

SUMMARY OF EVIDENCE - PREPARED FOR A. COX  
AUGUST 1973 BY GEO. FRAMPTON

(NO COPY OF TRANSMITTAL AVAILABLE, ..THIS IS  
A DRAFT - WHICH EVENTUALLY WAS GIVEN TO  
L. JAWORSKI) - PER SALLY WILLIS 6/21/76

I. Pre-June 17 Knowledge of a Planned Break-In and  
Bugging at the DNC Offices at Watergate

SYNOPSIS:

Although the CRP intelligence operation of Liddy and Hunt was known to and approved by the leadership of the CRP and probably by H. R. Haldeman, there is no direct evidence that the President himself knew about the program, or if he did that he knew that it contemplated an illegal break-in and wiretapping of the DNC Headquarters. However, ~~there is~~ circumstantial evidence and coincidences ~~that~~ suggest that the President may well have been aware, at least, that the CRP was mounting a "sophisticated intelligence program" - - including covert operations and campaign disruption - - with a budget in the area of \$300,000.

FACTS:

There is testimony, particularly that of Hunt and Dean, that Liddy's transfer from the White House staff to the CRP to head a large-scale intelligence program ~~there~~ was contemplated in the White House as early as November 1971. Liddy in fact made the move in December, and almost immediately began to receive large cash payments from Herb Porter for intelligence activities. Together with Hunt, Liddy drew up a draft plan and budget for this program of one million dollars. This plan, together with a "pared down" version of the same program at a budget of a half a million dollars, was discussed in meetings in January and February 1972 in Mitchell's office attended by Mitchell, Liddy, Magruder, and Dean.



A final version, at about a quarter of a million dollars, was approved about March 30 in Key Biscayne by John Mitchell, during a meeting attended by him, Magruder, and Fred LaRue (though LaRue's testimony is equivocal, and Mitchell denies approval). According to Magruder, the approved program had two primary targets - the DNC headquarters and the Democratic candidate's offices - - and included illegal entry and wiretapping.

Magruder communicated this approval to his aides. Furthermore, shortly thereafter, Liddy sought a cash disbursement of \$83,000 on the basis of the new budget approval, which disbursement was made by Hugh Sloane after clearing <sup>ance</sup> ~~ing~~ it with Magruder, Stans, and Mitchell. This money, and two other disbursements, <sup>was</sup> ~~were~~ used by the Watergate defendants to buy equipment and effect two entries into the DNC.

Shortly after the Key Biscayne meeting, Magruder sent papers to Gordon Strachan indicating that Mitchell had approved the program. Strachan prepared a talking paper for a Mitchell-Haldeman meeting on April 4 which included the fact that CRP ~~now~~ <sup>operational</sup> had a "sophisticated intelligence plan at 300". Mitchell and Haldeman did in fact meet April 4 to review the various campaign decisions made at the Key Biscayne meeting, and the two met the same day with the President.

#### ANALYSIS:

The President has stated that he "had no prior knowledge of the Watergate operation." (check this quote) (May 22, 1973, public statement)

This is a considerably narrower statement of his position concerning his prior knowledge of and White House involvement in the Watergate matter than any of his preceding statements.

For example, in his first public statement following the arrests on June 17, the President said in response to a question that "the White House has had no involvement whatever in this particular incident." (6/22/72 press conference) At a subsequent press conference on August 29, 1972, the President stated that under his direction, John Dean had conducted a complete investigation of all leads which might involve any present members of the White House staff or anybody in the Government. The investigation "indicates that no one in the White House staff, no one in this Administration, presently employed, was involved, in this very bizarre incident." (8/29/72 press conference, p. 1-2). The President also explained that CRP was conducting its own investigation, and that Clark MacGregor had assured <sup>the President</sup> ~~Nixon~~ that anyone who fails to cooperate or "against whom charges are leveled where there is a prima facie case where those charges might indicate involvement will be discharged immediately. That, ~~also~~, is true of anybody in the Government." (8/29/72) (press conference, p. 2).

The President reaffirmed the results of Dean's investigation in March 1972, when he stated: "The investigation conducted by Mr. Dean, the White House Counsel, in which, incidentally, he had access to the FBI records on this particular matter because I directed him to conduct this investigation, indicates

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that no one on the White House staff, at the time he conducted this investigation - that was last July and August - was involved or had knowledge of the Watergate matter." (3/2/73 press conference, p. 12.)

While these earlier statements tended to deny any "knowledge" of or "involvement" in the whole matter by White House officials (or the President), the May 22, 1973, statement does not constitute a denial that the President was at least aware of the Liddy intelligence operation, and possibly with its intended targets.

There is some circumstantial evidence to suggest that the President was at least aware of a "sophisticated intelligence plan" being mounted by the Committee to Re-Elect the President, at a budget in the neighborhood of \$250,000 or \$300,000:

1.

Magruder says that both Dean and Strachan called Magruder shortly thereafter to urge that a way be found to keep Liddy on, because of the importance of Liddy's intelligence duties. (Magruder GJ:SC) Strachan told Magruder that the President was aware of the program and thought that it was important that the program go forward. (Check Magruder GJ; Dean SC; Strachan denies it.)

2. In mid-February 1973 Magruder told O'Brien that Magruder had received final authorization for Liddy's plan from Strachan, and Strachan reported to Magruder that Haldeman had cleared the plan with the President. (Can Magruder corroborate?) O'Brien

reported this to Dean, according to Dean, who reported it to Haldeman. Dean says it was after this that White House efforts to find a job for Magruder were redoubled, and Haldeman assigned Higby to that task. (Dean Statement 178)

3. Following the March 30 Key Biscayne meeting, Strachan listened in on a phone conversation between Haldeman and Mitchell during which a meeting was arranged for Mitchell with Haldeman April 4. Strachan has said he prepared a talking paper for that meeting which included the "sophisticated intelligence plan at 300," and that he assumes that matter was covered since Haldeman never said anything further about it. (Strachan SC) In fact, on April 4, Haldeman and Mitchell met with the President, according to White House logs, from \_\_\_\_\_ p.m. til \_\_\_\_\_ p.m. Haldeman has testified about that meeting in his opening Senate Committee statement. Haldeman claims the Presidential meeting included ITT matters and other political decisions reached by Mitchell at the March 30 Key Biscayne meeting (re assignment of regional coordinators) but did not include the intelligence plan.

4. Colson had an active interest in Liddy's plan, according to both Hunt and Magruder, but nothing is known about what Colson may have communicated to the President on this.

5. When Alex Butterfield was informed of the fact that Hunt's name was found in connection with the arrests on June 17, he called Kehrli to ascertain Hunt's status. Kehrli told Butterfield Hunt's name was not listed in the official and complete book of all WH employees (of which there were only three

copies) because Kehrli has been instructed by Haldeman that Hunt was on a "hush-hush" project and thus Hunt's name should be kept out of the book. (Butterfield Witness Interview)

6. The likelihood that the President had pre-June 17 knowledge of the Liddy intelligence plan is also premised on the atmosphere created in the White House, about which Dean testified:

"The Watergate matter was an inevitable outgrowth of a climate of excessive concern over leaks, an insatiable appetite for political intelligence, all coupled with a do it yourself White House staff, regardless of the law." (p. 1, Deans statement).

Specific programs and action that corroborate this atmosphere include:

- a) The President's concern about and contempt towards even peaceful demonstrations;
- b) The "Enemies" list;
- c) The creation of the "plumbers" unit;
- d) The President's September 15, 1972, comment to Dean and Haldeman that Dean should keep a list of press people giving the Administration trouble, because, "we will make life difficult for them after the election;
- e) The President's conceded knowledge of a "special program of wiretaps" instituted in mid-1969 and terminated in February, 1971;

f) The President's 1970 internal security plan, which contemplated "surreptitious entry - breaking and entering, in effect - on specified categories of targets in specified situations related to national security," and which never went into effect because in the President's own words, "they were protested by Mr. Hoover;"

g) The creation of the Intelligence Evaluation Committee to improve coordination among the intelligence community and to prepare evaluations and estimates of domestic intelligence.

h) Misuse of the IRS against political enemies.

Mitchell, Richard Moore, and Ehrlichman have all denied that the President knew, prior to June 17, either about the break-in at the DNC or about general surveillance plans directed at the DNC and McGovern Headquarters.

(Get references)

II. Probable early knowledge by the President of the involvement of high White House and CRP officials in Watergate.

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SYNOPSIS:

The President has denied having any knowledge of any involvement by high White House or CRP officials in the Watergate operation (or cover-up) until March 1973. However, a series of meetings and contacts the President had with Haldeman, Ehrlichman, and Mitchell between June 17 and June 30 - - when viewed against the knowledge and activities of these three persons and the information that was being communicated to them by others such as Colson, Dean, ~~Mardian~~, LaRue, and Magruder - - strongly suggest that the President became aware early on of the involvement of all these persons in Watergate.

What follows is a combined "facts" and "analysis" setting out the events of this period.

FACTS AND ANALYSIS:

The President has said that he first learned about the Watergate arrests on June 17, from news reports. (4/30/73 public address, p. 1) He has not provided any further information about his knowledge of the details of the arrests between June 17 and June 20, <sup>on which day</sup> ~~when~~ we know from Ehrlichman's testimony and White House logs that the President met with both Haldeman and Ehrlichman.

The President was in Key Biscayne, with Haldeman, on June 17 and returned to Washington on the evening of June 19 (Monday). ~~We know that~~ <sup>As</sup> early as mid-day on June 17, Attorney General Kleindienst and Assistant Attorney General Petersen were appr<sup>o</sup>ised that one of those arrested was or might be employed by CRP or the White House, due to Liddy's approach to Kleindienst

(Peterson SC; Klein Dienst GT)

June 17 at Burning Tree. We also know that the FBI entered the case June 17, and discovered then or early June 18 that in the address book of one of those arrested was the White House number of Howard Hunt. Alexander Butterfield believes it was June 17 when he was notified by Al Wong of the Secret Service of Hunt's possible involvement. (Butterfield Witness Interview) We also know that Haldeman phoned Magruder in California, from Florida, at about noon Eastern time on Sunday, June 18. (Magruder SC; GT) What Haldeman learned from Strachan (or Higby, through Strachan), has not been determined. (Ehrlichman was in Washington, and according to him had no significant involvement til June 19.

The President met with John Ehrlichman and H.R. Haldeman, separately or together, from approximately 10:30 a.m. til approximately 12:45 p.m. or later on June 20, 1972. Apparently he met with Ehrlichman first, then with Haldeman from 11:30 til 12:45.

There is a substantial probability that the bulk of these meetings concerned Watergate for two reasons:

(1) This was the first opportunity following the arrests when the president would have had an opportunity for a full report on the case from all his top aides in the White House and Re-Election Committee who had knowledge about House and Re Election who had knowledge

about the events and the progress of the investigation.

The President, Haldeman, Mitchell, LaRue, and Mardian all returned to Washington late on June 19; Dean and Magruder returned to Washington late on June 18.



(2) The President's meeting(s) with Ehrlichman and Haldeman was immediately preceded by a meeting that began at 9 a.m. between Haldeman, Ehrlichman, and Mitchell, during which these three persons were joined by Attorney General Kleindienst and John Dean. (HRH, JE Logs)

Ehrlichman has testified that the main subject of the meeting from 9 a.m. to 10:30 was the Watergate matter and the knowledge of all those present about it. Ehrlichman has testified (Select Committee Transcript pp. 5358-70 and 5923-28) that the participants at the meeting discussed, among other things, their knowledge that Gordon Liddy, then General Counsel to the President's Re-Election Committee, Howard Hunt, a consultant to the White House, and James McCord, Security Director for the Re-Election Committee, were all deeply implicated in the watergate break-in and bugging. Ehrlichman has testified that he himself at this time was "unclear" but "actively concerned" about whether "the trail" led into the White House.

Ehrlichman has testified that he has no independent recollection of what he discussed with the President for 55 minutes at 10:30 a.m., but that upon refreshing his recollection with certain notes he is "certain" that the subjects of the meeting included "Government wiretapping" and Watergate.

It appears likely that Ehrlichman or Haldeman or both would have given the President a complete report on the Watergate matter during the morning because of the immediately preceding meeting between White House and CRP officials about Watergate and because, of the five who participated in the preceding meeting, there is sworn testimony that:

John Mitchell:

- approved the budget and targets of an intelligence plan that resulted in the break-in and bugging at Watergate; (Magruder GJ; SC)
- was aware of the entry into Watergate on or about May 28, 1972, and of the fruits of that entry; (Magruder GJ; SC)
- had participated in a meeting the preceding night, June 19, in his apartment where he himself proposed that documents at CRP that would be evidence of his and others' involvement in the break-in and bugging be destroyed. (Magruder GJ; SC; Laker GJ; Dean SC)

H.R. Haldeman:

- was aware prior to May 28, 1972, of the intelligence plan approved by Mitchell; (Strachen SC; Magruder SC)
- had on June 20 been shown by an aide materials in the files of Haldeman or his staff that would tend to prove Haldeman's foreknowledge, and ordered such material destroyed. (Strachen SC)

John Ehrlichman:

- had received on June 19 a full report from John Dean on the break-in and bugging based on an earlier Dean meeting June 19 with Gordon Liddy, a report that included Dean's and Mitchell's participation in meetings in January and February 1972 where budgets for the above-mentioned intelligence plan were reviewed; (Dean SC)
- had met on June 19 with Dean, Colson, and others to discuss the status of Howard Hunt at the White House and disposition of the contents of Hunt's safe, which there is sworn testimony to indicate Hunt had previously communicated that same day indirectly to Colson "was loaded"; (Hunt GJ)

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- had on June 19 heard discussion about orders to Hunt to leave the city or country;
- had, according to the sworn testimony of Dean, ordered that the contents of Hunt's safe should be "deep-sixed," i.e., destroyed.

Richard Kleindienst:



- had met on June 19 with Ehrlichman to discuss the Watergate investigation. (JE 1055)

John Dean: (Dean SC)

- attended the above-mentioned planning meetings with Mitchell and Liddy in January and February 1972;
- had met Liddy June 19 and received a full report on the break-in and bugging;
- had begun an investigation among officials of the CRP to determine the facts concerning the planning and financing of the break-in and bugging;
- had attended the meeting June 19 with Ehrlichman where Hunt's employment status and safe were discussed;
- had taken custody of the contents of Hunt's safe;
- had reported to Haldeman and Ehrlichman on some of his investigations.

