former President Nixon, the issuance of additional pardons to persons involved in Watergate-related activities, the desirability of the Watergate Special Prosecution Force to make public information it has compiled relating to the alleged criminal conduct of former President Nixon, and the public disclosure of all Watergate-related documents and tapes in the custody of the United States Government.

STATEMENT OF CONGRESSMAN GILBERT GUDE BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE COMMITTEE ON THE JUDICIARY -- SEPTEMBER 24, 1974

Mr. Chairman, I would like to express my appreciation for the opportunity to testify this morning on House Joint Resolution 1118 which I introduced on September 11, 1974, and House Joint Resolutions 1126 and 1139, which I subsequently introduced with 19 co-sponsors.

At his first news conference after assuming office, President Ford indicated that while he thought that former President Nixon had suffered enough, the legal proceedings in the Watergate affair should be allowed to run their course before any consideration of a Presidential pardon. I fully supported that policy for three reasons. First, it reaffirmed the people's commitment to equal justice under the law regardless of power or position. Second, it insured the right of former President Nixon and the country to have a judgment by the courts of Mr. Nixon's involvement, if any, in any offense against the United States. Third, it preserved the President's options if Mr. Nixon by fair and due processes had been found guilty of any crime.

As a result of the decision to pardon former President Nixon, the courts now will not be able to make a judgment in this matter, and the people will not have the normal judicial resolution of this matter as is appropriate to the American way.

The American people are entitled to all the evidence on both sides in this case. They can then intelligently examine the evidence and make an informed judgment if they so desire. It was in furtherance of the objective of making all the facts known that I introduced my resolution. Basically, it would require the Watergate Special Prosecutor to present to the public an objective report on all of the evidence in his possession concerning former President Nixon's involvement in any offenses against the United States. It is my intention that all exculpatory evidence as well as any incriminating evidence be reported. The resolution would not expand Mr. Jaworski's authority to obtain additional evidence. It would merely require that he make public the evidence he has in his possession.



Having conducted an extensive investigation and published volumes of evidence as part of the Judiciary Committee's impeachment proceedings, some may question the necessity for the Watergate Special Prosecutor to publish such a report. While I applaud the outstanding work of the Judiciary Committee throughout the course of the impeachment proceedings, I submit that there are two reasons for requiring Mr. Jaworski to issue such a report. First, it appears that the standard for impeachment and the standard for an offense against the United States may not be identical. Indeed, in following your Committee's deliberations during the impeachment proceedings there appeared to be some disagreement among committee members as to what constitutes an impeachable offense, some arguing that a crime was not necessary and others maintaining that only certain crimes were sufficient to prove an impeachable offense. Thus in view of the fact that the Committee was focusing on an impeachable offense rather than a criminal offense, the evidence which was marshalled during the impeachment proceedings may not include some evidence which reflects upon Mr. Nixon's involvement in some federal offenses. Second, there appears to be a substantial body of evidence that was not available to the Committee during the course of the impeachment proceedings. As all of you are aware, this past summer the Supreme Court required Mr. Nixon to furnish certain tapes to the Special Prosecutor which were never made available to the Judiciary Committee. In addition, the impeachment investigation included only limited testimony by witnesses while Mr. Jaworski appears to have extensive testimonial evidence which was never made available to Congress. Since I believe that the American people are entitled to consider all of the evidence in this matter, I think it is apparent that they should not rely solely on the impeachment evidence and report, even though it was a complete and thorough compilation of the evidence with regard to the commission of an impeachable offense by Richard Nixon.

Balance

Some may also question the propriety of making public testimony and evidence presented to a grand jury. While I am not a lawyer, it is my understanding that the Federal Rules of Criminal Procedure manifests a long established policy of secrecy for grand jury proceedings.



Such a policy is not completely sacrosanct, however. The Supreme Court has long held that "disclosure is wholly proper where the ends of justice require it." (United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 234 (1940).) I submit that there could not be more compelling circumstances "where the ends of justice require" disclosure than in the present case.

I readily admit that the question of protecting the rights of those yet to be tried is of great concern to me. However, my resolution provides that the Special Prosecutor will have ninety days from the date of enactment to publish his report. This period should be more than ample time to impanel and sequester the jury in the impending conspiracy trial. Any future prosecutions would not have the same potential for prejudicing defendants' rights as the conspiracy trial. The report would only focus on Mr. Nixon, and any future prosecutions would not likely include a conspiracy involving the former President in which his acts could be attributed to any co-conspirators. In any event, I would have to say that the American people's right to have the evidence necessary to judge Mr. Nixon's involvement in any federal offense is of such overriding importance that it should take precedence, and the Judiciary Committee's decision to televise its impeachment proceedings and the Senate Watergate Committee's decision to televise its hearings clearly support my judgment on this matter.

It seems clear to me that enactment of this resolution is necessary to obtain the goals it is designed to meet. At the present time there is some doubt as to whether Mr. Jaworski has the authority to issue such a report. In a letter dated September 10, 1974, to Mr. Jaworski eight members of the Senate Judiciary Committee expressed the opinion that his final report to Congress should include "a full and complete record detailing any involvement of the former President in matters under investigation by you." In his response of September 17, Mr. Jaworski stated that it was his "tentative belief that the existing authority for the issuance of reports, to which your letter alludes, most likely does not justify the inclusion of a detailed report on the matters you suggest." My resolution would clarify any ambiguities and insure that Mr. Jaworski has

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the authority to issue a report on former President Nixon's involvement in Watergate.

For over two years the nation has been confronted by the series of events we refer to as "Watergate." It has had a deep impact on our national conscience. It is now time to make all of the evidence available to the American people so that they can make their own judgment.

