

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

2 -----x  
3 IN RE: POSSIBLE VIOLATIONS :  
4 OF 18 USC 2511 and 2512 :  
5 -----x

24.2

6 Grand Jury Room No. 3  
7 United States District Courthouse  
8 3rd & Constitution Avenue, N. W.  
9 Washington, D. C.

10 February 5, 1974

11 The testimony of HENRY E. PETERSEN was presented to  
12 a full quorum of the Grand Jury.

13 BEFORE:

14 RICHARD BEN-VENISTE, ESQ.  
15 Assistant Special Prosecutor  
16 U. S. Department of Justice

17 GEORGE T. FRAMPTON, JR., ESQ.  
18 Assistant Special Prosecutor  
19 U. S. Department of Justice

20 JILL VOLNER  
21 Assistant Special Prosecutor  
22 U. S. Department of Justice  
23  
24  
25

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1 could not, in substance, bring himself to put it on paper  
2 because it would be a confession of Dean's own improper or  
3 illegal activities.

4           Was it your impression, or did the President indi-  
5 cate, that Dean had not, at the time that the President asked  
6 Dean to prepare such a report, provided information which  
7 would be incriminatory of Dean?

8           A     Well, I suppose I better give you -- I think that  
9 might be a fair inference but the President said, "Dean came  
10 in and told me all about these things. My goodness, that was  
11 the first time I heard. I sent him up to Camp David and told  
12 him, 'Sit down and write this out.' He came back and hadn't  
13 done it." Conclusion -- which was the President's -- "I  
14 suppose he was too involved to be able to do it."

15           "And, at that point, I asked Ehrlichman to sit down  
16 and get me the facts."

17           So there are two inferences. One that Dean was  
18 distraught and, two, that he was involved, and three, the  
19 President, now, couldn't rely on him because the President  
20 thought he was involved, in any event -- that's a possible  
21 third inference.

22           Q     Now, do you recall discussing with the President,  
23 at some time -- strike that.

24           I think you have testified earlier that the Presi-  
25 dent, at some time, indicated to you that Dean had been

1 promised immunity and that you had some discussion with the  
2 President about it. When did that take place?

3 A That took place in the telephone call on April 18th  
4 from Camp David and he was very upset and there were two --  
5 well, it kind of upset me, too, because one, the only impli-  
6 cations you could draw from that very forceful comment and  
7 conversation by the President was that, one, I did not know  
8 what in the hell was going on or, two, that I deliberately  
9 concealed information from him, neither of which made me feel  
10 very jolly.

11 And I undertook to check with Silbert & Company  
12 and Silbert checked with Silbert checked with Charlie Shaffer,  
13 Dean's lawyer, in order to make certain because the President  
14 -- this was important, not only because of what the President  
15 thought of me, which probably is of the least importance,  
16 but because of a major concern that if Dean was telling the  
17 President he was immunized, somehow or other we and the pro-  
18 secution had goofed, and goofed badly.

19 Q Was this a conversation in which the President,  
20 after you said Dean did not have immunity, said, "I have it  
21 on tape. Do you want to hear it?"

22 A That's right. That's right. That's correct. That  
23 was in a subsequent telephone call when I reported back to  
24 him.

25 Q Was there any indication that the President had

1 reviewed this tape?

2 A No. He said -- I told him and he said, almost as  
3 by way of explanation or almost apology for the strength of  
4 his statement, "Well, I have it on tape if you want to hear  
5 it." And I said, "No, I don't want to hear it. I take your  
6 word for it." But I didn't want to hear it because I didn't  
7 want to hear anything that came from John Dean other than  
8 we were getting from John himself.

9 But, in any event, you know, the other factor was,  
10 it's very awkward to say, "All right, Mr. President, I don't  
11 believe you. Let me hear the tape." And I didn't want to  
12 indulge that either.

13 Q Now, when was the first time there was ever any  
14 mention between -- in a conversation between yourself and  
15 the President of money paid to the Watergate defendants in  
16 a surreptitious manner, the source of which was either the  
17 Committee to Re-elect the President or the White House?