In addition, by the time of these meetings on June 20, it had been determined in the White House that Howard Hunt had an office and safe, the safe had been opened on the night of June 19 by Kehrli and Fielding, and Dean had taken possession of the contents of the safe on the morning of June 20. According to the testimony of Dean and Kehrli, Dean was ordered to have the safe opened Monday evening by Ehrlichman. It appears likely that the fact of the safe became known to Ehrlichman and Colson on Monday morning when Hunt told Colson's secretary that his safe was "loaded," and asked her to pass the message along to Colson. (Hall denies this.) We have no testimony concerning when the President might have become aware of the contents of the safe, which were examined Tuesday afternoon by Dean and Fielding (while they were wearing rubber gloves); Dean reported on the contents of the safe to Ehrlichman late Tuesday, according to Dean. (Dean SC)

By the time the safe was opened, it appears there was action already underway to alter Hunt's personnel records to make it appear that Hunt had been formally terminated as a White House consultant about March 30, 1972. Participants in that scheme would appear to include Kehrli, Colson, and Richard Howard (Colson's deputy), but there is no evidence that either Ehrlichman or Haldeman would necessarily have known about it, or that the scheme would have been communicated by anyone to the President.

The President spoke to John Mitchell on the telephone on that same evening, June 20, from about 6:00 to 6:12 p.m.

Mitchell has testified to the full extent of his recollection about what was said during this conversation. (Senate Select Committee Transcript pp. 3407-08) Mitchell testified that the subject of the conversation was the Watergate matter and the investigation into it. Mitchell testified that he apologized to the President for not keeping a "tighter rein" on Re-Election Committee officials, in light of his knowledge that James McCord was one of those arrested on June 17.

It is probable that the subject of this telephone conversation was the Watergate matter and other illegal or covert activities engaged in by Howard Hunt and Gordon Liddy while employed by the White House for the following reasons:

(1) This was the first direct conversation between the President and Mitchell since June 17, 1972.

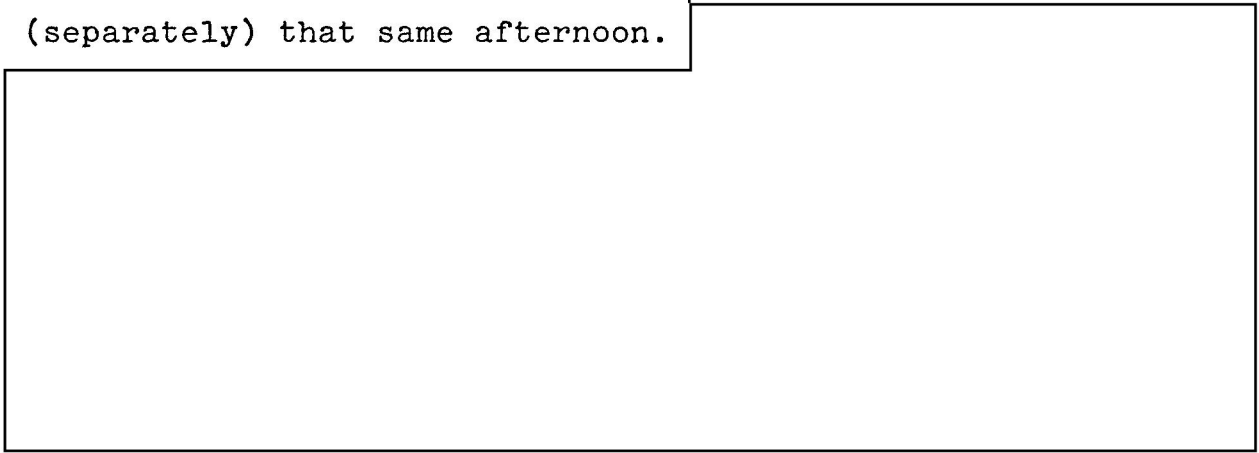
(2) At the time of this conversation, there is sworn testimony that Mitchell was possessed of all of the information mentioned above.

(3) In addition, at the time of this conversation Mitchell may already have been briefed by Robert Mardian and Fred LaRue concerning their conversation with Gordon Liddy in which Liddy related to them his involvement in the Watergate break-in and bugging, and his and Hunt's participation in the Ellsberg psychiatrist break-in in 1971 and other "White House horrors." (See Mardian GJ; SC; LaRue GJ; SC)

Mitchell has testified that despite all the information allegedly in his possession on June 20, he did not know of and did not communicate to the President anything concerning involvement of others besides the five men arrested in Watergate, and that the President never asked Mitchell directly, at any time, about the involvement of CRP or White House officials. (Mitchell SC)

John Mitchell's resignation as Chairman of CRP and his replacement by Clark MacGregor, was announced July 1, 1972.

The President met with Mitchell and Haldeman the day before, from 12:55 p.m. til 2:10 p.m. on June 30, and Mitchell has testified that his resignation was the sole subject of this meeting. The President and Haldeman also met with Kleindienst, MacGregor, and Colson (separately) that same afternoon.



Mitchell has repeatedly said and testified that the sole reason for his resignation was family problems, viz, his wife's desire that he remove himself from day-to-day campaign activities. However, his wife had made a public statement between June 17 and June 30 to the effect that she did not want to have any more to do with "dirty" things going on. *[Source NYTimes]*

Mitchell has also said that his resignation did not occur til June 30, but it is a strong possibility that his leaving the campaign was a result of Watergate, and that it was decided upon as early as June 20.

Despite Mitchell's testimony that the President never asked him - - and he never told the President - - about the involvement of White House or CRP officials in Watergate, there is a strong probability that such discussion did take place at this June 30 meeting, the tape of which we have subpoenaed. This was the first

time since June 17 Mitchell met directly with the President, alone or with others. On June 30 Mitchell not only had in his possession the facts referred to above but had also by that time:

- heard from Robert Mardian and Fred LaRue of the "confession" to them of Gordon Liddy concerning Watergate and the White House "horrors";
- learned from Hugh Sloan, Maurice Stans, Jeb Magruder, Robert Mardian, and others about the source of the funds used to finance the break-in and bugging;
- participated in a meeting with, among others, LaRue, Mardian, and Dean in which it was suggested or discussed that the CIA could be used to help block the FBI's investigation into Watergate;
- participated in a meeting in which it was suggested or discussed that the CIA could be used to supply funds to those arrested and to Liddy and Hunt;
- had suggested himself in a meeting attended by Dean, Mardian, and LaRue that Dean obtain Haldeman's sanction for employing Herbert W. Kalmbach to raise and distribute money to those arrested, Liddy, and Hunt.

### III. Attempted Use of CIA to Block the FBI Investigation

#### Summary:

Beginning June 22 and continuing til July 6, 1972, high White House officials attempted to impede the FBI's investigation into Watergate - - particularly into the source of the money found on those arrested July 17 - - by repeatedly representing that <sup>a</sup> vigorous FBI investigation might uncover <sup>(certain)</sup> sensitive CIA activities. This attempt was set into motion by Haldeman and Ehrlichman and continued by Dean at their request (according to Dean's testimony). It included direct representations to L. Patrick Gray by Dean and the importuning of the CIA by Ehrlichman and Haldeman to seek CIA's cooperation in obstruction of a full FBI investigation. The President is deeply implicated in this attempt because he has publicly acknowledged that he precipitated the events that subsequently occurred, and because on July 6 he received both indirect and <sup>then</sup> direct information from Gray that <sup>the President's</sup> ~~the~~ trusted aides had in fact been misusing the CIA and FBI in an attempt to impede the FBI's investigation, yet he took no action and made no further inquiry.

#### FACTS:

On Thursday, June 22, the White House arranged for Walters, Helms, Ehrlichman, and Haldeman to meet <sup>at the White House</sup> the next day. These four persons met at 11:45 a.m. The testimony of Walters and Helms is in substantial agreement that Haldeman and Ehrlichman spoke about Watergate causing problems with "the opposition" and of the <sup>(Helms GJ; Helms + Walters SC)</sup> embarrassment that would be caused. Haldeman also stated that the investigation was leading or could lead to a lot of people in high places, and could get worse.



Haldeman specifically directed Walters to meet with Gray immediately and communicate these matters to Gray, despite Director Helms' repeated protestations that CIA had no interest in those arrested at Watergate or the Watergate matter (a protestation Helms had made directly to Gray the previous day). Walters, at this time, had been at CIA only a few weeks and, according to Dean, was considered by Ehrlichman to "owe" his position to the present Administration. (Dean SC)

John Dean did in fact arrange a Walters/Gray meeting for later that day, and at that meeting was set in the first of motion a series of attempts by the White House to impede the FBI investigation. Dean, for example, requested urgent meetings with Walters on Monday, Tuesday, and Wednesday (June 26-28) following the Friday conference discussed above, and at each of these meetings urged Walters to help in preventing a vigorous CIA investigation. (Walters SC) Dean reported on each of these meetings to Ehrlichman and possibly Haldeman, and was told to "press Walters harder" when no success was initially achieved. (Dean SC)

Meanwhile, Dean was also making almost daily calls to Gray during which Dean requested that FBI interviews with Ogarrio, Dahlberg, and others with no CIA connections whatever be postponed or quashed. (Gray 6J, logs; FBI memos)

When Gray grew suspicious about these representations and requested a meeting directly with Director Helms, scheduled for June 28, the meeting was cancelled on the orders of Ehrlichman when Ehrlichman discovered the scheduled meeting the morning it was to take place. (Dean SC)

Finally, after Gray returned from a long Fourth of July weekend and was still unable to ascertain a satisfactory basis for these repeated requests, Gray notified Walters that he would have to have in writing a statement of CIA's interest by the morning of July 6 in order for the FBI to continue to postpone ~~certain~~ *following up the Dahlberg and Mexican leads* ~~interviews~~. Walters in fact met with Gray that morning at 10 a.m. and gave Gray a statement that indicated that no CIA activities would be jeopardized by a full FBI investigation. (Walters SC; Gray SC, GJ)

On July 6, immediately after meeting with Walters, Gray decided that the CIA had in fact been misused and that White House officials had been pressuring the FBI in bad faith to curtail certain investigative leads. Gray sought to get a message to the President to this effect, without going through Haldeman and Ehrlichman, by calling Clark MacGregor. Gray reached MacGregor in California at 10:51 a.m. EDT. Gray told MacGregor of Gray's concern about Watergate and about the misuse of CIA and the FBI by high White House officials. Gray asked MacGregor to convey this information to the President. Gray has testified to the substance of this call at length in the Grand Jury and Select Committee, and it is confirmed by his phone logs and his telephone operator, who remembers this particular call distinctly.

About one half hour later, the President called Gray directly from San Clemente, on the pretext of congratulating him on the FBI's success in stopping a recent hi-jacking. Gray then took the initiative and warned the President that his highest aides were "wounding" him, etc. [Gray has testified to the details of this conversation in the Grand Jury and the Select Committee] *[Quote Gray's testimony, expand this discussion.]*

ANALYSIS:

In his May 22, 1973, statement the President said, "Within a few days [of the break-in] I was advised that there was a possibility of CIA involvement in some way." However, the President has never explained who so advised him, or what he was advised, or whether he sought to confirm that advice directly with Director Helms or others at CIA.

According to the statement:

I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal-- and not at that time having any idea of the extent of political abuse which Watergate reflected -- I also had to be deeply concerned with ensuring that neither the covert operations of the CIA nor the operations of the Special Investigations Unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or activities of White House investigations unit -- and to see that this was personally coordinated between General Walters, the Deputy Director of the CIA, and Mr. Gray of the FBI. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way. (page 5 of Statement).

Other than the President's May 22 statement and the testimony of Haldeman that Haldeman was asked by Nixon to "inquire into" any "possible" CIA interest in the affair of those arrested, there is no direct evidence to ~~prove~~ *suggest* that the President actually ordered an attempt to use CIA to obstruct justice. Haldeman's testimony is consistent with the President's, but it is completely inconsistent with the testimony of Helms and Walters about what occurred at the June 23 meeting, inconsistent with the testimony and behavior of Dean through this period, and inconsistent with the representations made to Gray and Walters by Dean, Ehrlichman, and Haldeman.

Walters initially testified that he recalled that Haldeman had said at the June 23 meeting that it was the "President's wish" that Walters instruct Gray not to pursue the Mexican aspects of the investigation. However, Helms does not recall these specific words being used, and Walters shortly thereafter retreated from this testimony, claiming that this was being communicated to him by Haldeman.

We have no testimony about any other communications between the President and Ehrlichman or Haldeman during this period of time (during the latter part of which the President was in San Clemente), and we must inquire about this in the Grand Jury. [Analysis should <sup>also</sup> be made of the pattern of meetings the President had with his two top aides, before or after key meetings between them and Walters, and following Dean's reports to Ehrlichman or Dean's meetings with Walters.]

The "case" against the President in this area of the cover-up is based on his acknowledged role and the strong inference that the attempts mounted by his highest aides must have been at his direction. It is difficult to believe that despite representations of no CIA interest made by the Director of CIA to both Gray and, at the June 23 meeting, directly to Haldeman and Ehrlichman (a fact confirmed by Ehrlichman's Senate testimony), ~~the~~ <sup>aides</sup> White House would have persisted in such a strenuous effort <sup>affirmatively to involve</sup> ~~to misuse~~ the CIA without Presidential knowledge or approval.

It is worth noting that MacGregor denies the strong inference that MacGregor called the President on July 6 to alert him to Gray's concern. Indeed, MacGregor testified in the Grand Jury that he received Gray's call the night before, that Gray was tired or inebriated, and

that Gray never warned him as Gray claims but only spoke of the possible harmful effect of Watergate on the Republican campaign. MacGregor's account is, however, highly improbable and contradicted by a substantial amount of evidence, including not only Gray's testimony, his phone logs, his telephone operator, and the circumstances of the President's immediate follow-up call, but also by MacGregor's apparent perjury concerning the long distance phone bill on his hotel receipt for July 5-6. <sup>MacGregor</sup> ~~which he~~ <sup>this call</sup> claims was made by his wife to her brother in San Francisco; but <sup>his bill</sup> ~~which~~ bears a toll charge that is too small for any call to San Francisco, but is appropriate for a five or six minute call to San Clemente from MacGregor's hotel.