I am certain that members of this committee agree that the American people are capable of good judgment if given all of the evidence. They have demonstrated their fortitude and strength of character throughout the past two years, and I am confident that they will reinforce those qualities in their examination of the evidence in this case.

In my opinion this report will serve as a completion and closing of the record so that the nation can go forward with its other business.



Congressman Edward I. Koch news release

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FOR IMMEDIATE RELEASE
SEPTEMBER 04, 1974

KOCH TESTIMONY BEFORE JUDICIARY COMMITTEE

- 1) PUBLIC ACCESS TO WATERGATE TAPES
- 2) CONTINUATION OF JAWORSKI INVESTIGATION OF NIXON
- 3) COURT TEST OF NIXON PARDON
- 4) NO FURTHER WATERGATE PARDONS

(Washington D.C.)... In testimony today before the House Judiciary Subcommittee on Criminal Justice, Rep. Edward I. Koch (D-L, Manhattan), urged legislation providing "full public access" to all Watergate-related tapes and documents, continuation of the Jaworski investigation of Nixon, a court test of the Nixon pardon, and a sense of the Congress resolution against the Nixon pardon and any further Watergate-related pardons.

Koch has introduced legislation with twenty-eight co-sponsors, providing full public access consistent with due process to all tapes and documents relating to Watergate. The only exception would be, sealed "materials clearly vital to the national security interests of the United States and required for valid purposes to be sealed."

He condemned the Ford-Nixon tape arrangement as unconstitutional and at the very least, illegal. He pointed out that nowhere in the Constitution or public law is there "the right to negotiate the destruction of materials, as in the Nixon-GSA agreement." Koch said that, "Totalitarian nations, including Nazi Germany, have burnt books in an effort to distort the truth. In the United States, no one should have the right to erase history."

Koch urged the Special Prosecutor to continue his investigation and to test the timing of the pardon in court. He said that, in his opinion, "An individual cannot be pardoned before it is legally determined that he committed some crime."

Koch also urged the adoption of his concurring resolution, now co-sponsored by twenty members of Congress stating the sense of Congress that the pardon was "wrongful and premature" and that there should be, "no further Watergate related pardons prior to indictment, prosecution, and conviction, and then only on an individual basis where warranted by special circumstances."



TESTIMONY OF REPRESENTATIVE EDWARD I. KOCH, SEPTEMBER 24, 1974
SUBCOMMITTEE ON CRIMINAL JUSTICE - HOUSE JUDICIARY COMMITTEE

MR. CHAIRMAN and COLLEAGUES, FORMER PRESIDENT NIXON IS FAST BEING GRANTED ALL THE BENEFITS AND HONORS OF A NATIONAL HERO. DESPITE THE CIRCUMSTANCES UNDER WHICH HE RESIGNED, MR. NIXON IS RECEIVING ALL THE EMOLUMENTS OF A CHIEF EXECUTIVE WHO HAS LEFT OFFICE AFTER DISTINGUISHED SERVICE. I HOPE THAT YOUR SUBCOMMITTEE WILL INITIATE SWIFT ACTION BY THE CONGRESS THAT WILL MAKE CLEAR TO FUTURE GENERATIONS THAT CRIMES AGAINST THE CONSTITUTION AND THE PEOPLE BY ANY PRESIDENT OR OTHER HIGH OFFICIALS WILL NOT BE SWEEPED UNDER THE RUG, AS THOUGH THEY NEVER OCCURED.

IN YOUR FULL COMMITTEE'S FINAL REPORT ON IMPEACHMENT, YOU STATED YOUR UNANIMOUS VIEW THAT MR. NIXON COMMITTED AT LEAST ONE IMPEACHABLE OFFENSE, AND A MAJORITY VOTED ARTICLES OF IMPEACHMENT ON TWO OTHER GROUNDS. THERE IS LITTLE QUESTION THAT HE WOULD HAVE BECOME THE FIRST IMPEACHED AND CONVICTED PRESIDENT IN OUR HISTORY, AND THIS IS PRECISELY WHY HE WAS THE FIRST PRESIDENT IN OUR HISTORY TO RESIGN. THERE ALSO WAS THE STRONGEST PROBABILITY THAT, IN UPCOMING MONTHS, HE WOULD HAVE BEEN INDICTED FOR CRIMINAL ACTIVITIES.

THE PARDON BY THE PRESIDENT AT THIS TIME WAS AN AFFRONT TO OUR JUDICIAL SYSTEM. YOUR HEARINGS ON THE PARDON AND RELATED QUESTIONS ARE A GREAT SERVICE TO THE AMERICAN PEOPLE. I AGREE WITH PROFESSOR PHILIP KURLAND OF THE UNIVERSITY OF CHICAGO LAW SCHOOL, ACKNOWLEDGED AS ONE OF THE NATION'S LEADING CONSTITUTIONAL AUTHORITIES, WHO HAS ARGUED THAT THE CONSTITUTIONALITY OF GRANTING THE PARDON PRIOR TO CONVICTION SHOULD BE CHALLENGED IN THE COURT. PROFESSOR KURLAND ARGUES THAT AN INDIVIDUAL CANNOT BE PARDONED BEFORE IT IS LEGALLY DETERMINED THAT HE COMMITTED SOME CRIME FOR WHICH HE HAS BEEN CONVICTED. U.S. DISTRICT COURT JUDGE CHARLES B. RICHEY, IN THE MCCORD CASE NOW BEFORE HIM, HAS INDICATED THAT HE MAY TEST THE VALIDITY OF THE NIXON PARDON.