18 A My guess is -- and I can't specifically remember,  
19 first of all, but my guess is that we mentioned that money  
20 in connection with Ehrlichman's knowledge of the cover-up  
21 on April 15th but, in any event, it was sometime during that  
22 week.

23 But I think that was one of the items, April 15th  
24 or April 16th, that we had with respect to Ehrlichman. One  
25 of the few, at that point.

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1 might be raised among the Cuban organizations in Florida --  
2 passed through them, or what have you, I don't know -- but  
3 only in that sense.

4 I suppose I implied that it would be campaign funds  
5 that were be moving through front organizations in order to  
6 conceal their origins, but I can't attribute that statement  
7 to anyone.

8 Q Well, is it your recollection that the President  
9 implied, in this conversation, that it was from Dean that  
10 he first learned that such surreptitious payments were being  
11 made to the defendants?

12 A That's right. Yes.

13 Q Did the President indicate that he had spoken to  
14 various advisers concerning the question of the involvement  
15 of Haldeman and Ehrlichman and the related question as to  
16 whether to call for their resignations?

17 A Yes. Sometime early in that week -- well, this  
18 certainly was not April 15th, so it had to be the 16th. I  
19 don't believe I saw him on the 17th and 18th, and I did see  
20 him on the 19th, to my recollection.

21 So either on the 16th or 19th, he had indicated  
22 that he had discussed with Secretary of State Bill Rogers,  
23 who was a former prosecutor in New York, my conversation of  
24 the 15th with the President.

25 Q Did he mention anyone else?

1 A Discussing it with any other adviser?

2 Q Well, specifically, with Mr. Wilson or Mr. Strickler?

3 A No. He asked me did I know Wilson and Strickler  
4 and I indicated yes, that I did know them. I thought highly  
5 of them as lawyers. But my recollection is it was after  
6 they were retained and I gathered, from the President's com-  
7 ment, that he was present at the time when Wilson -- whether  
8 Strickler was present or not -- had debriefed Ehrlichman  
9 and Haldeman under, I gather, rather rigorous-style cross-  
10 examination.

11 Q And at least Mr. Wilson -- whether Haldeman and  
12 Ehrlichman were present at the time, you got the impression  
13 from the President that Mr. Wilson had communicated the in-  
14 formation he had learned to the President?

15 A Well, I don't know. I assumed that, but I can't  
16 say the President told me that. But it was clear, one, from  
17 the President's comments that he had talked to Wilson. It  
18 was my inference that he had been present when Wilson ques-  
19 tioned those people.

20 But the same inference -- that inference doesn't  
21 necessarily hold. It may have been that Wilson was question-  
22 ing the President, you know. I don't know.

23 In any event, there was a conversation with Wilson.

24 Q This was in the context, though, of the President  
25 relating to you what he had attempted to do to learn the facts?



1           A     That it was necessary for him to learn all of the  
2 facts with respect to this matter so the President, or Head  
3 of State, would be able to take whatever action was appro-  
4 priate.

5           Q     Now, going back to the time when the President  
6 spoke to you, on the 18th, about whether or not Dean had  
7 been granted immunity. Aside from the President's constena-  
8 tion about not having been informed of a decision which he  
9 thought had been made and carried out, did he indicate any-  
10 thing about the substance of the question of immunity to Dean?

11          A     I'm not sure what you mean by "substance" in that  
12 context.

13          Q     That is the pros and cons of giving Dean immunity  
14 as opposed to his disappointment about not being advised.

15          A     No. There were those conversations but not at the  
16 time of that telephone call where he raised the question.

17          Q     Well, when you called him back and informed him  
18 that someone was mistaken and no such agreement had been  
19 arrived at, did he, at that time, reiterate his position  
20 or his various feelings on immunity?

21          A     No. At that time, we were three days beyond our  
22 earlier discussion with respect to immunity and I think that  
23 we pretty much had a meeting of the minds that this was a  
24 sober decision and I had to make it and I would take all of  
25 these factors into consideration.

1           So there was no further discussion, at that point,  
2 other than to say that my inquiry had confirmed through  
3 Charles (Jaffa) that we were in a negotiating posture. No  
4 immunity, either formal or informal, had been accorded and,  
5 indeed, that no stopple had been created insofar as grants  
6 of immunity was concerned.