Ehrlichman, on the other hand, has provided testimony that strongly supports the inference that MacGregor promptly notified the President of Gray's warning and triggered the President's phone call to Gray. Ehrlichman testified in the Senate Committee that the President told him that MacGregor had told the President (in person) of Gray's call, and that the President thereupon picked up the phone and called Gray. (This could not have occurred in exactly this fashion, however, since MacGregor did not have time to get from his hotel to San Clemente in the intervening half hour between the Gray/MacGregor call and the Nixon/Gray call.)

IV. Covert Cash Payments to the Defendants in  
Exchange for Their Silence

SYNOPSIS:

Beginning as early as June 26, 1972, the CRP leadership, John Dean, John Ehrlichman, and (according to Dean) H. R. Haldeman began attempts to arrange secret payments of cash to the five men arrested in the DNC, Liddy, and Hunt, in order to insure that these seven would not reveal the involvement of high CRP and White House officials in Watergate. When Dean's efforts to secure CIA assistance in this venture failed, Dean arranged for Herbert Kalmbach to coordinate obtaining and distributing these funds. Kalmbach received secret CRP cash funds from Stans and LaRue at Dean's request, and distributed these funds through Tony Ulasewicz to Hunt and Mrs. Hunt, and through them to the others. Kalmbach confirmed this arrangement with Ehrlichman, and both Haldeman and Ehrlichman have confirmed <sup>that they knew</sup> ~~knowledge~~ of these payments <sup>as early as</sup> ~~during~~ the summer of 1972. The payments were for legal and lawyers fees and "income supplement."

After the 1972 election, when Kalmbach had refused any further role in the payoffs, <sup>(Kalmbach SC; 6J)</sup> ~~CRP~~ cash was exhausted, and <sup>the defendants'</sup> legal fees (and demands by Hunt) were increasing, it was arranged that payments would be made by LaRue to various persons out of a secret White House cash fund of \$350,000 which Haldeman ordered turned over to LaRue, by Strachan.   <sup>Dean SC; Strachan SC)</sup>

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There is no direct evidence that the President knew of these payments until March 1973. An inference that he did know about the payments early on would have to be drawn from the admitted knowledge of Mitchell, Haldeman and Ehrlichman as early as June or July 1972. (Haldeman and Ehrlichman, however, have testified that they believed this was a "defense fund" effort and strictly legal.) The President himself has said that until the time of "his own investigation," he did not know about such payments. (May 22, 1973, statement) Presumably this would have been March 21, when Haldeman confirms that the payments were discussed with the President at a meeting with Dean.

It would be important to know whether, and precisely when, the President may have known about the payoffs before March 21, because during January, ~~February~~, and <sup>of 1973</sup> March Hunt was seeking to let it be known that "commitments" made to the defendants were "not being kept." (Hunt 6J, Dean 5c) In mid-March meetings with O'Brien and Shapiro, Hunt threatened to "blow the lid off" if he were not provided (Hunt 6J; Dean 5c; Bittman 6J; Shapiro W Intro) quickly with some \$60,000 - \$120,000, and we know that a payment of \$75,000 out of the White House \$350,000 was in fact made to Hunt about March 21. (Hunt 6J; Bittman 6J)

Hunt's threats were communicated to the President by Dean by March 21 at the latest, during which meeting the President asked what it would take to keep all the defendants silent for a long time, Dean suggested a million dollars, and the President stated that that would not be difficult to raise. (Haldeman 5c) If Dean communicated

IV, 3

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Hunt's demands to the President on March 13, as Dean  
 testified, <sup>(Dean SC)</sup> or if the President knew of these demands  
 or payments after the LaCosta meetings on February  
 10 and 11 attended by Haldeman and Ehrlichman (at  
 which raising more money was discussed <sup>(see Dean SC; [redacted])</sup>), or if the  
 last \$75,000 payment to Hunt about March 21 was made  
 after Dean reported Hunt's demand to the President,  
 or if the President knew that that last payment had  
 in fact been made (even if he did not approve it  
 personally), then the President's personal knowledge  
 of the purpose of these payments could be established.



V. Presidential Knowledge of a Conspiracy to "Coverup" the Break-in and Other Related Events.

1) Summary: The strongest evidence of Presidential complicity in the coverup is Dean's testimony. The President's meeting with Dean on September 15 and during later February and March, 1973 are of key importance.

However, some of the most favorable testimony on behalf of the President still supports the view elaborated upon below that the President showed little concern about the Watergate investigation. Several conflicting interpretations for this neglect are possible:

1) The president thought the break-in was only a bizarre and isolated incident not deserving his attention in light of the more pressing domestic and foreign problems confronting him; 2) The President accepted Dean's and Ehrlichman's conclusions that no one in the White House or CRP was involved, and had no reason to doubt the validity of these reports; 3) The President had "a feeling" that a conveyance was in effect; and wanted to insulate himself from that effort without stopping it; and 4) The President was fully aware of the coverup and/or the involvement of others in the pre-June 17 events, and did not want an investigation to expose the cover-up or any White House or CRP political intelligence or sabotage efforts.

V. Knowledge of a Conspiracy, Including Destruction of Documents and Perjury, to Prevent the Prosecutors and FBI from Discovering How the Break-in at Watergate Came About

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SYNOPSIS:

On June 17, the leadership of the CRP, with the knowledge and cooperation of high White House aides, entered into a conspiracy to prevent the prosecution and FBI from discovering that the break-in had resulted from a large scale covert intelligence plan approved by CRP (and <sup>possibly</sup> White House) aides, and that in furtherance of this program well over \$250,000 had been disbursed to Gordon Liddy. This conspiracy comprehended, inter alia, the destruction of incriminating documents ~~at~~ the CRP and the White House, and perjury and false statements to the prosecutors by Jeb Magruder and Herbert Porter concerning the purpose of the money disbursed to Liddy and the purpose of meetings between Dean, Magruder, Liddy, and Mitchell in January and February 1972.

There is no direct evidence of the President's knowledge of this conspiracy. There is circumstantial evidence, however, that the President either was told about the conspiracy by Haldeman and/or Ehrlichman, or that the President -- having learned some details of the Hunt-Liddy operation before or soon after June 17 -- purposefully chose to "insulate" himself from any detailed knowledge of how his aides and political associates went about preventing this incriminating information from coming to light.

This circumstantial evidence consists of: (1) the President's failure to heed a clear warning given him during a phone conversation with L. Patrick Gray on July 6 that Presidential aides were misusing the CIA to obstruct the Watergate investigation; (2) the discrepancy between the President's public statements urging a thorough and aggressive investigation, and his actions: his failure personally to seek information from any of the principals in the CRP, the White House, or the prosecution and his failure to take steps to insure that an aggressive investigation would in fact be mounted; and (3) the President's September 15 meeting with John Dean and H. R. Haldeman. Dean has testified that during that meeting the President congratulated Dean on 'containing' the investigation so that indictments 'stopped with' Liddy.

FACTS:

Beginning almost immediately after June 17, high White House officials entered into a conspiracy (or conspiracies) to prevent the FBI and prosecutors from learning how the Watergate break-in had in fact come about. In particular, the conspirators sought to prevent the investigation from uncovering these facts:

- 1) that a large amount of money, between \$200,000, and \$300,000 had been paid by CRP to Liddy and his agent Hunt;
- 2) that the money had been disbursed for a large-scale covert intelligence and campaign disruption program that included a break-in and wiretapping at DNC Headquarters;

2) Facts: Beginning almost immediately after June 17, high White House and CRP officials entered into a conspiracy or conspiracies to prevent the FBI and prosecutors from learning how the Watergate break-in had in fact come about. In particular, the conspirators sought to prevent the investigation from uncovering these facts:

1) that a large amount of money, between \$200,000 and \$300,000 had been paid by CRP to Liddy and his agent Hunt;

2) when that became impossible to conceal, the purpose for which this money was intended;

3) the fact that the money had been discussed pursuant to a specific intelligence plan known to and approved beforehand by Magruder, Mitchell, LaRue, and Haldeman (?).

The means by which this conspiracy was furthered included destruction of documents (by Strachan, Liddy, Magruder, and possibly others); perjury (by Magruder and [ ] and possibly others); subordination of perjury (by most of the conspirators, who knew that Magruder's testimony was false); and false statements to FBI agents. Material information was also concealed. The conspiracy was further aided by Dean's obtaining raw FBI data from L. Patrick Gray which enabled the conspirators to plan and carry out this aspect of the cover-up. The conspiracy(s) continued even after September 15

and in addition a new element was added by the necessity to conceal from the public the fact that Donald Segretti had been employed by Haldeman's aide Chapin, directed by Chapin and then by Liddy and Hunt; and paid by Kalmbach: discovery of the true facts here would have revealed Hunt's and Liddy's roles in the overall CRP intelligence operation.

3) Analysis: There is no direct evidence to show that the President knew of these efforts by Dean, Mitchell, Magruder, LaRue, Mardian, Haldeman, Ehrlichman and Strachan. Of these participants, the President had direct contact before September 15 only with Haldeman and Ehrlichman, and several conversations with Mitchell (though not many). Haldeman and Ehrlichman have denied being aware of this phase of the cover-up, and thus of informing the President. Mitchell admits awareness but claims he never talked to the President about it, and the President never asked. Except for Strachan's testimony implicating Haldeman in destruction of White House documents, only Dean's testimony links either Haldeman or Ehrlichman clearly with the perjury of Magruder which was central to this phase of the cover-up.

In addition, Ehrlichman has testified that he advised the President throughout the summer, on the basis of Dean's reports,

that no one in the White House was involved. And there is some corroboration for this in that Gray prepared a letterhead memorandum on the investigation about July 20, which was evidently discussed at a July 31 luncheon attended by Dean, Ehrlichman, and Kleindienst. That memo indicates that there is no evidence against high White House officials, or Magruder or Mitchell. Ehrlichman says that Kleindienst assured him at that luncheon that no one in the White House or CRP was in fact involved, (together with Dean's reports) and that this/was the basis for Ehrlichman's report to the President to the same effect and the President's August 29 statement. Kleindienst, however, denies making any such statement since, at the least, he strongly suspected at that time that Magruder might be lying.

Any "case" against the President in this area must, therefore, be based upon an assumption that he "must have known" what Haldeman and Ehrlichman themselves knew; or, failing that, that the President "should have known" and was grossly negligent in not finding out. This second line of reasoning may be even more damaging than the first, if it can be assumed that the President knew before or shortly after

June 17 of at least the fact of Liddy's intelligence plan and the employment of Liddy and Hunt to carry it out. If that is true, then the President's failure to assure that these facts would be brought out -- indeed, an affirmative effort to "insulate" himself from any knowledge of his subordinates' attempts to prevent this information from becoming available to the prosecution or FBI -- would probably constitute criminal conduct.

Affirmative evidence to support either of these "theories" must be found in (1) the President's telephone conversation with Pat Gray on July 6, (2) his meeting with Dean and Haldeman on September 15, and (3) the discrepancies between his public statements urging a full investigation and claiming such an investigation had been conducted, and the President's actual failure to cause a thorough investigation to be made or to assure that one was being made.

Despite these statements, the President had no direct contact whatsoever with those responsible for the investigation: Kleindiesnt, Petersen, Gray or Titus. Nor did the President direct either Haldeman or Ehrlichman to have such direct contact, except for the CIA link (prior to July 6). According

to Kleindiesnt, the only contact between him and the President regarding Watergate was an early phone call when the President urged him to conduct a "thorough and intensive" investigation.

On July 6, the President received clear notice from Pat Gray that attempts were being made to impede the FBI's investigation into the Watergate break-in and bugging. All evidence indicates that, other than urging Gray to conduct a "thorough" investigation -- a homily entirely inconsistent with what Gray had just told the President a moment before -- the President did nothing. He did not inquire into the meaning of Gray's statement that the President aides were "wounding" him or misusing the FBI; rather the President said nothing.

Subsequent to July 6, the President was also aware that John Dean was receiving raw FBI investigative reports from Gray or the Department of Justice. (May 22, 1973, public statement)

On August 29, 1972, the President stated in response to a question at a press conference that his counsel, John Dean, had made a full report to the President and had concluded that no one in the White House was involved. In fact, Dean had never been asked by the President directly to make such a report, nor had he made one.



Dean's statement before the Senate Select Committee contains a blanket statement by Dean that he had never told the President that no one presently employed at the White House had any advance knowledge of the Watergate incident. Moreover, Dean stated that he had no advance knowledge of the President's August 29 public disclosure of the so-called "Dean Report." (Dean, statement before Senate Committee, 94-97).

Dean further testified to his September 15 meeting with the President and Haldeman. The President told Dean that he had a good job with a difficult task, and he was pleased that the case had stopped with Liddy. Dean told the President that Dean thought there was a long way to go before the matter ended, and that Dean could make no assurances that matter would not unravel. Dean told the President that the Justice Department had held off as long as possible the return of indictments. The President expressed his hope that the case would not come to trial before the election. The President asked about the Patman Committee hearings, and the President indicated that we don't need the hearings before the election. The conversation then turned to the President's

past election plans about dealing with those in the press giving the administration problems, and cover-ups in the Administration including IRS. (101-103).

In late November, 1972 Haldeman told Dean to write a report on the Watergate matter. The President wanted to get rid of the Watergate matter. (121-122).

We can, therefore, conclude that the evidence indicates little concern by the President with a full scale, thorough investigation. Gray has testified that the President did not question him when he told the President on July 6, 1972 that people in his Administration were trying to mortally wound him. Further, it was not until July 6 that the President told Gray to conduct an aggressive investigation, and there is no evidence that the President was kept posted by Gray during the investigation. Haldeman has testified before the Senate Select Committee that following the break-in the President did not call and demand from Mitchell, Magruder, Stans, or Sloan an <sup>explanation</sup> as to why burglars were found in the DNC with funds from his re-election committee (N.Y. Times, 8/2/73, p. 20-21). Henry Petersen and Richard Kleindienst testified on August 8, 1973, before the Senate Select Committee that the President did not direct

them on March 21 or at any time before April 15 "to get all the facts" regarding the Watergate affair, and to report directly to him. Moreover, even accepting as true Ehrlichman's testimony that at the March 21, 1973, meeting of Haldeman, Ehrlichman, Mitchell, and the President there was no discussion of Watergate (NY Times, 7/28/73, p. 11), we are left with the conclusion that even after the President was told of a possible cover-up he did not discuss the issue with his closest advisors. Ehrlichman also testified that it was not until April 14, 1973, that the President got his first thorough report on Watergate (NY Times, 7/28/73, p. 1). Was this due to Presidential indifference, or Presidential involvement, or deception of the President by his advisors such as Dean?