IT IS INCUMBENT ON THE CONGRESS TO TAKE ACTION. IN PURSUIT OF THAT, I HAVE INTRODUCED A CONCURRENT RESOLUTION (H.CON.RES. 643) STATING THE SENSE OF THE CONGRESS THAT THE PARDONING OF RICHARD NIXON WAS "WRONGFUL AND PREMATURE", AND THAT "NO FURTHER WATERGATE-RELATED PARDONS SHOULD BE GRANTED PRIOR TO INDICTMENT, PROSECUTION, AND CONVICTION, AND THEN ONLY ON AN INDIVIDUAL BASIS WHERE WARRANTED BY SPECIAL CIRCUMSTANCES." TWENTY HOUSE COLLEAGUES HAVE JOINED IN CO-SPONSORING THIS RESOLUTION, AND THE SENATE ADOPTED A SIMILAR RESOLUTION ON SEPTEMBER 12.

I ALSO SUGGEST THAT LEGISLATION BE ENACTED DIRECTING THE SPECIAL PROSECUTION TO PROCEED WITH HIS INVESTIGATION OF PRES-^{OR}IDENTIAL ACTIVITIES BOTH IN ORDER TO BRING OUT THE FACTS AND TO RAISE BEFORE THE COURT THE CONSTITUTIONALITY OF THE TIMING OF THE PARDON. PROFESSOR KURLAND CONTENDS THAT IF MR. NIXON USED HIS PARDON AS A DEFENSE AGAINST SPECIFIC CHARGES, THIS WOULD DEFINE THE CRIMES COVERED BY THE PARDON. KURLAND BELIEVES THAT THE JUDGE IN THE CASE WOULD THEN BE REQUIRED TO RULE IF THE PARDON WERE APPLICABLE, AS HE WOULD RULE ON ANY DEFENSE MOTION. UPON THE JUDGE DETERMINING THAT THE PARDON IS APPLICABLE NIXON WOULD THEN BE DEEMED GUILTY AS A MATTER OF RECORD OF THE CRIME TO WHICH THE PARDON APPLIES.

I ALSO BELIEVE THAT AS SOON AS CONSISTENT WITH FAIR JUSTICE, MATERIALS FROM WATERGATE-RELATED INVESTIGATIONS, INCLUDING THAT OF THE SPECIAL PROSECUTOR, SHOULD BE MADE PUBLIC. I HAVE INTRODUCED LEGISLATION, H.R. 16750, NOW BEFORE YOUR SUBCOMMITTEE, CO-SPONSORED BY TWENTY-EIGHT MEMBERS OF CONGRESS, TO PROVIDE PUBLIC ACCESS TO ALL WATERGATE-RELATED FACTS, DOCUMENTS, PAPERS, AND TAPES PRODUCED BY INVESTIGATIONS BY ANY FEDERAL EXECUTIVE OFFICE, DEPARTMENT, OR AGENCY, AND ALL OTHER RELATED MATERIALS AT THE TIME OF MR. NIXON'S RESIGNATION. ONLY BY FULL KNOWLEDGE OF AND AVAILABILITY TO ALL THE FACTS AND RECORDS WILL THE AMERICAN PEOPLE BE ASSURED THAT AN ADMINISTRATION COVER-UP HAS REALLY STOPPED AND THAT GOVERNMENT OFFICIALS ARE SINCERE IN ATTEMPTING TO AVOID THE MISTAKES OF THE PAST. THE ONLY EXCEPTION TO FULL PUBLIC DISCLOSURE ALLOWED BY THE BILL RELATES TO MATERIALS CLEARLY VITAL TO THE NATIONAL SECURITY INTERESTS OF THE UNITED STATES AND REQUIRED FOR VALID PURPOSES TO BE SEALED.

I BELIEVE THAT THE NIXON ADMINISTRATION PAPERS AND DOCUMENTS BELONG TO THE UNITED STATES, NOT TO PRIVATE CITIZEN NIXON. THE EXTRAORDINARY FACTORS BEHIND HIS INVOLUNTARY RESIGNATION ~~FORM~~ ^{FROM} OFFICE MANDATE PUBLIC ACCESS TO THE MATERIALS. I DO NOT

BELIEVE THAT RESIGNATION FROM OFFICE NEGATES PUBLIC ACCESS TO THE MATERIALS. I DO NOT BELIEVE THE AGREEMENT BETWEEN G.S.A. AND MR. NIXON DISPOSING OF THE WATERGATE MATERIALS TO BE CONSTITUTIONAL OR LEGALLY BINDING. UNDER ARTICLES IV OF THE CONSTITUTION, CONGRESS HAS EXPRESS POWER TO "MAKE ALL NEEDFUL RULES AND REGULATIONS RESPECTING THE PROPERTY OF THE UNITED STATES." THE MATERIALS IN QUESTION WERE PRODUCED COMPLETELY WITH PUBLIC FUNDS. IN ADDITION, THE U.S. CODE (44 U.S. CODE SEC. 2108) STATES THAT ALTHOUGH G.S.A. HAS AUTHORITY TO ACCEPT PRESIDENTIAL PAPERS AND OTHER HISTORICAL MATERIALS, IT SHALL NEGOTIATE "THE RIGHT TO HAVE CONTINUOUS AND PERMANENT POSSESSION OF THE MATERIALS." NOWHERE IS THERE MENTIONED ANY RIGHT TO NEGOTIATE THE DESTRUCTION OF MATERIALS, AS IN THE NIXON—G.S.A. AGREEMENT.