7           Q     Did the President ever indicate to you, or discuss  
8 with you, the question of immunity for Ehrlichman or Haldeman  
9 and, specifically, the question of national security matters  
10 that either of the two might have been involved in which  
11 may have appeared to entail some criminal activity?

12          A     No. No.

13          Q     Back to that day on --

14          A     That would have been preposterous. I was in no  
15 mood to hear anybody discuss -- it's hard to second guess  
16 yourself and look back, or project what you might have done,  
17 but that's one of the things that I think would have caused  
18 me to get up and leave.

19          Q     Did the President ever indicate to you what he felt  
20 the so-called Hunt blackmail to entail on the blackmail side  
21 rather than on the money side? That is, on the information  
22 side that Hunt would divulge, if he were not paid?

23          A     Well, the implication is that Hunt would tell all,  
24 but whether that all would be correct or incorrect, there was  
25 never any basis to ascertain or confirm.

1 Q I take it you never did have a substantive discus-  
2 sion about what it was Hunt could reveal?

3 A No.

4 Q Did there come a time when the President requested  
5 that you put in writing the substance of the investigation  
6 up to any particular point?

7 A Well, there were two occasions. First, on April  
8 15th, after we gave him the oral statement, he asked me to  
9 put that in writing so that he would be certain of it. That,  
10 I did. That very brief statement has previously been made  
11 available to you.

12 At or about that time, maybe later in the week,  
13 he asked for a full exposition. Having got into it this far,  
14 he felt he needed all the information, and I said I would  
15 undertake to to try to do that.

16 I did go through the information but it was deter-  
17 mined that anything above and beyond that which I'd already  
18 given him was Grand Jury matter and, therefore, was not to  
19 be divulged.

20 On that score, I should say that that came up, as  
21 I recall, in the April 15th meeting, if I'm not mistaken.  
22 It was the President -- in the course of the President asking  
23 to be kept informed of these things, that he pointed out  
24 that he didn't expect to get Grand Jury information and we,  
25 of course, agreed to that. Which I thought was fortunate

1 because I'm not all certain that as President he's not en-  
2 titled to Grand Jury information from Government attorneys,  
3 if it's distributed in the course of their duties.

4 Q In any event, I take it you got back to the Presi-  
5 dent and told him that you could not provide him a more de-  
6 tailed report?

7 A That's correct, I did, and he accepted that. There  
8 was no discussion, argument, rancour, indignation, anything  
9 else -- and I gave him that "no" with some trepidation, I  
10 don't mind saying.

11 Q Now, aside from a detailed written report, did you  
12 provide all information to him, from time to time, about the  
13 progress of the investigation or the possibility of --

14 A From time to time, but it was very general, in the  
15 two weeks. For example, when he called about the immunity  
16 thing, he said, "Well, what else is new?" And I told him  
17 about the John Dean statement with respect to the Fielding  
18 break-in.

19 On another occasion, I told him about the conflict  
20 between Strachan and Magruder and we were trying to resolve  
21 it and, if Strachan developed into a witness, then we would  
22 have a prima facie case against Haldeman.

23 But it was in the context of what I describe as  
24 ultimate rather than evidentiary fact.

25 Q Was there some discussion about the scheduling of

1 of witnesses before the Grand Jury?

2 A Well, there was some discussion about the need for,  
3 you know -- "Hurry up and get this over with." "Yes. We'll  
4 make haste as reasonably as we can." But not specific wit-  
5 nesses, as I recall -- who was coming in, when, you know.

6 Well, you know, I hesitate over that one. If I  
7 would tell him something about Strachan, he might say, "Well,  
8 you've got to get this tied down. You've got to do this."  
9 In that sort of context.

10 Q In substance, in discussing Mr. Strachan and his  
11 potentiality as a witness, did you advise the President that  
12 if Mr. Strachan came around and told the truth that he would  
13 probably be able to provide evidence of criminal activity,  
14 linking Mr. Haldeman to those crimes?