VI. Offers of Executive Clemency to the Defendants  
In Exchange for Their Silence

SYNOPSIS:

There has been a substantial amount of testimony, sharply contradicted at points, that all seven defendants were at one time or another promised executive clemency if they would remain silent about the involvement of higher-ups in the Watergate affair. Dean has testified that Hunt was promised clemency in early January 1973 by Colson, through Hunt's attorney Bittman, and that this promise was communicated by the President directly to Colson and indirectly <sup>from the President</sup> through Ehrlichman to Colson. There is also evidence of a promise of clemency to McCord, corroborated by all those "couriers" who carried the message: McCord, Ulasewicz, Caulfield, and Dean. Dean says this offer was approved by Mitchell. David Shapiro, Colson's attorney, has also told us that, according to Hunt, Liddy was offered a Presidential pardon by John Mitchell. And there is sworn testimony of Henry Rothblatt - - for whatever that is worth - - that Hunt pressured the Miami defendants into pleading guilty by promises of money, clemency, and rehabilitation.

The President is tied directly only to the offer to Hunt, through Colson and Bittman. Of course, direct evidence of Presidential knowledge may be less important in this area than elsewhere, since only the President can grant clemency and it <sup>seems</sup> ~~highly~~ unlikely that high White House officials would extend a promise of clemency to a defendant without checking first with the President.

VI, 2

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And there is evidence that several promises of a similar nature ("a year is a long time") were made through different channels.

However, with respect to the one promise to which the President is directly tied - - that to Hunt - - the weight of the evidence contradicts Dean's testimony that any offer was in fact made. Without establishing the offer itself, no liability can be assigned to the President. Thus, Hunt, Bittman, Shapiro, Colson, Ehrlichman, and O'Brien, all of whom could corroborate Dean, in fact contradict him.

There is some, largely circumstantial, corroborating evidence of the fact of the offer to Hunt. But this evidence will have to be strengthened before a firm conclusion can be drawn concerning the President's own liability.

~~What follows is a combined section on "facts" and "analysis"~~

VI, 3

FACTS:

The following are the major points in the various versions of the executive clemency stories. Dean's Senate testimony is the most damaging against the President.  
(Page references are to Dean's statement).

VI, 4

On January 2, 1973, Dean received a phone call from Paul O'Brien saying there was some serious problems with Hunt. Dean told Haldeman about the call. (136).

The evening of January 2, Dean called O'Brien and O'Brien told him that Hunt would plead guilty, but Hunt wanted some assurances of executive clemency. O'Brien said Hunt wanted assurances from Colson, and Bittman was trying to reach Colson. (136).

On January 3, Dean discussed with Colson, <sup>J</sup>Hunt's letter to Colson pleading for Colson to meet with Bittman. Dean then met with Ehrlichman, and Ehrlichman thought Colson should meet with Bittman. (137). Colson apparently met with Bittman, and on January 3, Colson came to Ehrlichman's and Dean's meeting, and said it was imperative that Hunt receive some assurances of executive clemency. Ehrlichman told Colson not to speak with the President. (137-138).

On January 4, Dean learned that Ehrlichman had given Colson an affirmative regarding clemency for Hunt, and that Colson had talked with Bittman about this. (138).

Another meeting was held in Ehrlichman's office on January 5. Ehrlichman told Dean that no one could be given a specific commitment, but if Hunt was going to get "an assurance for clemency the others could understand that it applied to all." (138). After this meeting Colson told Dean that Colson had taken up the matter of executive clemency with the President. (139).

VI, 5

Dean further stated that on March 13, 1973 and April 15, 1973, the President had told Dean that the President had discussed the matter of executive clemency for Hunt with both Ehrlichman and Colson. (139).

As to McCord, Dean's testimony is as follows:

Around January 3-5, 1973, Caulfield came to Dean's office with a letter Caulfield had received from McCord. Dean thinks he gave the letter to O'Brien. (140).

At some point Mitchell then called Dean and told Dean to get Caulfield to speak to McCord. (140). On January 10, both O'Brien and Mitchell told Dean that since Hunt had been given assurances of clemency, Caulfield should give the assurances to McCord. (140). Dean called Caulfield and they agreed on the clemency message Ulasewicz gave McCord. (141).

On January 11, O'Brien called Dean and told Dean that McCord wanted to meet with Caulfield. (140). Dean called Caulfield and Caulfield agreed to meet McCord. (142).

On June 12, Mitchell called Dean for a report. (142).

On June 13, Caulfield gave Dean a report on Caulfield's meetings with McCord. (142).

On January 15, Dean reported to Mitchell on what Caulfield has reported. (144).



VI, 6

On January 19 or 20 Caulfield brought Dean copies of McCord's memo regarding the intercepted conversation with the embassies. Dean told Mitchell about the memo and showed it to O'Brien. (144).

Colson denies offering Hunt executive clemency. Colson does admit speaking with Bittman and telling Bittman in January, 1973 that as a friend of Hunt's, Colson would always want to help Hunt. In a March 23, 1973 memorandum Colson does state that Bittman might "have drawn whatever conclusions he wanted to from my having said that I would do anything I could to help him." Colson in discussing the January 4 meeting with Ehrlichman stated that Ehrlichman told Colson to talk to Bittman but to "make no promises of any kind other than to assure Hunt that Colson was still his friend." (See Haberfeld summary of Colson, p. 10 D-E).

O'Brien denies discussing executive clemency with Dean, Bittman, or Hunt. (O'Brien interview - Hecht memo, 9-10).

Bittman in a memorandum to Neal on July 5, 1973, related his meeting with Colson on January 4. Colson told Bittman that Colson "could be called upon to do anything possible to assist Hunt, whether he was in or out of the White House." (14-15).

VI, 1

Previously Bittman had talked to Hunt about executive clemency in the event of a substantial sentence. While speaking to Hunt after meeting with Colson, Bittman discussed the chances of clemency in the context of Colson's expressed support. (15-16).

Ehrlichman before the Senate Select Committee denied Dean's story that as a result of a meeting on January 3, Ehrlichman checked with the President and told Colson to give Bittman assurance of clemency for Hunt. Ehrlichman claims his only meeting with the President was on January 4 at 3:00 with Haldeman, and Kissinger was present a substantial portion of time (NY Times, 7/26/73, p. 28). Haldeman stated that he had no specific recollection of any White House discussion before last March of demands by Watergate defendants for Presidential clemency (NY Times, 8/1/73, p. 20). Haldeman further stated that he did not recall any March 13, 1973, discussion between the President and Dean concerning executive clemency for Hunt (NY Times, 7/31/73, p. 24).

In his testimony before the Senate Select Committee McCord stated that on about January 14, 1973, Caulfield made an offer of executive clemency, and said the message was coming "from the very highest level of the White House." Caulfield said

VI, 8

the President knew of the meeting. McCord was notified to meet Caulfield by a strange call (from Ulasewicz) saying, "plead guilty. One year is a long time. You will get Executive Clemency. Your family will be taken care of and when you get out you will be rehabilitated and a job will be found for you." (312) Caulfield and McCord had subsequent discussions about executive clemency.

Caulfield's testimony to some extent corroborates McCord's. But Caulfield expressly stated that "at no time in our first meeting do I recall saying anything about the President but I specifically reviewed the offer of executive clemency, as indicated above and referred to it as coming from 'the highest levels of the White House.'" (622)

Caulfield had his meetings with McCord and made the offer of clemency pursuant to instructions from Dean. Caulfield testified that at one point, Dean said to talk to McCord again and "impress upon him as fully as you can that this offer of executive clemency is a sincere offer which comes from the very highest levels of the White House." (623). Caulfield asked if he should say "it comes from the President?" Dean said, "No, don't do that, say it comes from way up at the top." (624).

VI, 9

At the Senate Select Committee Caulfield stated: "I believed that I was going back to see Mr. McCord to again extend an offer of executive clemency and that by my doing so I was doing a great service for the President of the United States in a very sensitive matter. At no time, either before or after this meeting with Mr. Dean did I ever speak to any other White House officials about this offer of executive clemency. I specifically never spoke to the President of the United States...my guess was that when Mr. Dean referred to 'high White House officials' he at least meant Mr. Ehrlichman." (625-626).

Ulasewicz's Senate Select Committee testimony is consistent with Caulfield's and McCord's.

Alch's Senate testimony reveals two matters relative to executive clemency. Both events substantiate the views that Bittman had some involvement with efforts to obtain executive clemency for the Watergate defendants.

On January 8, 1973, Alch, McCord, Strachan, and Baker went to Bittman's office to discuss Hunt's plan to change his not guilty plea (736). Alch met with Bittman and discussed Hunt's change of plea. (738). Bittman told Alch

VI, 10

that McCord would receive a call from a friend; Bittman did not mention "the White House," nor did Alch when conveying the message to McCord (738).

Only once did Alch mention "executive clemency" to McCord. In late, 1972 Alch said to Bittman, "Bill, what to you think our clients will receive as a sentence should they be convicted?" Bittman said, "You can never tell, Christmas time rolls around, and there could be executive clemency." Alch told Bittman the President would not touch this case with a ten foot pole. Subsequently, but not on the same day, Alch mentioned this to McCord, but also told McCord that McCord should not rely on any prospect of executive clemency. (739-740). This was the only discussion Alch had with McCord concerning executive clemency.

Regarding McCord, O'Brien admits that Dean on January 8, 1973 read to O'Brien a letter sent by McCord which stated that Helms could not be made the scapegoat, that McCord wanted to be extricated from jail, and if the first two don't work out, "all of the trees in the forest shall fall." Dean asked O'Brien to contact counsel for McCord and tell counsel that a friend would contact him that evening. O'Brien wasn't sure if he got in touch with Alch, but O'Brien did speak with Bittman. Bittman told O'Brien that Alch was either at Bittman's or coming over. O'Brien passed on this information to Dean. (Hecht memo p. 27-30).

VI, "

Concerning clemency to Liddy, Shapiro said that Hunt told him on March 16 that Mitchell had made a "solemn promise" to Liddy of a Presidential pardon.

3) Analysis: The President stated that at no time did he authorize any offer of executive clemency for the Watergate defendants, nor did he know of any such offer. (5/22/73 statement).

~~I have enclosed~~ The different versions of the executive clemency story <sup>(are included here at length)</sup> because by definition this is one area where the President's complicity is essential if he plans to grant clemency for the defendants were to succeed.

McCord's version states that Caulfield told McCord that the President knew Caulfield's meeting with McCord. Caulfield does not remember specifically referring to the President at his first meeting with McCord, but rather remembers using the phrase "the highest levels of the White House." But Caulfield felt this meant at least Ehrlichman. Dean's testimony before the Senate Committee includes these references to the President: At a January 3 meeting with Colson, Ehrlichman told Colson that Ehrlichman would have to speak to the President about executive clemency. Colson later told Dean that Colson had taken up the matter with the President. At Dean's meetings with the President on March 13 and April 15, 1973, the President told Dean that he had discussed the issue of executive clemency for Hunt with both Ehrlichman and Colson.

VI, 12

The testimony of various witnesses refers to Haldeman, Ehrlichman, and Mitchell. The issue here, as in so many cases with the President, is whether Haldeman and/or Ehrlichman and/or Mitchell could have known about the talk of executive clemency and not the President.

Mitchell does state in his Senate testimony that Dean never told Mitchell about any conversations Dean had had with the President. Mitchell states he never discussed executive clemency with the President. Mitchell also states that Dean's testimony concerning Mitchell telling Dean to offer McCord executive clemency is false (3439-3442).

Ehrlichman has denied Dean's version that on January 4 Ehrlichman checked with the President and told Colson to give Bittman assurance of clemency for Hunt.

Thus, only Dean can testify directly that the President spoke about a previous discussion the President had with Ehrlichman and Colson concerning executive clemency. McCord's testimony that Caulfield said that the President knew of the Caulfield-McCord meeting is at least double hearsay. The tapes of the March 13, 21 and April 15 Dean-Nixon meetings would of course be extremely helpful.



VI, 13

Haldeman's Senate Select Committee reveals a rather interesting discussion. Based on the tapes and his personal attendance at the March 21 meeting between Dean and the President, Haldeman testified as follows: At this meeting Dean told the President that Colson had said something to Hunt about clemency. The President confirmed that he could not offer clemency. Dean also reported on the current Hunt blackmail threat. According to Haldeman the President pushed this in considerable detail, "obviously trying to smoke out what was really going on. He (Nixon) led Dean on regarding the process and what he (Dean) would recommend doing." Haldeman stated that the President asked how much money would be involved, and Dean said one million. The President stated that there was no problem raising the money, but it would be wrong. Haldeman then asserted "He (President) was trying to get Dean's view and he was asking him leading questions in order to do that. This is the method the President often used when he was moving toward a determination." (NY Times, 7/31/73, p. 24)

This explanation by Haldeman implies that the tapes contain statements which one might interpret as inculcating the President, but were actually the President's technique to elicit information from Dean. Thus, anything incriminating on the tapes with Dean was merely the President "exploring and probing."



VI, 14

In spite of the absence (except for Dean's testimony) of direct evidence incriminating the President some circumstantial evidence does exist.

1) Ehrlichman testified that the President mentioned in summer of 1972 that executive clemency should not be offered. Why would this subject come up at that early point?

2) <sup>There is</sup> testimony <sup>by</sup> Kleindienst and Petersen that Ehrlichman and Dean explored technical aspects of clemency in January, 1973.

3) There is a similarity in the offer to McCord and Hunt ("a year is a long time, clemency comes up around Christmas.")

4) Would Dean tell Caulfield to offer McCord executive clemency on Dean's own initiation?

5) Colson admits that Bittman might have concluded that Colson would do anything to help hunt. Would this include seeking clemency from the President? Bittman did speak with Hunt about clemency. Was this pure speculation by Bittman and Hunt, or was it based on assurances from Colson. In addition Bittman told Alch on January 8, 1973 that McCord would receive a phone call from a friend. Following that McCord received the calls from Ulasewicz and Caulfield.