IN THE WASHINGTON POST OF SEPTEMBER 21, 1974, PROFESSOR ARTHUR MILLER ARGUES THAT "THE AGREEMENT ABOUT DESTRUCTION IS A LEGAL NULLITY." HE ALSO POINTS OUT THAT ATTORNEY GENERAL SAXBE'S CONTENTION THAT THERE IS A CUSTOM OF PAST PRESIDENTIAL OWNERSHIP DOES NOT MAKE SUCH A CUSTOM LEGALLY BINDING.

IF THESE TAPES AND OTHER DOCUMENTS, FOR ANY PRESENT LEGALISTIC REASON, CANNOT BE SUBJECTED TO PUBLIC ACCESS, THE U.S. GOVERNMENT SHOULD EXERCISE THE POWER IT PRESENTLY HAS OF EMINENT DOMAIN AND RETAIN THEM, EVEN IF DUE PROCESS REQUIRES A PAYMENT TO THE FORMER PRESIDENT FOR THEIR VALUE. THAT PAYMENT, IF ANY, COULD BE OFFSET AGAINST WHAT MR. NIXON OWES THE GOVERNMENT ON MONIES ILLEGALLY SPENT ON HIS ESTATES. SUCH A PROCEDURE OF EMINENT DOMAIN WAS USED BY FEDERAL AUTHORITIES TO OBTAIN THE GUN ASSERTEDLY USED BY LEE HARVEY OSWALD TO KILL PRESIDENT KENNEDY IN 1963. THE GOVERNMENT PAID THE VALUE OF THE GUN TO A PRIVATE INDIVIDUAL WHO HAD BOUGHT IT, RETAINING THE WEAPON FOR U.S. ARCHIVES.

ABOVE ALL, WE MUST NOT ALLOW THE TAPES AND DOCUMENTS TO BE DESTROYED, SELECTIVELY OR COLLECTIVELY. TOTALITARIAN NATIONS, INCLUDING NAZI GERMANY, HAVE BURNT BOOKS AND DOCUMENTS IN AN EFFORT TO DISTORT THE TRUTH. IN THE UNITED STATES, NO ONE SHOULD HAVE THE RIGHT TO ERASE THE FACTS OF HISTORY.

THE REASONS GIVEN BY PRESIDENT FORD FOR THE PARDON SHED INSUFFICIENT LIGHT ON THE MATTER. FIRST AND FOREMOST IS THE QUESTION, SPECIFICALLY WHAT CRIMES WAS NIXON PARDONED FOR? MR. CHAIRMAN, I WAS PLEASED TO LEARN OF YOUR RECENT LETTER TO PRESIDENT FORD ASKING FOR ELABORATION ON THE MATTER AND POSING ADDITIONAL QUESTIONS WHICH MUST BE ANSWERED. THE RESOLUTION OF INQUIRY INTRODUCED BY CONGRESSWOMAN BELLA ABZUG, IF ANSWERED WITHOUT EVASION BY THE PRESIDENT, WILL PROVIDE THE CONGRESS AND THE PEOPLE WITH INFORMATION VITAL FOR THEM TO MAKE INFORMED DECISIONS AND JUDGMENTS IN CRUCIAL MATTERS. SHE DESERVES OUR CONGRATULATIONS FOR HER INITIATIVES, AND I AM DELIGHTED TO BE A CO SPONSOR OF THAT RESOLUTION. I HOPE THAT THE RESOLUTION IS PASSED WITH RAPIDITY. IF THE PRESIDENT RESPONDS TO THE COMMITTEE'S LETTER, THE PURPOSE OF THE RESOLUTION WILL HAVE BEEN SERVED. THIS IS A MATTER WHICH REQUIRES IMMEDIATE ACTION AND WILL NOT TOLERATE DELAY.

HISTORY MUST RECORD THE TRUTH BEFORE THE MEMORY OF MAN FADES. THE PRESIDENTIAL PARDON BEFORE CONVICTION WAS, IN MY JUDGEMENT, WRONG, IF NOT ILLEGAL. THE CONGRESS MUST REAFFIRM THAT NO MAN IS ABOVE THE LAW, NOT EVEN A PRESIDENT AND HIS ADVISORS. I AM HOPEFUL THAT YOU WILL REPORT OUT LEGISLATION STATING THE SENSE OF THE CONGRESS IN THIS MATTER, AND GUARANTEEING ACCESS TO ALL THE FACTS AND RECORDS ABOUT THIS, ONE OF THE SADDEST EPISODES IN OUR HISTORY.

I AM REMINDED OF THE STATEMENT IN THE GETTYSBURG ADDRESS OF 1863 WHICH SAYS WE ARE A GOVERNMENT OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE. TODAY, THE PEOPLE WANT THE FACTS SURROUNDING WATERGATE, THEY ARE OWED THE FACTS, AND IT IS THE OBLIGATION OF THE GOVERNMENT TO PROVIDE THEM. THE PRESIDENT'S CONSTITUTIONAL POWER OF PARDON, IS NOT, I SUBMIT, UNLIMITED, AND THOSE WHO ABUSE IT MUST BE CALLED TO TASK.

Testimony of Honorable Stewart B. McKinney

Before the House Judiciary Committee, Subcommittee on Criminal Justice

September 24, 1974

Mr. Chairman:

I appreciate this opportunity to testify before your Committee on my bill, H.R. 16619, and companion measures introduced by my colleagues.

This opportunity to testify before you means all the more to me because I feel strongly that in the past months the concern expressed by so many Americans about the integrity and durability of our governmental and judicial institutions was answered by the visibly thorough, deliberate, relentless and, for the most part, non-partisan pursuit of the truth by the Members of this Committee throughout the impeachment proceedings. Your deliberations, seen as they were by all America, were a source of renewed confidence for the American people.