15 A No question about that. I mean, I made it pretty  
16 clear, "Well, you have a reservation about Dean. Okay. But  
17 then there's Magruder and, if Strachan comes through, Halde-  
18 man's dead." You know, that was --

19 Q When do you recall that this took place?

20 A I think this started around September -- whatever  
21 that month was.

22 Q April?

23 A April 15th.

24 Q Do you recall having a telephone conversation with  
25 the President on the evening of April 15th?

17 Q But, in any event, during the course of the April  
18 discussions, or shortly thereafter, there was no such sugges-  
19 tion?

20 A No, never. Absolutely not. Oh, well -- you know,  
21 absolutely not, absolutely not, as far as I was concerned,  
22 but there were statements, during the course of the President's  
23 conversations with me, "Now, you'll have to serve as White  
24 House counsel," or, "You're the adviser to the President now,"  
25 which I, frankly, thought was a little heavy handed.

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1 Q Did that have any meaning of any substance or pro-  
2 cedural import?

3 A I thought it was sheer unadulterated flattery is  
4 what I thought it was, but it was not in any context of pro-  
5 mise, formal assignment, leaving my duties.

6 Q There were no strings attached, I take it, in terms  
7 of communication of information or anything along those lines?

8 A Well, I don't think so, but I don't know what you  
9 mean by strings attached in terms of communications. "You  
10 tell me this; I'll give you that," no.

11 Q In terms of your being a White House counsel, if  
12 that were the case -- and, of course, we're kind of talking  
13 hyperthetically through all of this, since you said it didn't  
14 make much difference to you what he said, because you regarded  
15 it as flattery, but was there any concept of confidentiality  
16 of communication or of a knowledge that you had obtained from  
17 some source?

18 A You mean, "You and I stick together, buddy. I'll  
19 make a big man of you"? No. Uh-uh.

20 Q No. I wasn't implying that. I was implying the  
21 possibility that, if you were counsel to the President and had  
22 learned certain information, there might be an attorney-client  
23 privilege to which would not maintain just wearing your  
24 Department of Justice hat. I take it there was no such dis-  
25 cussion?

1           A     No, no.  Indeed, I never thought of myself as any-  
2 thing other than Assistant Attorney General in the Department  
3 of Justice who was trying to advise the President of informa-  
4 tion I thought he should probably be advised of, so that he  
5 could take the necessary action to protect the Presidency of  
6 the United States.

7           Q     Was there ever a discussion about convening a new  
8 Grand Jury to present this information to, as opposed to this  
9 Grand Jury before which you are now appearing?

10          A     Not to my knowledge, no.

11               THE FOREMAN:  I just want to extend something, in Mr.  
12 Ben-Veniste's investigation.

13               Your testimony is that you were never approached,  
14 directly or indirectly, by intimation, that, in view of your  
15 understanding of the investigation or possession of a great  
16 deal of factual information, as far as this investigation was  
17 concerned, that you should, in a sense, not necessarily switch  
18 sides, but work more in conjunction with the plans of the  
19 President's lawyers rather than the Department of Justice?

20               THE WITNESS:  No, there was not.  But, you know,  
21 this debate goes on and it's a very, very difficult debate.  
22 The Department of Justice, as an institution, you know, has  
23 a duty, an obligation and responsibility of representing the  
24 Presidency.

25               And the Presidency is something, obviously, larger

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1 than the incumbent. And it seems to me that we debate this a  
2 least weekly even now.

3 The question of the subpoena on the President, for  
4 example, out of the local case. The White House wanted us to  
5 represent them. The Criminal Division, the Associated Genera  
6 Office, they didn't care who, and we had to decline. And  
7 yet, in declining, we had to recognize that we do have an  
8 obligation to represent the Presidency.

9 So the middle ground that we arrived at is that if  
10 there's an adverse decision, we will appear amicus in the  
11 Appellant Court but we will not represent the White House as  
12 a party to the proceedings.