## VII. Collapse of the Cover-Up

### SYNOPSIS:

Beginning probably in January 1973 and certainly on March 21, 1973, the President began to be made aware of the involvement of his own White House aides and the CRP's former leadership in the many aspects of the Watergate planning and cover-up. Any liability, criminal or otherwise, that the President may have in connection with the "collapse" of the cover-up must be premised on (1) any failure by him to bring out sooner the information he was receiving that tended to incriminate his aides and political associates; (2) any attempts by the President/affirmatively to prevent this information from coming to the attention of the prosecutors or FBI; and (3) the discrepancies between what the President in fact knew (or probably knew) on the dates of his public statements on April 17, April 30, and May 22, 1973, and what he said or implied in those statements.

We can probably show substantial weaknesses in the President's position on (1) and (3); affirmative attempts to continue and perpetuate the cover-up, if any, can be established only by John Dean's testimony, which in this instance is uncorroborated, and by the tapes we have subpoenaed.

VII, 2

FACTS:

According to Dean, the President was made aware by both Ehrlichman and Colson in the first week of January of the need to extend a promise of executive clemency to Howard Hunt in order to insure his continued silence. There is little corroboration of Presidential involvement, as pointed out above.

Magruder has testified that he met with Haldeman in mid-January and communicated Haldeman Magruder's and Mitchell's full involvement in Watergate, which Haldeman knew much of already.

Haldeman has denied the meeting took place during January, or that Magruder ever told him such things even in a February meeting (which Haldeman agrees took place). Colson also says that he met with Haldeman in late January concerning Colson's suspicions (acquired through Hunt and Bittman) that Mitchell and others (including Dean) were deeply involved, but that Haldeman brushed him off. We do not know how much of this information, if any, Haldeman may have communicated to the President.

On February 10 and 11, Haldeman, Ehrlichman, Dean, and Richard Moore met in LaCosta, California, for a "secret" meeting that continued over two days. The meeting covered the entire range of Watergate-related topics, including - - according to Dean's testimony - - a discussion of whether the defendants would continue to remain silent, and a decision that Mitchell should raise more money for this purpose, a decision communicated to him by Moore. Haldeman and Ehrlichman (SC) deny that the meetings included such a discussion, Moore is quite equivocal, but it

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appears from his evasive and <sup>un</sup>convincing testimony in the Senate and his interview with our office that such a discussion about money probably did take place. O'Brien, who visited Dean shortly after the meeting in Florida, tends to confirm Dean's testimony. (O'Brien GJ; Witness Interviews) O'Brien was told by Dean to report to Mitchell that Mitchell would have to raise money for the defendants. The extent to which the President caused this secret and intensive meeting to be held and was told about the subjects covered and decisions reached has not been ascertained.

Colson met with the President (on an unrelated matter) on February 14 and attempted at that time to tell the President about Mitchell's involvement, the early 1972 planning meetings, and the payments to the defendants. Shapiro and Colson claim, however, that before Colson got far into this presentation or mentioned details or sources, the President "blew up" at Colson and asked Colson not to make accusations against Mitchell without hard evidence.

Beginning February 27, the President began to meet regularly with John Dean for the first time since June 17, 1972. The President told Dean, according to Dean, to report directly to the President on Watergate. On February 28 Dean told the President that he had been involved in some pre-June 17 activities, and might be involved in obstruction of justice (according to Dean). On March 2, the President said there would be no problem with Dean having received FBI reports. Most of the Dean/Nixon

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meetings during this time were concerned with Executive and Attorney-Client Privilege and the White House response to the upcoming Senate Watergate Hearings.

Dean met with the President on March 13.

According to the memorandum of the White House counsel briefing, the bulk of this meeting related to Watergate, some of which may have been in the context of preparation for an upcoming PRESIDENTIAL press conference. During the meeting, the President asked Dean for a report on the involvement of Colson, Haldeman and others in the White House or Re-Election Committee in Watergate, and Dean discussed the liabilities of these persons and Strachan. According to the memorandum of this briefing, the discussion also involved possibly illegal pre-April 7, 1972, fundraising by the Re-Election Committee.

Dean has testified that much of the meeting was concerned with Dean's possible appearance before the Senate Judiciary Committee where he might be asked about Watergate, and possible assertion of executive privilege or attorney-client privilege. Dean testified that during this meeting there was discussion of the money demands being made by the convicted defendants and of the fact that the President had discussed executive clemency with Colson. Dean has testified that some of these matters were discussed in Haldeman's presence, which Haldeman has denied (Haldeman SC). Dean has testified there was also discussion of the mechanics by which previous payments to the Watergate defendants had been arranged. The President asked how much money would be required to keep the defendants quiet indefinitely. Dean said: "a million dollars." The President said there would be no problem in raising that much money.

Haldeman has contradicted Dean and has further testified that some of this discussion may have taken place on March 21, rather

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- 2 -  
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than March 13, since the tape recording of the March 21 meeting was reviewed by Haldeman reflected a similar discussion. (Haldeman SC)

On March 16, according to the White House briefing for the Senate Committee, Dean told the President about the Ellisberg break-in.

On March 21, Dean met with the President at Dean's request to tell him the entire story of Watergate. According to all three accounts of this meeting - - Dean's, Haldeman's, and White House counsel's -- the whole subject of the meeting was the Watergate break-in and bugging, and the subsequent cover-up of Watergate. All versions substantially agree that Dean told the President of Dean's theory of Watergate and of the involvement and possible liability of Magruder, Mitchell, Strachan, Colson, Ehrlichman, Haldeman, and Dean. Dean also reported on a "blackmail" threat from Hunt. According to Dean and Haldeman, Dean spoke of a "cancer on the Presidency." According to Haldeman, there was also discussion of how much money would be required to meet Hunt's threat and similar threats in the future and the difficulty of raising such money; the figure of one million dollars was mentioned at this meeting. According to Haldeman, the President said: "We could do that, but it would be wrong."

At about this time, it was announced that McCord had sent a letter to Judge Sirica that implicated high White House and CRP officials in Watergate and asserted that perjury had been committed at the trial, and payments had been made to the defendants for their silence.

In the late afternoon of March 21, the President met with Haldeman and Ehrlichman, and also with Dean, Haldeman and Ehrlichman. Dean got the impression that as far as the White House was concerned the cover-up would continue. Dean said that he, Haldeman and Ehrlichman were indictable for obstruction of justice.

On March 22 the President met with Ehrlichman, Haldeman and Mitchell with Dean; according to Dean there was no indication at this meeting of any change in attitude concerning the need to get the truth out.

On March 23, the President called Dean and suggested that Dean go to Camp David.

On the evening of April 15, the President met Dean alone. That meeting came about in the following manner. On April 14, the United States Attorney and Assistant United States Attorneys handling the Watergate case met during much of the day with Henry Petersen to outline the information they had been receiving over the previous ten days from John Dean, Jeb Magruder, and others, concerning the involvement in Watergate of high officials in the White House and CRP. Following this meeting, Petersen and the prosecutors sought, through Attorney General Kleindienst, an immediate and urgent meeting with the President to outline this information directly to him. On Petersen's request, Petersen, Titus, and Silbert met very late that night and until approximately 4 a.m. April 15 with Kleindienst at Kleindienst's residence. The following morning at about 9 a.m., Kleindienst urgently requested a meeting with the President. Petersen and Kleindienst did meet with the President on April 15, Sunday, and outlined to him the information available to the prosecutors. During this meeting, Petersen strongly urged the President that Haldeman and Ehrlichman be fired.

Following Petersen's meeting with the President, Petersen and the prosecutors, who were interviewing Dean and Dean's counsel that day, learned that John Ehrlichman was seeking to meet with Dean. Dean consulted with Petersen, who urged Dean or Dean's counsel to meet only with the President himself. Dean thereupon communicated a message through Lawrence Higby that Dean would meet with the President, but not with Haldeman or Ehrlichman. When the President received this message, he called Petersen at home to seek Petersen's advice. Petersen advised that the President should meet with Dean directly to receive Dean's information. Dean subsequently received a telephone call from the White House switchboard that the President would meet with him that evening.



According to Dean's testimony and the White House briefing the sole subject of the conversation was the Watergate matter. Dean has testified that this conversation included the following subjects: Dean's negotiations with the prosecutors and his cooperation with them; whether Dean would seek or be granted immunity; the involvement of Haldeman,; Liddy's continuing refusal to testify under immunity; the possibility of appointing a special prosecutor; previous conversations relating to the difficulty of raising money (during which the President stated that his previous statement about a million dollars was made in jest); and the President's previous conversation with Colson concerning immunity (made, according to Dean, in a barely audible voice in one corner of the President's office.)

The President continued discussions during the next 15 days with Henry Petersen, during which time Petersen repeatedly urged the President that he must fire Haldeman and Ehrlichman.

On April 18, Petersen told the President about the Ellsberg break-in during a telephone conversation. The President told Petersen to stay out of that, it was a national security matter and none of Petersen's business. The President expressed concern that could "wreck the Ellsberg prosecution." (Petersen Witness Interview)

However, on April 25, after Petersen had consulted with Kleindienst, Kleindienst saw the President and, in effect, threatened that he and Petersen would resign if the President did not authorize them to release this information to Judge Byrne; the President consented. (Kleindienst GH, SC)

#### ANALYSIS

[Must include a close analysis of the President's three public statement. For example, on April 17, immediately after the Petersen revelations but more than three weeks after the Dean disclosures of March 21, the President said:

"On March 21st, as a result of serious changes which came to my attention, some of which were publicly reported, I



began intensive new inquiries into this whole matter."

The President then mentioned that on Sunday, April 15, 1973, he met with Kliendienst and Petersen "to review the facts which had come to me in my investigation and also to review the progress of the Department of Justice Investigation." He said that major developments in the case has come to light which made it improper to be more specific now. All government employees were expected to cooperate fully (especially White House staff employees); anybody in the Executive Branch indicted would be suspended, and discharged if convicted; no individual holding a position of major importance in the Administration should be given immunity from prosecution..

In announcing the April 30, 1973 resignations of Ehrlichman and Haldeman and Kleindeinst and Dean the President stated that he accepted the resignations of Ehrlichman and Haldeman with deep respect, and that no one should assure their resignations are admissions of wrongdoing. The President stated that "each of these men has demonstrated a spirit of selflessness and dedication that I have seldom seen equalled. Their contributions to the role of this Administration have been enormous." (4/30/73 Statement,)

The President May 22, 1973, statement should also be closely analyzed here.

In addition, there must be discussion of the fact that the President did not commission John Ehrlichman to begin a new investigation until March 30, and that by April 17 Ehrlichman had interviewed enough people to have obtained most of the full story. In spite of this, the President appeared to express full confidence in Haldeman and Ehrlichman on April 30, and even May 22. ]

~~On April 17~~: With the collapse of the cover-up came the President's April 17, April 30, and May 22 public statements outlining his knowledge of all aspects of the Watergate case. What these statements juxtaposed against the facts, the conclusion evolves that even while the cover-up was collapsing the President did not vigilantly pursue a full investigation into the Watergate incident.

On April 17 the President stated: "On March 21st, as a result of serious charges which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter." What new inquiries did the President direct? His own Attorney General and Petersen have testified that the President did not direct them on March 21 or at any time before April 15 to conduct new and vigorous investigations.

On April 30 the President once again stated that "on March 21, I personally assumed the responsibility for coordinating intensive new inquiries into the matter, and I personally ordered those conducting the investigation to get all the facts and to report them directly to me, right here in this office."

Even according to Ehrlichman it was not until March 30 that the President asked Ehrlichman to conduct a new Watergate investigation. There is no evidence that the Justice Department prior to April 15 was asked to provide the President personally with all information relevant to Watergate.

Curiously, therefore, the pattern events from June, 1972 thru April 30, 1973, indicates indifference towards a vigorous investigation. This is revealed in the following sequence of events and statements:

- 1) The President in his May 22 statement spoke about his instructions to Haldeman and Ehrlichman "to ensure that the investigation of the break-in is not expose either an unrelated covert operation of the CIA or the activities of the White House Investigations Unit." This effort to impede the FBI investigation was continued even after Helms told Haldeman and Ehrlichman on June 23 that the CIA was not connected with the break-in. There is no evidence explaining why the President felt a complete FBI investigation might expose CIA activity. Did the President know on June 23 that CRP money found in the possession of the defendant had been

laundered through Mexico. What information did the President have, which Helms did not, which would prompt the President to have his closest advisors impede an FBI investigation for fear of exposing CIA activity.

2) The May 22 statement of the President acknowledges the phone conversation with Gray on July 6, 1972. The President states that he asked if Gray had spoken with Walters. Gray said that he had, and that Walters had assured him that the CIA was not involved. After that phone call where the President is told by Gray that people in the Administration are trying to mortally wound him, the President seemingly took no steps to check out this charge. In addition after being clearly told that the CIA was not involved the President did not continue to ensure that his original orders to Haldeman concerning the problem of an investigation exposing CIA activity were ignored, and that the FBI was conducting a complete investigation.

3) In his statement on April 30 the President observed: "As the investigations went forward, I repeatedly asked those conducting the investigation whether there was any reason to believe that members of my Administration were in any way involved. I received repeated assurances that there

were not." From whom did he receive these assurances? The August 29 "Dean Report" was a farce. The President even according to Ehrlichman did not receive until April a full report on the Watergate incident. John Dean the person who was allegedly conducting the White House investigation had almost no contact with the President until the end of February, 1973. Why did the President not insist on a written report on the Watergate affair?

4) It was not until mid-April, 1973 that the President spoke at length about the investigation with people from the Justice Department. This was several weeks after the March 21 meeting with Dean, and apparently the April 15 meeting of the President with Kleindienst and Petersen was held at the urging of Kleindienst, and not on the initiative of the President.

5) Even though the President's public statements show a desire on his part for a vigorous investigation especially after March 23, Ehrlichman has testified that it was not until March 30 that the President asked him to investigate whether anyone in the White House was involved in the break-in

or cover-up. In fact Ehrlichman never prepared a final written report for the President. Ehrlichman's report to the President was oral.

Thus, there is serious questions as to whether the President ever on his own took the steps necessary to ensure that a complete investigation was being conducted free from concern about exposing CIA operations or revealing evidence incriminating White House, CRP, or FCRP officials.

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : Honorable Archibald Cox  
Special Prosecutor

DATE: June 13, 1973

FROM : Earl J. Silbert  
Principal Assistant  
United States Attorney

SUBJECT: Attachment

Attached for your information is a copy of a memorandum to me concerning the possibility of an indictment of the President. As the memo itself indicates, it is obviously a preliminary survey.