However, this confidence in our institutions and in the concept of equal justice has once again been brought into question by the controversial pardon of former President Nixon. I believe the interests of justice and mercy would have been better served if the question of a pardon had been held until a more complete account of the facts, attitudes and events which produced Watergate had been made public. However, this decision was the President's and his alone, and it is now fact.

It is my concern that the pardon may prematurely close the book on Watergate, thereby denying the American people their right to view and evaluate the



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first-hand data now in the possession of the Special Prosecutor and in the Nixon tapes. H.R. 16619, would instruct the Office of the Watergate Special Prosecutor to turn over to the Congress for inspection and eventual publication all materials, documents, and reports obtained, prepared and compiled by that Office in the course of its investigation of the administration of the former President. I have introduced this legislation in order to guarantee that the American people will be apprised of the facts as discovered by the Special Prosecutor regarding affairs in the White House from 1969 thru August 8, 1974.

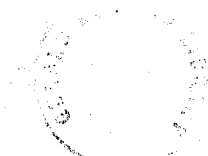
I consider the American people to be mature, wise, and fully deserving of complete and accurate information. When reliable data exists, as a result of intensive government investigation, we cannot ask the American people to accept second hand reports or historical interpretations of the events of this incredible period in our history. It is our responsibility and even more importantly our duty to provide every possible opportunity for each citizen to confront the unscreened facts not just to prevent the reoccurrence of these tragedies but also to enable each citizen to draw his own conclusion about the guilt or innocence of each participant.

Of course, I am aware that the rights of individuals who have been named or cited in the data sought to be made public, must be protected. There are a number of legal actions which are now or will be before the courts, and we must be vigilant in assuring that the release of the data will not



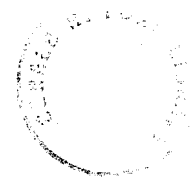
compromise the constitutional rights of the parties. Thus, I have included a provision in my bill which would provide for the release of this data to Congress only upon such time as the Attorney General of the United States shall determine that the parties who are named or any parties in related litigation have the full protection of the law. The factors which I hope would be taken into consideration in making this determination include the status of any criminal or civil litigation, its progress through the appellate process and a final determination by the highest court in which a litigant can proceed. These safeguards will refute claims that the release of these reports will prejudice the rights of those who are currently on trial for the offenses discovered by the Special Prosecutor.

The Office of the Special Prosecutor was established to investigate and prosecute offenses committed against the United States by those including, but not limited to, the White House staff, from 1969 to 1974. The Office was formally established by the President; however it was authorized and funded by the Congress. And any information discovered by such an investigation should be disclosed to the Congress. We are the watchdogs of this democracy. It is our responsibility to be aware of the activities of other branches of government and insure that these activities are in the best interest of the nation. This was the desire of the framers of the constitution when they included the system of checks and balances as a guiding principle for our government. Thus the information gathered must be revealed in order to allow us to properly accomplish this function.



I am not a lawyer but I am advised that Congress has the power to request this information from the Special Prosecutor under its investigatory powers which include the authority to make inquiries concerning surveys into defects in our social and political system for the purpose of enabling Congress to remedy them. In 1959, Justice Harlan stated, "The power of inquiry has been employed by Congress throughout our history over the whole range of national interests concerning which Congress might legislate or decide upon due to investigation not to investigate." The scope of the power, in short, is as penetrating and as far reaching as the potential power to enact and appropriate under the Constitution." Watkins v. U.S. 354 U.S. 178 (1957). In another case involving Congress' power to investigate into a situation such as exists today, the Supreme Court stated that the power of Congress to inquire into the Administration of an executive department and sift the charges of malfeasance in that administration was ratified in sweeping terms. (McGrain v. Daugherty, 237 U.S. 135, 1771 178 (1927)).

Experts on the subject of Congressional power further state that "the administrative function, that is the function of direction, supervision, and control of the administrative activities of the government resides in the legislative branch of the Government. Upon it falls the legal obligation to take such action as is necessary to insure that the several administrative organs shall be properly directed, supervised and controlled. (W.F. Willoughby, Director Brookings Institute). In Kendall v. U.S.



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(12 Peters 524, 1838) the Supreme Court affirmed a lower court case which gave Congress the power to impose certain duties upon the executive branch. The Court stated "But it would be an alarming doctrine that Congress cannot impose upon any executive officer any duty that they may think proper that is not repugnant to the Constitution, and in such case that duty and responsibility grow out of and are subject to the control of the law and not the president.

Thus Mr. Chairman I submit that the actions which this bill require are not beyond the powers of Congress. The legislative power of Congress encompasses the ability to seek information for the purpose of making the laws and for determining if the laws have been properly exercised. This bill will allow us to perform this important function.

Mr. Chairman, I would like to suggest two amendments to my bill which would eliminate any misunderstanding of its mechanical requirements. First, I think it should be made quite clear that the Congress does not expect the Special Prosecutor to turn over any grand jury minutes. This I believe would be a gross invasion on the Constitutional rights of the individuals who testify before the grand jury. The secrecy of the Grand Jury testimony must be maintained if we are to feel secure in our rights under our judicial system. Second, it is not necessary for the Special Prosecutor to release to Congress the original documents which he might have acquired through his investigation. Copies of such documents or tapes can be submitted in their place.

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This will prevent any litigation on the question of whether the Congress can maintain control of private property, such as private papers and tapes.

Finally Mr. Chairman, I would like to stress the necessity for a bill which provides for Congressional action. I firmly agree with the former Chief Justice Warren, who stated in *Watkins v. U.S.* (1957) that "there is no Congressional power to expose for exposure's sake". Given the circumstances which exist today, I believe that exposure which I have proposed is necessary not solely because Congress will be exercising its oversight function by being informed of what is happening in our government, but more importantly, to inform the American people of these acts in order to help identify and deal with them in the future.