13 So, too, with respect to the decisions on the sub-  
14 poenaes by the Ervin Committee. The request was made that  
15 Bourke appear on the five tapes of conversations in the  
16 District Court and, Bourke being the Solicitor General, we  
17 refused, again, on the same ground. But we might, later,  
18 have to file brief amicus again to represent the Presidency  
19 with respect to the 500 or so documents subpoenaed by the  
20 Ervin Committee -- the same debate, the same resolution.

21 These are terrible questions. We do represent the  
22 legal office for the President and the Government of the  
23 United States.

24 THE FOREMAN: My question was less towards the De-  
25 partment of Justice Criminal Division or you, as Assistant

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1 Attorney General, than Henry Petersen as a lawyer who knows.

2 THE WITNESS: Would quit and represent them? No.  
3 Indeed, I couldn't do that. That's a clear professional con-  
4 flict of interest. They may not recognize it, but there are  
5 a lot of things they apparently don't recognize.

6 THE FOREMAN: I was asking for your reaction. My  
7 question was asking if the subject had ever been broached to  
8 you by anyone.

9 THE WITNESS: No. The only offer -- that's not  
10 correct. The only statement that was ever mentioned or made  
11 by the President, which I felt was indiscreet and I mention  
12 it only in -- I'm not sure that it's really germane -- I  
13 think was on one of the occasions he asked me would I like  
14 to be Director of the FBI, and then he went on and talked  
15 for about fifteen minutes and I indicated that that was not  
16 one of my ambitions.

17 If I became Director of the FBI, that was fine; if  
18 I didn't, that was fine, too; and that's the way we left it.  
19 But that having come subsequent to the disclosures with res-  
20 pect to Judge Matt Burn, I thought it was an indiscreet thing  
21 to say.

22 But I have to say that he was quick to say, "I'm  
23 not offering you the job."

24 BY MR. BEN-VENISTE:

25 Q When was this?

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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IN RE: POSSIBLE VIOLATIONS :  
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18 USC 2511 and :  
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United States District Courthouse  
3rd & Constitution Avenue, N. W.  
Washington, D. C.

August 23, 1973

The testimony of HENRY E. PETERSEN was taken in  
the presence of a full quorum of the Grand Jury.

BEFORE:

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1966

1 that business about Dean coming to him. But in relation to  
2 his disappointment in Dean, and Dean's having kept him posted  
3 on this, and this came at or about the March 21st thing.

4 I gathered from the President's conversation -- I  
5 hate to talk about the President when you're talking about  
6 your own impressions of what he said or did. But I gathered  
7 this was the precipitating thing that brought John Dean into  
8 him.

9 His orders to John Dean were to go up to Camp David  
10 and write this whole thing out. He said, "Tell me what it's  
11 all about", and this was his discomfort about being informed  
12 of this, and not knowing it beforehand.

13 I gathered it was this fact, this demand, this  
14 million dollars, or whatever it was that was requested, that  
15 triggered Dean's concern.

16 Q Did there come a time when you discussed with the  
17 President the subject of immunity for Mr. Dean?

18 A Yes. Those discussions began on April 15th. The  
19 President really didn't have any clear understanding of immu-  
20 nity, so we had to tell him basically what the law was and how  
21 the statute was written and in whom the authority was vested,  
22 and his concern was, one -- I suppose it was a concern for  
23 image. He didn't want it to appear that high echelon officials  
24 in the White House were being immunized. He was afraid that  
25 would look like a cover-up, particularly if it was done by

1 other relatively high Administration officials, and I indicated  
2 that I shared that concern. I certainly had no desire to  
3 immunize principals.

4 That was a factor that we would have to take into  
5 consideration, but we might very well have to immunize John  
6 Dean, and if so, then I reserved the right to do it, and it  
7 was my responsibility and there was no way he could relieve  
8 me of it.

9 We discussed that back and forth for about two or  
10 three days. We finally reached the agreement that those were  
11 factors I should take into consideration, but the judgment was  
12 mine.

13 Q Excuse me, Mr. Petersen. What was his initial re-  
14 action to the question of immunity?

15 A Well, he was concerned that Dean was falsely accusing  
16 others to exculpate himself. That was one concern. The other  
17 concern was the public imagery involved.