Also on June 7, 1973, I delivered to your office a memorandum dated June 7, 1973, setting forth the current status of the Watergate investigation conducted by the United States Attorney's Office.



UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : Earl J. Silbert  
Principal Assistant  
United States Attorney

DATE: June 7, 1973

FROM : Paul L. Friedman  
Administrative Assistant  
United States Attorney

SUBJECT: Constitutionality of Indicting the President

This memorandum constitutes a preliminary response to your request of May 3, 1973 that I research the question of whether the President of the United States may be indicted by a federal grand jury if he has not first been impeached by the House of Representatives and tried and convicted by the Senate. The memorandum is less than complete in its analysis because the authorities are meager, those that do exist have been extremely difficult to locate at the Library of Congress, apparently because of the renewed interest in the subject of impeachment, and because my time has been limited.

While I have found no authority that has directly addressed the question whether a sitting President may be indicted, the recent criminal conviction of Circuit Judge Otto Kerner demonstrates that an official who may be impeached under the Constitution may nevertheless be subjected to the normal criminal process prior to impeachment. 1/ Theoretically, the same conclusion should apply to the President, for our system of government is based in part upon a rejection of the notion that "the king can do no wrong." 2/ Yet, somehow, the President is different from other impeachable officials. He embodies the entire Executive Branch, a coordinate branch of government. Accordingly, it is probably accurate to state that, "[b]y custom, the President is exempt from ordinary

1/ "Federal judges are entitled, like other people, to the full freedom of the First Amendment. If they breach a law, they can be prosecuted. If they become corrupt or sit in cases in which they have a personal or family stake, they can be impeached by Congress." Chandler v. Judicial Council, 398 U.S. 74, 140 (1970) (Douglas, J., dissenting). See also id. at 141-142 (Black, J. dissenting).



criminal proceedings. Thus, a President would have to be removed from office before he could be charged with crimes in the regular courts. This immunity does not apply to judges and other officers." Smith, The American Way of Impeachment, N.Y. Times Mag. (May 27, 1973), at 10. As Professor Corwin has stated:

The extent of the President's own liability under the ordinary law, while he is clothed with official authority, is a matter of some doubt. Impeachment aside, his principal responsibility seems to be simply his accountability, as Chief Justice Marshall expressed it, "to his country in his political character, and to his own conscience." (E. Corwin, The Constitution and What It Means Today 132 (1958).

There is, however, another view. As Rawle has noted: "[T]he ordinary tribunals . . . are not precluded, either before or after an impeachment, from taking cognizance of the public and official delinquency." W. Rawle, A View of The Constitution of The United States of America 215 (1970 ed.). And during the state debates on the proposed Constitution, Mr. Iredell of North Carolina argued:

2/ That maxim cannot apply to the President "because the Constitution admits that he can do wrong, and has provided, by the proceeding of impeachment, for his trial for wrongdoing, and his removal from office if found guilty . . . . It is to be observed that the English maxim does not declare that the government or those who administer it, can do no wrong, for it is a part of the principle itself that wrong may be done by the governing power, for which the ministry for the time being is held responsible; and the ministers like our President, personally may be impeached; or, if the wrong amounts to a crime, they may be indicted and tried at law for the offense." Langford v. United States, 101 U.S. 341, 343 (1879) (emphasis supplied); cf. Branzburg v. Hayes, 408 U.S. 665, 688-689 n.26 (1972).

If he [the President] commits any misdemeanor in office, he is impeachable, removable from office, and incapacitated to hold any office of honor, trust or profit. If he commits any crime, he is punishable by the laws of his country, and in capital cases may be deprived of his life. 4

J. Elliott, The Debates in The Several State Conventions on The Adoption of The Federal Constitution 109 (1896).

The foremost commentator on the Constitution, Joseph Story, has noted that there was little debate at the Constitutional Convention about the provision limiting the sentence upon impeachments to removal and disqualification from office. 2 J. Story, Commentaries on The Constitution of The United States § 785 at 254-255 (1970 ed.). Accordingly, the precise wording of the clause was probably not given much attention by the framers. Yet, the Constitution, by its terms seems to imply that indictment may only follow impeachment, not precede it:

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. U. S. Const., Art. I, § 3, cl. 7.

While perhaps not consciously considering which was intended to come first and which second, the writer of Federalist No. 65 apparently thought that impeachment must precede indictment:



The punishment which may be the consequence of conviction upon impeachment, is not to terminate the chastisement of the offender. After having been sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country, he will still be liable to prosecution and punishment in the ordinary course of law. (emphasis supplied)

This view was reiterated in Federalist No. 69:

The President of the United States would be liable to be impeached, tried and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office, and would afterwards be liable to prosecution and punishment in the ordinary course of law. (Emphasis supplied).

Joseph Story apparently shared this view, but he suggested that indictment and criminal trial may follow even an acquittal at a trial on Articles of Impeachment. See J. Story, supra, § 780 at 250-251. Story's view, however, must be erroneous if a primary purpose for postponing indictment until after impeachment is to preserve the effectiveness of the Executive Branch of government and to avoid a devastating economic and international impact upon the country. 3/

3/ Indeed, one can conceive of situations where an ordinary citizen should be subjected to criminal sanctions and yet where a President who commits the same acts should not be impeached, because certain offenses -- e.g., drunken driving, negligent homicide, carrying a pistol without a license -- would not necessarily make man unfit to serve as President. Thus where a President is either acquitted after a trial on Articles of Impeachment or is not impeached in the first instance, it may be that he should not be indicted even though he is technically guilty. The interests of the country may be better served by allowing the criminally culpable President to go unpunished in the courts of law.

Thus, the constitutional theory underlying the Impeachment clause suggests that regardless of what evidence you may accumulate against the President in the Watergate case, the grand jury should not indict him prior to impeachment. There are at least four practical reasons which suggest that no indictment should be returned without first giving the House of Representatives an opportunity to file Articles of Impeachment:

1. The Executive Power is vested in the President of the United States. U. S. Const., Art. II, § 1. All indictments must be signed by the attorney for the Government, be he the Attorney General or his designee or the United States Attorney. Fed. R. Crim. P. 7. When signing an indictment, the attorney, a member of the Executive Branch, is acting for the President of the United States, and he is only permitted to act in that capacity at the pleasure of the President. Clearly he cannot violate an order of the President. If he threatened to return an indictment in court against the President, he could be ordered to desist from such action, and presumably the return of such an indictment in the face of such an order would be null and void. It is even conceivable that the President could order the arrest of a United States Attorney, an Attorney General or a Special Prosecutor who returned an indictment in the face of a direct order not to do so.

2. If indicted and convicted while still serving as President, the President would have the power to grant himself (and others convicted with him) a pardon, relief not available in the case of impeachment. Art. II, § 2. Once pardoned, he would never be able to be retried on the criminal charges, jeopardy having attached, even if he were later convicted and removed from office upon Articles of Impeachment.

3. There would be a devastating effect upon the country both economically and in foreign affairs, if the President of the United States, while still serving in that capacity were indicted by a grand jury for a criminal offense. He would still be functioning as President and might well refuse to resign if he felt the charges were unjustified or that he could ride out the storm. Even if convicted, he would still continue as President unless impeached by the House of Representatives and convicted by the Senate. There is a serious question of whether the country would be able to survive such a situation.

4. The precedent of indicting a sitting President, once established by a responsible grand jury under the direction of responsible federal nonpolitical prosecutors, is likely to be repeated by irresponsible or politically-motivated elected state and county district attorneys, some of whom may institute criminal charges without the buffer of the grand jury and at their own whim.

If there is evidence to implicate the President criminally in the Watergate case, I nevertheless would recommend that he not be charged as a defendant. It may be appropriate to name him as an unindicted co-conspirator, although I have some doubts even about this procedure. Probably the best approach in such a case would be for the grand jury to make a report of the evidence which it has discovered concerning the President's involvement. The report could either be made to the public or, more appropriately, to the House of Representatives which has the power to impeach.



UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

December 28, 1973

ADDRESS ALL MAIL TO:  
UNITED STATES ATTORNEY  
ROOM 3136-C  
UNITED STATES COURT HOUSE BUILDING  
3RD AND CONSTITUTION AVENUE NW.

IN REPLY, PLEASE REFER TO  
INITIALS AND NUMBER

EJS/eh

The Honorable Leon Jaworski  
Special Prosecutor  
Watergate Special Prosecutor  
Force  
1425 K Street, N.W.  
Washington, D.C. 20005

Dear Mr. Jaworski:

In our letter of June 29, 1973, to former Special Prosecutor Archibald Cox withdrawing from the Watergate case, Mr. Campbell, Mr. Glanzer, and I informed him that we would respond in writing to criticism of our handling of the Watergate investigation prior to his appointment as Special Prosecutor.

Pursuant to our commitment and so that unwarranted and unjustified criticisms of our investigation will not remain unchallenged, criticisms made without adequate knowledge of the facts, I am enclosing a response I have prepared to an article written by Walter Pincus in the New Republic. I had previously sent to Professor Cox a copy of a response to an article by Watergate defendant James McCord, a response originally requested by former Attorney General Elliot Richardson. For your convenience, I am also enclosing a copy of that response.

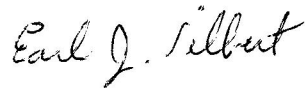
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-2-

I still intend, when I have time, to respond to the unfounded diatribe concerning the prosecutors, particularly myself, by Charles Morgan of the ACLU. In the meantime, should you or any members of your staff have any questions concerning our investigation, we are anxious to continue to cooperate and be of whatever assistance we can. Since our departure, we have cooperated with members of the staff both prior to and after your appointment as Special Prosecutor. We trust this cooperation has been helpful and we want to assure you that we stand ready to assist you and your staff in the future at your request.

With best wishes in fulfilling your difficult responsibilities as Special Prosecutor.

Sincerely,

A handwritten signature in cursive script, reading "Earl J. Silbert".

Earl J. Silbert  
Principal Assistant  
United States Attorney

Enclosures

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

December 28, 1973

ADDRESS ALL MAIL TO:  
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UNITED STATES COURT HOUSE BUILDING  
3RD AND CONSTITUTION AVENUE NW.

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INITIALS AND NUMBER

EJS/eh

Response to Walter Pincus, "The Puzzling Prosecution  
- More Unanswered Watergate Questions", printed in  
The New Republic, June 2, 1973

By: Earl J. Silbert, Principal  
Assistant United States Attorney

The June 2, 1973, issue of the New Republic contained an article by Walter Pincus entitled "The Puzzling Prosecution - More Unanswered Watergate Questions". The purpose of this memorandum is to answer the questions of Mr. Pincus.

As a general matter, the questions posed by Mr. Pincus are based on misleading or inaccurate assumptions of fact, innuendo, and unwarranted insinuations of misconduct. For example, Mr. Pincus initiates his article by stating that of those in charge of the Watergate prosecution and investigation, I, together with Mr. Petersen, had "ties to main participants in the matter (John Mitchell and John Dean)" because I had "dealt" with them when previously employed at the Department of Justice. In fact, however, prior to Watergate, I had met John Mitchell only twice - once at an office party and once at a fifteen minute meeting concerning proposed federal legislation on murder of state



police officers. I never worked on any matter at all with John Dean, never socialized with him, and knew him only to say hello to as an Associate Deputy Attorney General in charge of a section of the Deputy Attorney General's office different from the Office of Criminal Justice in which I worked. I emphasize this, not because as a factual matter it is critical, but because the unstated though obvious unfounded insinuation by Mr. Pincus of a questionable relationship between myself as Watergate prosecutor and Mr. Mitchell and Mr. Dean typifies his article.

1. The first general question posed by Mr. Pincus is "Who narrowed the scope of the original investigation and why?"

The question is predicated on an erroneous assumption of fact: that the scope of the investigation was narrowed. I am not aware that the scope of the investigation into the Watergate break-in was ever narrowed. If it was, no one ever communicated that fact to Mr. Campbell, Mr. Glanzer, or myself. Certainly not the White House, because, apart from the presence of John Dean as counsel at depositions of White House witnesses at the Department of Justice, I had absolutely no contact of any kind with anyone from the White House during the investigation which led to the first indictment.

Contrary to another erroneous statement of Mr. Pincus, i.e., that with Mr. Petersen, the three prosecutors had "primary responsibility for the investigations and prosecutions . . . of the financing and carrying out of the Nixon campaign organization's widespread political espionage and sabotage," our investigation initially and throughout only involved the Watergate burglary and bugging. This was so initially because, without the benefit of hindsight that

Mr. Pincus had when he wrote his article, we did not know at the time of our initial investigation of any alleged widespread political espionage and sabotage by the Nixon campaign organization.

More important, the enormous pressures on us to complete the Watergate investigation in the shortest possible time in view of the November '72 presidential election mandated that we devote our efforts solely to the Watergate burglary and bugging. The Department of Justice has a special unit in the Fraud Section of its Criminal Division that investigates possible campaign or election law violations, investigations not ordinarily handled by this office. Therefore, whatever information relating to these violations which was uncovered by our investigation was transmitted to this special unit. Indeed, all or nearly all of the evidence that provided the basis for the criminal informations filed against the Finance Committee to ReElect the President for violations of the Federal Election Campaign Act of 1971 came from our investigation.

When questioning Donald Segretti concerning any possible involvement in or knowledge he had of Watergate, we did learn from him of some of his political spying activities. These included asking embarrassing questions at press conferences, placing pickets of opposing candidates at Democratic rallies, supporting opposing Democrats, distributing leaflets or pamphlets, etc. Based on what he told us, none of these, in our view, constituted a criminal violation. Indeed, I specifically recall inquiring of Henry Petersen if he could see any violation, advising him of my lack of expertise in this area. He said he could not. In any event, all that information was transmitted to the Department of Justice for its evaluation. Thus, if as Mr. Pincus asserts, Mr. Gray did state that Mr. Petersen or I indicated that there was little likelihood of prosecution of Mr. Segretti, it is because we

were never aware of any illegal - as opposed to unethical - activity on his part in the District of Columbia, the jurisdiction of this office, or elsewhere. None of the three prosecutors, for example, even knew of the scurrilous Florida letter concerning Senators Jackson and Humphrey, let alone Mr. Segretti's alleged participation in its distribution, prior to his indictment in May, 1973. Indeed until the indictment, we were never aware of the investigation by the Department of Justice that was being conducted in Florida with respect to this letter or any others.