TESTIMONY OF REP. BELLA S. ABZUG

HOUSE COMMITTEE ON THE JUDICIARY
Subcommittee on Criminal Justice
September 24, 1974

H. Res. 1367: An inquiry relating to Presidential pardon of Richard Nixon.

In behalf of myself and 13 co-sponsors, including members of the Judiciary Committee, I welcome this opportunity to appear before you to testify for our Resolution of Inquiry on the unconditional pardon of Richard M. Nixon.


Not since the storm of public reaction to the Saturday night massacre and the Nixon tape disclosure of August 5th that led to his forced resignation a few days later has there been such an overwhelmingly negative response by the American people to a White House action.

President Ford says the pardon was motivated, at least in part, by his desire to heal the wounds of Watergate. He clings to this rationale despite the clear evidence that this totally premature, confusing, and unprecedented pardon is opposed by a majority of Americans and is viewed as a further cover-up of Watergate.

The wounds have, in fact, been reopened, leaving to fester suspicions of White House deals, deception, abuse of Presidential power, and perhaps further blanket pardons of the Watergate culprits. Most wounding of all is what Mr. Ford's action has done to our concept of equal justice for all and the belief that the President is accountable for his actions and not above the law. This is the very concept that was supposed to have been reaffirmed by this committee in its impeachment proceedings and vindicated in Mr. Nixon's forced resignation.

It would be a disservice to that concept to leave unchallenged the many contradictory and self-serving statements that have been issued by the principals, their subordinates and others in this affair. Further, I believe the legality of both the pardon itself and the arrangement under which the tapes are to be returned to Mr. Nixon should be challenged.

The Congress and the Committee on the Judiciary have a primary responsibility to act in behalf of the American people on all aspects of these issues. I am aware that a number of resolutions dealing with these matters are before the committee. I will address myself here primarily to my Resolution of Inquiry, which is privileged and can be called up on the floor of the House within seven legislative days after introduction, and to some observations on the legality of the pardon.



I believe approval of the Resolution of Inquiry is a necessary step in an investigation this committee should conduct to determine all the facts in the events leading up to the issuance of the pardon. The American people have a right to know these facts. They have a right to get answers to their questions in an appropriate forum from witnesses under oath, instead of in speculative news stories and columns, television interviews and other publicized unsupported and contradictory comments by a host of people who have been involved in the pardon controversy in one way or another.

The response of the President to the questions propounded in the Resolution of Inquiry which was sent to him by the Chairman of this subcommittee reveals a nonserious and trifling attitude that demeans the authority and dignity of this committee and this parliamentary procedure. It is totally inadequate for Mr. Ford to respond by sending a batch of White House press releases and an accompanying letter.

I have in the past introduced a number of Resolutions of Inquiry which have been addressed either to the President or to members of his cabinet. This is the first time in my experience that there has not been a point by point specific response to specific questions even though in some cases I have not felt the answers to be satisfactory.

It should also be noted that this Committee is still operating under House Resolution 803, adopted on Feb. 6, 1974, which authorized and directed the Judiciary Committee "to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon."

The committee has not been discharged of this duty. The articles of impeachment voted out by the full committee were never debated or voted upon by the full House, despite its vote to accept the committee report. Incidentally, I said at the time that the House should vote on approving the articles of impeachment, instead of evading this issue, and I believe that events since then have shown it was a mistake not to do so. I would also note in passing that the House can still vote on impeachment, and if there is no other way to enter on the record books the political crimes for which Richard Nixon was forced to resign, then I believe the House should proceed to a vote.

Under Resolution 803, this committee is fully empowered to determine whether there is any new evidence relevant to the conduct in office of the former President.

My resolution requires the President to answer specific questions about the circumstances leading up to the pardon proclamation.

There are, of course, many other questions that can and should be asked of the President and others involved in this affair, and I have submitted to the chairman a list of those who I believe should be called before this

committee, including:

- President Gerald Ford
- Attorney General William French Smith
- Special Prosecutor Leon Jaworski
- Alexander Haig
- Benton Becker
- Philip Buchen
- Herbert J. Miller
- Ron Zeigler
- Dr. Walter Tkach
- Dr. John C. Lundgren
- Julie Nixon Eisenhower
- and Richard M. Nixon

But as a preliminary, it is vital that we get answers to the following questions from Gerald Ford:

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

2. Did Alexander Haig refer to or discuss a pardon for Richard M. Nixon with Richard M. Nixon or representatives of Mr. Nixon at any time during the week of August 4, 1974 or at any subsequent time? If so, what promises were made or conditions set for a pardon, if any? If so, were tapes or transcriptions of any kind made of these conversations or were any notes taken? If so, please provide such tapes, transcriptions or notes.

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

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

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

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

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

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

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

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

We need direct answers to these direct questions, answers that the committee can corroborate in the course of an inquiry and hearings. There are suspicions that Richard Nixon may have made a deal on the pardon with Gerald Ford before nominating him to the Vice Presidency. If Richard Nixon made Ford's elevation to Vice President conditional upon the promise of a pardon or even if Nixon conditioned his own resignation on a promise of receiving a pardon, then conceivably Mr. Ford could be charged with accepting a bribe, which is an impeachable offense. Grim as this possibility may be, it is nonetheless the duty of this committee to investigate the facts and make a determination.