18 Q The others were Mr. Haldeman and Mr. Ehrlichman?

19 A That's right.

20 Q And Mr. Nixon voiced his concern that Mr. Dean might  
21 be doing that, and in that context indicated that he did not  
22 want Dean immunized?

23 A That's right. Well, that he did not want Dean immun-  
24 ized -- it never got that strong because I put it to him rather  
25 boldly. "There's not any way", said I, "that you can take this

1 responsibility from me. No matter what you say or do, I'm  
2 the only one who can make the decision. I'm the only one  
3 that's going to be held responsible and it's not going to  
4 serve me to say that you said do this or do that. I'm going  
5 to have to decide it on the merits as best I see it."

6 He finally agreed to that.

7 Q And on the 18th did you have a discussion with  
8 respect to immunity?

9 A Yes. I received a telephone call from the President  
10 and he was rather angry. He said, in effect, "You told me  
11 that Dean wasn't immunized and now I know that he is, and I  
12 know that he is because he told me."

13 I said, "Well, that simply isn't so." I guess that  
14 Presidents don't like you to say that it simply isn't so. The  
15 conversation got nasty and it made me uneasy.

16 I said, "Well, I'll double check on it, but I know  
17 that it isn't so."

18 I got in touch with Earl Silbert and I said, "Earl,  
19 this is what he says. He says that he has it on tape and he  
20 offered to let me listen to it and I told him I didn't want to  
21 listen to it."

22 Q — You left that part out of the conversation. I'm sorry,  
23 Mr. Petersen. The President indicated that he had it on tape?

24 A Well, he said, "I know it's so." I said that I  
25 thought that was wrong, and he said, "Well, I have it on tape."

1 Do you want to hear it?" I said, "No, I'll accept your word  
2 for it. If you tell me that's what Dean said, I'll accept it,  
3 but I think that's wrong. I don't see that he has any reason  
4 -- he has not been immunized, and I'm the one that has to  
5 exercise the authority and I know I haven't exercised it, but  
6 I will check."

7 I asked Mr. Silbert to get in touch with Charlie  
8 Schaffer, and Earl called me back later in the evening and  
9 said, "Mr. Schaffer confirmed our understanding was correct,  
10 that we were simply negotiating for immunity and no immunity  
11 has been conferred either formally or informally."

12 I called the President back and told him that, and  
13 that seemed to reassure him. It certainly reassured me. At  
14 least he didn't think that I was misleading him, and I guess  
15 that was my real concern at that point.

16 He said, "What else is new?" I said, "I got this  
17 report that Liddy and Hunt burglarized Fielding's office."

18 Q Can I interrupt you for a second with that? Is this  
19 the first that you had ever heard in this investigation of the  
20 President or his agents tape recording any conversations?

21 A Yes, but it didn't surprise me.

22 Q I'm sorry. Go on.

23 A With respect to the second part of this conversation,  
24 I would be surprised to learn that a chief of state did not  
25 record conversations and I assumed when I spoke with him that

1 our conversations were being recorded.

2 In any event, he said, "What else is new?", and then  
3 I dropped the next bombshell. It was that Dean had informed  
4 Silbert that Liddy and Hunt and company had burglarized Dr.  
5 Fielding's office who was Ellsberg's psychiatrist.

6 The President said, "I know about that. That's a  
7 national security matter. Your mandate is Watergate. You  
8 stay out of that."

9 I said, "Well, I have caused a check to be made, and  
10 we don't have any information of that nature in the case." I  
11 said, "Do you know where there is such information?", and he  
12 said no.

13 He said, "There's nothing you have to do." Then I  
14 got off the phone.

15 I called Mr. Silbert and told him what the President  
16 had said. I guess he was kind of upset about it. He just kind  
17 of grunted or groaned. I said, "Well, Earl, that's it."

18 Then I called Mr. Maroney and told him to -- Mr.  
19 Maroney is the Deputy Assistant Attorney General who has the  
20 Internal Security Section which had the Ellsberg case under  
21 his jurisdiction.

22 Without referring to the President, I told him to  
23 forget about it, that it was easier handled -- because Maroney  
24 had previously recommended that it was not necessary to make  
25 a disclosure of the facts to the trial court on what he