As was subsequently brought out in Mr. Segretti's testimony before the Senate Watergate Committee, we did not examine Mr. Segretti at length before the grand jury on his non-Watergate related political spying activities. This was attributable to the facts that the grand jury was investigating only the Watergate break-in and bugging, what Segretti had informed us of his spying activities indicated no criminal violation, and these matters, as I have previously explained, are not ordinarily investigated by this office but instead by the Justice Department which did in fact investigate them here. As Segretti acknowledged, our questioning on the Watergate burglary and wiretap was "full and complete." Moreover, immediately after his grand jury appearance I requested the FBI to interview Messrs. Chapin and Strachan of the White House staff, whom Segretti said had recruited him, and Mr. Kalmbach, whom Segretti said had paid him. It has been suggested that we purposefully did not bring out the names of Messrs. Chapin, Strachan, and Kalmbach before the grand jury to conceal their involvement in this political spying from the public and the news media. This is nonsense. For during this investigation leading to the September 15, 1972, indictment, there were no leaks at all to the public or news media from the grand jury. It was apparent to us, however, that there were serious leaks from the FBI. Thus if concealment was our motive, we never would have requested the FBI to interview them.

Mr. Pincus claims that the FBI did not pursue the allegedly illegal corporate \$100,000 contribution which they learned came from an American company in Mexico. His claim is false. It was not until the latter part of July, when we persuaded Hugh Sloan, Treasurer of the Finance Committee to ReElect the President, to cooperate with us, that we learned that the so-called Mexican checks came from Texas. The FBI then interviewed Texas Republican officials to determine the source of those checks. None would satisfactorily respond to specific inquiries about the Mexican checks. I then told the FBI that with grand jury subpoena power, we - the prosecutors - would trace the Mexican checks to their source. This we did, prior to the return of the indictment of September 15, 1972.

We traced these checks because of their connection with Watergate, not because of a possible campaign contribution violation. The latter was a matter to be investigated by the special unit of the Department of Justice. Our sole interest and efforts, however, particularly in view of the extraordinary time pressures under which we were operating, were directed at Watergate.

2. The second question posed by Mr. Pincus is "Why was the Watergate prosecution so slow in coming to trial?"

As the predicate for this question, Mr. Pincus refers to Mr. Gray and other FBI sources to the effect that the investigation was nearly complete by mid-July and indictments could have been obtained by late July. The statement that the main part of the investigation was over by mid-July is absurd. By that date, we had not yet been able to persuade Sloan to cooperate, we had not traced the Mexican and Dahlberg checks to their sources, we had not even questioned Liddy or Hunt before the grand jury. The investigation was not even half complete. Indeed, at that time we did not know how far or where our investigation would go or how long it would take.

It is true as a technical legal matter, that based on Baldwin's testimony, an indictment could have been returned against Hunt and Liddy as well as the five arrested on June 17th. No responsible prosecutor, however, would or could have ended the grand jury investigation at that point. For the case against Liddy and Hunt would have rested almost exclusively on one accomplice - Baldwin, and innumerable investigative leads would have remained unpursued. Had the suggestion been made to return an indictment then, I would have categorically rejected it. As it was, when claims of delay did begin to appear in the news media toward the end of August, Henry Petersen told me that Mr. Kleindienst was hoping indictments could be returned by Labor Day. Even at that time I told Mr. Petersen that this could not be done, that there was too much to do. In fact, between September 7 and September 15, 1972, the day on which the indictment was returned, nine witnesses testified before the grand jury, including John Mitchell, and, for the third time, Jeb Magruder.

Interestingly, Mr. Pincus' criticism of failure to return an earlier indictment is flatly inconsistent with his charge, totally incorrect as already explained, that certain investigative leads were not pursued. Mr. Pincus cannot have it both ways: an almost immediate indictment and the most exhaustive investigation conceivable. The two are mutually exclusive.

Mr. Pincus overlooks the fact that when the indictment was returned it was the prosecution that requested Chief Judge Sirica to assign the case specially to a judge for handling on a priority basis. He also overlooks the fact that the trial of the case was delayed from November 15, 1972, to January 8, 1973, because of illness of Judge Sirica.

3. Mr. Pincus' next question is "Was the delay in any way part of a cover-up?"

The predicate for the question is the earlier wholly unfounded statement that the investigation was nearly complete in mid-July. The question thus assumes a delay - a false assumption - and compounds the error by insinuating an illicit motive, i.e., cover-up.

It is difficult in this section to determine the point or points Mr. Pincus is trying to make. For example, he states that two folders from Hunt's White House safe were privately given to Gray with directions from Dean and Ehrlichman to destroy them. Without quibbling here as to the accuracy of the destruction aspect of his statement, its inclusion is puzzling. For it has no relevance whatsoever to our prosecution, unless Mr. Pincus is insinuating that we knew of the delivery, an insinuation which, of course, is also absolutely false.

Mr. Pincus points to the fact that I agreed to permit reelection committee lawyers to sit in on all FBI interviews of employees of the Committee for the Re-Election of the President (CRP). Initially, I did. After the civil suit was filed by the Democratic National Committee against CRP on June 20, 1972, Mr. Titus, the United States Attorney, and I, upon request of CRP's counsel, did agree as Mr. Pincus alleges. In reality we had virtually no choice since if counsel insisted on sitting in on witness interviews, the FBI either had to acquiesce or not conduct interviews. Presence of counsel in investigations of corporations and other associations has become the rule rather than the exception. Even the Senate Watergate Committee at the beginning of its investigation permitted White House counsel to be present at the Committee's interviews of White House personnel.

Some CRP personnel, as Mr. Pincus indicates, did seek reinterviews by the FBI without the presence of CRP lawyers. Mr. Pincus omits the facts that based on this and our general conclusion that the presence of CRP counsel was having an inhibiting effect on the candor of the witnesses at FBI interviews, I requested CRP counsel at conferences held on July 21 and 28, 1972, and on a number of other occasions, not to attend FBI interviews. My request was denied. Indeed, CRP counsel went so far as to insist on being present when we, the prosecutors, interviewed CRP witnesses. This I refused, that is, I would not permit them to be present at witness interviews in my office. The result was that we had no such interviews but put CRP witnesses into the grand jury cold and used its cumbersome procedure to explore and reconstruct their recollection of events. This hampered and slowed down our investigation.

Mr. Pincus alleges that we gave Sloan "unusual treatment." It is impossible to determine from his article what he means by this. Sloan was concerned about potential liability for violations of the Federal Campaign Election Act of 1971 - misdemeanor offenses. After interviewing him, I made the decision that his testimony was vital for the Watergate case: he explained the cash disbursements to Liddy, the Mexican checks, the Dahlberg check, and the Liddy comment to him Saturday morning at CRP, June 17th. While I gave him no formal promise of immunity, I did indicate to him and his counsel that because we wanted him as a witness, common sense should indicate we could not seal his lips by charging him with criminal offenses. If this is the "unusual treatment" to which Mr. Pincus is referring, I believed then and believe now that the decision was sound: Sloan was far more valuable as a witness in Watergate than as a potential misdemeanant defendant for campaign law violations.

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Mr. Pincus raises the question of why after McCord's arrest, no search warrant was obtained for his home or business office. The mere raising of the question demonstrates Mr. Pincus' complete lack of understanding of the Fourth Amendment prohibition against unreasonable searches and the Supreme Court and other court decisions interpreting and applying that Amendment. It is elementary that no warrant can be obtained to search a person's residence or office unless there is reasonable or probable cause to believe incriminating evidence, fruits or implements of crime, or contraband is present. Until Baldwin agreed to talk to us on July 5, 1972, the prosecution had no information that any legally seizable evidence was ever at McCord's home. By then - eighteen days after the arrest and twelve days after McCord's release from jail - there was no longer any reasonable basis at all to believe the property was still at McCord's home where Baldwin claimed to have delivered it on June 17th. For this reason, there was no conceivable basis in law for obtaining a search warrant. It is surprising that in view of his reputation as a civil libertarian, Mr. Pincus would even suggest a search of a person's home without any legal basis.

To rebut this response, Mr. Pincus refers to an alleged FBI directive suggesting a search warrant for McCord's Florida apartment. I know of no such directive. If there was such a suggestion, it was wholly without merit since there was no legal basis to obtain a search warrant for that apartment either.

Recognizing that there was no basis for a search warrant, the prosecutors subpoenaed [redacted] to the grand jury concerning the items Baldwin delivered. McCord had asserted his Fifth Amendment privilege despite our attempt in the grand jury to elicit his cooperation. [redacted]



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[redacted] Based on the testimony of [redacted] other leads were pursued. Only after these proved fruitless did we then advise Mr. McCord's lawyers that if we did not obtain the receiver and walkie talkie Baldwin delivered to his home, we would charge his wife with obstruction of justice. We never had any firm intention of so charging McCord's wife. The threat worked, however, and we received the materials. Mr. Pincus wonders why we did not ask for other material. The simple answer is we had no evidence that McCord had any other material. Furthermore, our leverage with respect to Mrs. McCord related only to what Baldwin testified he delivered to McCord's home, not to materials that we did not even know existed.

Mr. Pincus speculates that the delay in our "requesting" the materials from McCord is attributable to the fact that the request was not made until the discovery of the bug in Spencer Oliver's telephone. <sup>1/</sup> As might be expected, Mr. Pincus' speculation is totally wrong: the two had absolutely no relationship, direct or indirect. Mr. Pincus further speculates that absent discovery of the bug, the indictment "would have been only a conspiracy to intercept, rather than the carrying out of the act of wiretapping." Again Mr. Pincus is wrong. Discovery of the bug had nothing at all to do with including the intercepting count - Count Eight of the indictment. As a matter of fact, the bug discovered in Oliver's telephone was not legally necessary to prove the intercepting count and was not relied upon by the prosecution at trial.

4. Mr. Pincus' next allegedly unanswered question is "Did the prosecutors know of attempts to involve the CIA in the cover-up?"

<sup>1/</sup> This discovery occurred two days before the indictment, not two weeks as Mr. Pincus mistakenly asserts.

Mr. Pincus insinuates that because in November and December of 1972, the prosecutors made a number of inquiries to CIA concerning its relationship to the Watergate Seven, we knew of the alleged attempt to involve CIA in the cover-up. Then in a total non-sequitur, Mr. Pincus points, supposedly as proof, to the testimony of Mr. McCord that the defendants considered a CIA defense.

The facts of the matter are that at the very start of the investigation, because of the CIA association of a number of the defendants and their ties to Cuba, we did speculate as to whether the Watergate break-in had some connection to the CIA. Initial inquiries to CIA by the FBI, however, so far as we knew, drew an entirely negative response.

Despite the negative response, Seymour Glanzer, based on his experience in a prior case he had handled, his knowledge of other cases, and his litigating skill, suggested that as a defense to this case - particularly in view of the strong evidence we were amassing - the defendants might raise a phony CIA defense, that is, they might falsely claim that the Watergate break-in was a CIA sponsored operation. Pursuant to Mr. Glanzer's suggestion and only to prepare to rebut this possible defense, did we renew inquiries at CIA concerning any recent relationship the Agency had with any or all of the Watergate Seven. At no time, however, did Mr. Glanzer, Mr. Campbell, or myself ever know for a fact that the defendants were actually contemplating such a defense.

5. Mr. Pincus next asks "What was the background of the press release by Assistant Attorney General Petersen on September 19, 1972?"

The press release replied to Senator McGovern's allegation that the indictment returned on September 15, 1972, was a whitewash. It is difficult to understand what this question and the following discussion have to do with the Watergate prosecution. By innuendo and insinuation, nothing more, Mr. Pincus may be trying to raise the spectre of wrongdoing. But what it is and in what way his discussion is intended to demonstrate it are a total mystery.

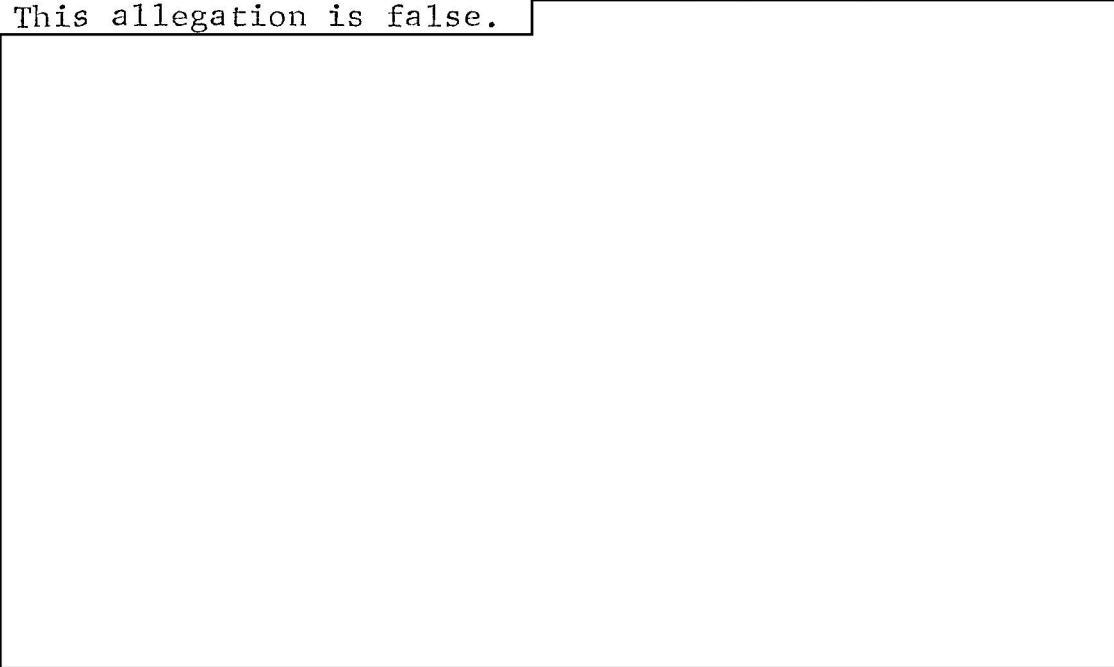
6. Mr. Pincus next queries: "Why did the prosecutors accept so uncritically Magruder's questionable testimony?"