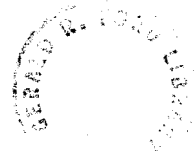
There are suspicions that General Haig, who reportedly was instrumental in convincing Mr. Nixon to resign, may have held out to him the promise of a pardon. There are suspicions arising from the belief that in the negotiations for the pardon, the roles appear to have been switched, with Mr. Ford acting as supplicant and Mr. Nixon dictating the terms of the pardon, the so-called statement of contrition, and the agreement on the tapes. There are grave questions as to whether, in issuing a pardon before Nixon was indicted, tried or signed a statement of guilt, Mr. Ford abused his pardon powers. And, of course, there are a multitude of questions about whether Mr. Nixon's physical or mental condition justified such an unprecedented pardon.

I make no judgment here as to whether these suspicions are justified. It is a fact, however, that they are widespread and only a full investigation by the Committee can either confirm some or any of them, or lay them to rest.

For more than two years the American people suffered the consequences of having a President who lied and misled them at every opportunity throughout the course of the Watergate investigations. The stability of our nation requires that the citizens be able to believe that their President is telling them the truth, at least most of the time. In the wake of the pardon, Gerald Ford has created an enormous credibility problem for himself and the Presidency. He is in a particularly vulnerable position because he is the first non-elected President in the history of our nation and because he was named to the Vice Presidency by a discredited and impeachable President. The Committee on the Judiciary which recommended confirmation and the Congress which confirmed his nomination also have a responsibility to the American people to investigate and report to them on the conduct of President Ford in connection with the pardon and the agreement on the tapes.

President Ford's own actions and many conflicting statements have added to his credibility problem. On August 28, 1974, in his first news conference as President, he advised the American public that he was not going to make any comment on a pardon "during the process of whatever charges were made." He further stated that it would be "unwise and untimely" for him to pardon Nixon before any charges had been brought against him. Yet, just two days later, on August 30, he asked Philip Buchen formally to study the presidential power of pardon. Furthermore, according to a report in the September 22 Washington Post, as early as Friday September 6 Ford had revealed to his staff his intention to pardon the ex-President. Thus it presumably took the White House less than a week to make a study of and reach a decision on this highly controversial and explosive issue.

The question naturally arises as to whether the President consulted fully on this question with Attorney General Saxbe and Special Prosecutor Jaworski to find out whether they considered legally valid a pardon, issued before indictment or trial, a pardon that the President himself described as unprecedented, and that did not specify the offenses for which the pardon was issued. The question also arises as to whether the President asked Saxbe or Jaworski what effect the pardon would have on the pending Watergate trial and other possible investigations, indictments and trials, or did he already have in mind what he later hinted at--a wholesale pardon for the entire Watergate gang.



In his pardon proclamation, President Ford made the prior judgment that Richard Nixon would be unable to obtain a fair trial, implicitly an attack on our judicial system, and also expressed his belief that "ugly passions would again be aroused" during the long period of delay before Mr. Nixon could be brought to trial. As we know, Mr. Ford has accomplished the reverse of what he said he intended to do.

Finally, President Ford inserted in his statement a sentence which said that "serious allegations and accusations. . .hang like a sword over our former President's head and threaten his health as he tries to reshape his life. . ." It is this factor that has become the subject of the widest speculation and conflicting reports. Did President Ford receive any new evidence in the interval between August 28 and August 30 indicating a change in Nixon's health--physical or mental?

I regret, of course, that Mr. Nixon is ill and has had to be hospitalized. The gravity of his present illness can no doubt be determined by court appointed physicians, as may be requested by Special Prosecutor Jaworski. Certainly, no one wishes Mr. Nixon ill health or physical punishment, and clearly he is suffering over his fall from enormous power. How could he feel anything but regret and anguish? But it is a mark of the man and his reputation for trickery and deceit that even now, people are questioning whether he is seriously ill or whether he has taken refuge in a hospital to escape testifying at the Watergate defendants trial, or to develop sympathy as a rationale for the pardon.

Most of the facts respecting Nixon's health were released following the pardon. They appeared to be a well-orchestrated after-the-fact attempt to protect the vitality of the pardon by promoting the notion that Nixon was grievously ill. We are all familiar with the alarming statements issued by Dr. Tkach, Mr. Nixon's personal physician. According to Dr. Tkach, the former President was a ravaged man who had lost his will to fight. However, after Dr. Tkach left San Clemente, communications director Kenneth Clausen spent three hours with the former President and said he seemed animated and in no visible pain.

Did Mr. Nixon's condition suddenly worsen after the pardon? Or did Mr. Ford receive new information about Mr. Nixon's health after his first news conference? The American people have a right to know. Certainly their deep sense of compassion and fair play should not be played upon, if the facts do not warrant it.

Finally, beyond the questions raised in my Resolution of Inquiry, I believe the Judiciary Committee should support efforts to obtain a legal test of the validity of the pardon. I have already called upon Attorney General Saxbe and Mr. Jaworski to make such a test possibly by proceeding with an indictment of Mr. Nixon, if the evidence so warrants, and I would like to state my reasons.

I disagree with those who claim the pardon was a constitutional exercise of presidential power and cannot be overturned. President Ford himself asserted in his statement announcing the pardon that "there are no historic or legal precedents to which I can turn in this matter," and there is already serious debate within the legal community as to the constitutionality of Ford's granting a pardon before formal charges were filed and without a formal admission of guilt from Mr. Nixon.

Defenders of the pardon are on weak ground in citing as authority for it an 1867 case -- Ex Parte Garland 71 U.S. 33 -- a 5-to-4 U.S. Supreme Court decision in which the written opinion explaining the ruling said--

That a President's discretion to pardon is unlimited and extends to every offense known to the law, and may be exercised at any time after . . . commission (of the crime) either before legal proceedings are taken, or during their pendency or after conviction and judgment.

This language is dictum, was not crucial to the decision in the case, and does not constitute a precedent.

Moreover, the impact of the Garland case has been eroded for a number of reasons, principle among them being that Garland received a grant of amnesty rather than a pardon. As you will recall, Garland, who had been a Senator in the Confederate Government during the Civil War, was granted a blanket Presidential amnesty, which applied to all crimes that may have been committed during the war.

The courts have come to draw a distinction, not drawn by the Garland court, between amnesty and pardon, and this is a significant distinction as it relates to individual admission of guilt.

The phrase "reprieves and pardons" as used in article II, section 2 of the Constitution has been interpreted as a phrase of art including within its purview reprieves, commutations, pardons, both conditional and unconditional, and amnesties (Lupo vs. Zerbst, 92 F2d 362, 365 (CA 5th 1937)).

The Supreme Court has recognized that "amnesty and pardon" are distinct and different. In an 8-to-0 ruling in Burdick vs. United States, 236 U.S. 79, 94-95, it stated that they "are of different character and have different purposes. The one--amnesty--overlooks offense; the other--pardon--remits punishment. The first is usually addressed to crimes against the sovereignty of the State, to

political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infraction of the peace of the State. Amnesty is usually general, addressed to classes or even communities, a legislative act, . . . the act of the supreme magistrate."

When the Burdick case went to the Supreme Court, the justices were asked to rule on whether the President had the authority to pardon Burdick before he had been indicted. The court, however, ruled on another issue, whether Burdick could decline the pardon. Stating that a grant and acceptance of a pardon "carries an imputation of guilt; acceptance a confession of it," the court held that an individual does not have to accept a pardon.

The need for either a confession or judgment in a pardon case is evident from the language of the Constitution itself: the power to grant pardons only goes to "offenses." Without either a confession or at the very least an indictment, there is no offense. Richard Nixon has made no confession or admission of guilt and there has been no indictment. Instead, in collaboration with President Ford, he has made a statement of "contrition" which is a religious rather than a legal concept.

The first case examining the power of the President to pardon was United States v. Wilson, 32 U.S. 150 (1833). The question involved there was whether it was necessary for an individual to accept the pardon in order for it to become effective. The court held that it was, and that a pardon was without effect if the person refused it. Under this decision, it was also held that a court cannot take judicial notice of a pardon unless it is pleaded in court.

It would appear from this ruling that the Watergate grand jury is free to proceed with an indictment of Richard Nixon, as it had indicated earlier that it wished to do. The court does not have to take notice of President Ford's pardon of Richard Nixon unless Mr. Nixon pleads it in court. If he should plead that he has been pardoned, he would have to state for which offenses he has been pardoned.

Special Prosecutor Jaworski has stated that the Presidential pardon of Mr. Nixon preempts any Federal legal action against him for the period covered by the pardon. However, as demonstrated in my testimony, not only is the legality of the pardon open to serious doubt, but also the pardon itself neither precludes nor preempts grand jury action. Consequently, I would strongly urge that the grand jury proceed with an indictment, if the facts warrant it, and that Special Prosecutor Jaworski or Attorney General Saxbe sign it, so that the

American people may be assured that the system of equal justice prevails and so that the groundwork may be laid for a court test of the constitutionality of President Ford's action.

If it is shown that the pardon was intended to prevent an indictment or a trial, contrary to the President's stated reasons for the pardon, and if it is shown that the agreement on the tapes was intended to prevent further information from becoming public, then these actions might well be construed to be an abuse of power by President Ford and/or an obstruction of justice.

In view of the President's unresponsive reply it seems to me that the subcommittee has no alternative but to act favorably in reporting this Resolution of Inquiry to the full committee with the recommendation that the full committee likewise report it out favorably to the floor.

I would also hope that the full committee would support and initiate efforts to investigate the validity of the agreement concerning the tapes and take appropriate steps to preserve this valuable evidence in whatever way it deems possible.

The committee should also support the resolution which suggests that the House go on record favoring the grand jury going forward with the indictment and Mr. Jaworski signing it.

The committee should also consider lending its support to a legal challenge as to the validity of the pardon.

I want to thank this committee for its consideration of this matter and for agreeing to have me come to testify before it.

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Legal authorities on pardon, cited to President

No formal written opinion was provided to the President, but I reviewed ^{for him} legal precedents, including a comprehensive review of court decisions and ^{examples of pardons under} precedents the U.S. Constitution which had been ^{mainly} prepared by Solicitor-General ^(although this dealt with class pardons before indictment or conviction) Wm. H. Taft in 1892. Principal decisions reported on to him were Ex Parte A. H. Garland, 71 U.S. 366 (1867) and Burdick v. U.S., 236 U.S. 79 (1915). The latter involved an individual pardon before indictment. Numerous other court decisions authorities were checked but not reported on to the President. I did point out that ~~the~~ under certain state constitutions, the pardon power could be exercised only after conviction, but that was because of ^{an} express limitation which is absent from the U.S. Constitution.

A copy of a legal memorandum prepared by ~~Special Prosecutor~~ for the Special Prosecutor by Richard Nixon's attorney was given me in a preliminary draft after the pending pardon decision was disclosed to such attorney. A final draft as filed ^{earlier} was distributed to the press on September 10, 1974. Decisions dealt with in that memorandum related to the effect of pre-trial publicity on due process requirements for a fair trial by an impartial jury, particularly in reference to Mr. Nixon's ~~own~~ situation. The decisions cited supported the opinion to me of the Special Prosecutor as to the delay required before a trial of



the former President could have been held,
but I believe that opinion was issued
before the legal memorandum had
been filed with the Special Prosecutor,