This loaded question is also based on a false assumption of fact - that we accepted uncritically Magruder's testimony. As shown in my original prosecutive memorandum to Mr. Petersen, dated September 13, 1972, we had grave reservations about Magruder's testimony. Indeed our prosecutive memorandum indicated a reluctance to call Magruder as a witness at trial. Based on Sloan's testimony, particularly that concerning Magruder, and the fact that as Liddy's superior Magruder was the obvious next rung on the conspiratorial ladder if it went higher than Liddy, we had advised Magruder of his Constitutional Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel when he was called to testify before the grand jury on August 16, 1972, advice that is given targets or suspects of a grand jury investigation. As he demonstrated at the trial, when neither the defense counsel nor Judge Sirica questioned his testimony in the slightest, and before the Senate Watergate Committee, Magruder is a convincing, persuasive witness. Moreover, his testimony was significantly corroborated by Herbert Porter, another persuasive witness whom we had no reason to believe was lying and whose testimony was also not questioned at trial by either defense counsel or Judge Sirica.

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The decision to use Magruder as a witness at the trial was based on a number of factors. Probably foremost among them was our concern that without Magruder, who alone could explain why Liddy was authorized to receive \$250,000, our case would appear so incomplete as to raise questions with the petit jury. Sloan, whom we intended to call, always insisted he did not know the purpose of the authorization. Stans and Mitchell denied any detailed knowledge. Only Magruder testified he knew. Thus, with misgivings and realizing the defense would be given as Jencks material his extensive grand jury testimony, we decided to call Magruder and also Porter.

Mr. Pincus also claims that Sloan informed us Magruder suggested he perjure himself and report a smaller amount of cash disbursed to Liddy - \$45,000. This information, it has been alleged, we ignored. This allegation is false.



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Mr. Pincus refers to a conflict between Odle and Porter "on the same key cover-up promoted at the trial - the so-called need for a special intelligence unit run by Liddy." Contrary to Mr. Pincus' allegation that testimony was not inconsistent. Odle stated McCord was plugged into the FBI, Secret Service, etc. This did not mean that he had access to information concerning rallies for surrogate candidates for the President which Porter testified he needed and which were not within the jurisdiction of the Secret Service or other law enforcement agencies.

Mr. Pincus also alleges that "the most damaging point concerning the prosecutors at trial was a leading question put to Magruder, who was asked if he had ever told Liddy how to conduct his "legal" intelligence gathering." Initially it should be noted that the question was not leading. In addition to his obvious ignorance of the law, Mr. Pincus apparently is ignorant of relationships between trial attorneys (particularly prosecutors) and witnesses. Prosecutors take witnesses as they find them; they cannot direct a witness what to say or what not to say. Magruder told us throughout that he distinctly remembered warning Liddy on one occasion to be careful of what he did, not to do anything illegal or

which would embarrass the President. Given the circumstances, this was hardly unbelievable testimony. Magruder added at trial to what he had told us previously the answer quoted by Mr. Pincus, to the effect that CRP was very concerned about its activities being handled in a legal and ethical manner. This statement, it is clear, Magruder applied to all Committee employees, not, as Mr. Pincus insinuates, only to Liddy.

7. Mr. Pincus last question is: "What has been the prosecutor's attitude since the trial?"

Mr. Pincus states that following the trial, the prosecutors were critical of the press because of misleading facts and conclusions based on hearsay. Moreover, according to Mr. Pincus, we stressed that Liddy was the boss, giving "on background" various reasons why.

It certainly is true that though I believe the majority of reporters have generally been fair, I have been critical of a few members of the news media concerning their coverage of Watergate. Moreover, for the very reasons specified - misleading facts and conclusions based on hearsay - Mr. Pincus is one of them.

I do not know who Mr. Pincus claims said there were no higher-ups. I know I never said it to any newsman, on or off the record. Nor did I say there were higher-ups. For at the time I did not know. We had suspicions, as reflected in my September 13, 1972 prosecutive memorandum to Mr. Petersen, because of the vagueness of Magruder's testimony concerning Liddy's assignment and funding, the absence of any reports, the conflicts with Sloan and because of other unanswered questions we had concerning Hunt's and Liddy's activities at the White House, as also set forth in my prosecutive memorandum to Mr. Petersen. There were, however, factors which indicated that this bizarre escapade could well have ended

with Liddy. These included Porter's corroboration of Magruder, the stupidity of the burglary as acknowledged by all - Democrats and Republicans alike - the strange personalities of Liddy and Hunt, Liddy and Magruder's falling out in March, 1972, and their known intense hostility, indeed hatred, of one another, and the absence of any hard evidence uncovered by our investigation that higher-ups were involved.

At no time, however, did we cease trying to determine whether there were higher-ups, a fact Mr. Pincus ignores. During the early investigation, we repeatedly sought the cooperation of Hunt, Liddy, and McCord. They refused it. Shortly prior to the November Presidential election, we renewed our efforts with McCord by offering him a generous plea bargain. He rejected it. When Hunt pled guilty, in response to our inquiries, he assured us he had no personal knowledge of the involvement of higher-ups. After the trial, we obtained authorization to immunize the defendants in order to compel their testimony before the Watergate grand jury we were reconvening, a strategy we had decided to pursue long before the trial. In April and May, we broke the case wide open. Mr. Pincus mentions not one of these facts.

Mr. Pincus implies that we suggested "Liddy had stolen \$16,000 to finance the operation." I never even heard of the suggestion prior to reading Mr. Pincus' article. Mr. Pincus also stated that I told an attorney (Charles Morgan of the ACLU) that Hunt was doing the bugging for blackmail, not for political reasons. This is another distortion. We never were able to determine the precise motivation for the burglary and wiretapping, particularly a tap on the telephone of an unknown - Spencer Oliver. Baldwin had told us that McCord wanted all telephone calls recorded, including personal calls.



They were, many of them being extremely personal, intimate, and potentially embarrassing. We also learned that Hunt had sometime previously met Spencer Oliver at Robert R. Mullen Co. and opposed his joining the firm because he was a liberal Democrat. Therefore, one motive we thought possible was an attempt to compromise Oliver and others, but so far as Hunt and Liddy were concerned, for political reasons, not for money. We never had any direct proof of this since neither Hunt or Liddy, despite our continuing efforts, would talk to us. It was, therefore, only an inference based on the above facts. We did think McCord was in this at least partially for the money. For our examination of his bank records and cancelled checks showed that without the three \$10,000 cash deposits in one hundred dollar bills he made to his account in April to June 12, 1972, presumably money for the Watergate operation, his business - McCord Associates - would have been hopelessly in debt.

8. Toward the beginning of his article, Mr. Pincus notes that Judge Sirica "on several occasions interrupted the prosecutors to press questions of his own, seeking to dig out information that seemed to be ignored by the government lawyers." Because this view has been expressed by others, it warrants a response.

I recall only two instances of Judge Sirica asking questions on his own. The first occurred with Baldwin who testified he could not remember the name on the envelope containing the logs he delivered to CRP when McCord was out of town. This had been his position with us since early July. We had tried every name we could with him, without any success. I concluded, as did Mr. Glanzer and Mr. Campbell, that Baldwin honestly could not remember. Judge Sirica apparently thought otherwise, believing that perhaps Baldwin was shielding

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a higher-up. In fact, we now know the name was Liddy. That Baldwin could have forgotten this is readily explained by the fact that he did not know who Liddy was until we first interviewed him in early July; he knew the person he identified to us - who was in fact Liddy - only as George. The important fact here, though, is that this was absolutely not an area ignored by the prosecutors.

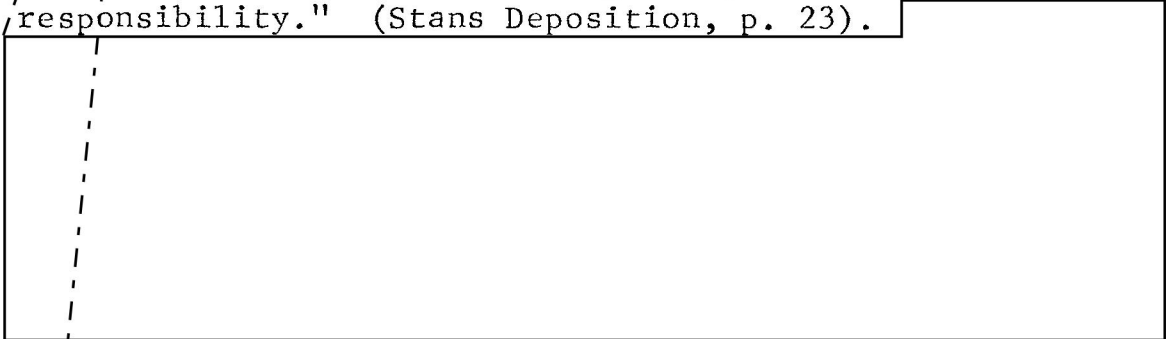
The second instance involving questioning by Judge Sirica occurred during Sloan's testimony. When Sloan testified that he did not know the purpose of the authorization and payment to Liddy of \$199,000, Judge Sirica questioned him out of the presence of the jury. During this questioning, Sloan testified that he verified the authorization with Secretary Stans and he Stans verified it with John Mitchell. (Trial Transcript, p. 1462). It is this response, bringing out for the first time in the trial the names of Stans and Mitchell, particularly the latter, in connection with the authorization, that we are criticized for not doing.

There were a number of reasons we did not ask the question. At least part of this response of Sloan's was hearsay. It was also at best only remotely relevant to the guilt or innocence of Liddy or McCord. Most important, however, this answer of Sloan was completely inconsistent with what we had previously been told by a number of witnesses, including Sloan himself. In his interviews in our office and

Secretary Stans, when

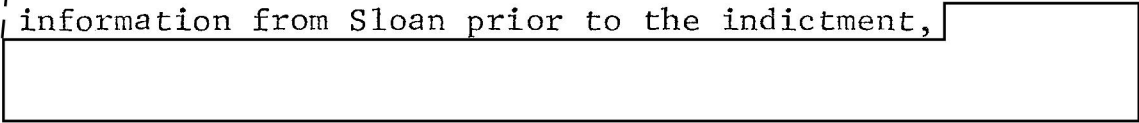
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questioned by us on this matter, went further: he testified that he knew vaguely that Liddy was working on security for the San Diego convention and that the one time Sloan asked him about a disbursement to Liddy, he told him to "check with Jeb Magruder, because it was his responsibility." (Stans Deposition, p. 23).



Thus, contrary to the assumption of Mr. Pincus and others, we had thoroughly explored the responsibility for the Liddy \$250,000 authorization with the appropriate persons in the appropriate forum - the grand jury investigation. The trial of Liddy and McCord on the charges specified in the indictment returned by the grand jury was not the proper forum.

Mr. Pincus also alleges that Sloan told us and the grand jury that Fred LaRue advised him to take the Fifth Amendment. My recollection is that at some time, after the return of the indictment, Sloan told us that he was advised to assert the Fifth by the Committee lawyers, certainly not LaRue who is not a lawyer, advice that caused him to seek his own counsel. I recall no such information from Sloan prior to the indictment,



ROUTING SLIP

TO:

~~(1) Ruth~~

(1) Mr. Cox

(2) Lacovara

( ) Connolly - ITT

( ) Davis - Dirty Tricks

( ) McBride - Camp. Contr.

( ) Merrill - Plumbers

(3) Neal - Watergate

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(✓) Return to Central Files

NOTES:

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

August 16, 1973

ADDRESS ALL MAIL TO:  
UNITED STATES ATTORNEY  
ROOM 3136-C  
UNITED STATES COURT HOUSE BUILDING  
3RD AND CONSTITUTION AVENUE NW.

IN REPLY, PLEASE REFER TO  
INITIALS AND NUMBER

EJS/eh

Professor Archibald Cox  
Special Prosecutor  
1425 K Street, N.W.  
Washington, D.C. 20005

Dear Professor Cox:

A recent publication of the Armed Forces Journal contained an article on Watergate by James W. McCord entitled "What the FBI Almost Found." The Attorney General requested the views of Henry Petersen about McCord's allegations. Mr. Petersen in turn asked for my comments. Enclosed for your information is a copy of my response to Mr. Petersen.

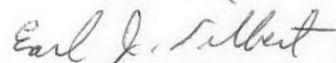
I am certain that, given the extraordinary security precautions you have undertaken at your offices at 1425 K Street, N.W., you were seriously disturbed about the news media obtaining copies of some of your internal memoranda. As reported by the Washington Post on Saturday, August 11, 1973, one of these memos appears to criticize the FBI and inferentially this office for not interviewing Harry Fleming until May or June of this year, and so-called "sources" note that he was not interviewed about his March trip to Key Biscayne and post-Watergate contact with Robert Mardian.

The apparent author of the memorandum, Kenneth S. Geller, is mistaken about the facts. Until Magruder acknowledged to us in mid-April, 1973, his previous perjury and told us about the Key Biscayne meeting, neither the FBI nor this office had any reason at all to interview Fleming. Once Magruder disclosed the occurrence of the Key Biscayne meeting, Mr. Fleming was interviewed in April, not in May or June, and by Mr. Campbell, Mr. Glanzer, and myself, not by the FBI. Moreover, our lengthy interview covered the very subject matter discussed in Mr. Geller's memo: Mr. Fleming's trip to Key Biscayne, his post-Watergate conversation with Mardian and also his relationship with the campaign, particularly with John Mitchell.

Moreover, when we withdrew from the case, Mr. Neal asked for our recommendations on witnesses to be interviewed and presented before the grand jury. I responded by a memorandum to Mr. Neal, dated July 10, 1973. In that memorandum, I specifically listed Harry Fleming as a witness to be interviewed, stating that we had previously interviewed him and suggesting the areas of inquiry.

Mr. Geller, if the Post report is accurate, apparently is not familiar with the files in the case. This is regrettable, particularly since his memorandum was obtained by the news media and the inaccuracies contained therein and their adverse reflection on those who conducted the investigation prior to your appointment, received front page exposure. I trust that John Hanrahan, the writer of the Washington Post article, will be informed about the misleading impressions created by his article and "encouraged" to correct them.

Sincerely,



Earl J. Silbert  
Principal Assistant  
United States Attorney

cc. Mr. Henry Petersen

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : Henry E. Petersen  
Assistant Attorney General  
Criminal Division  
Earl J. Silbert  
FROM : Principal Assistant  
United States Attorney

DATE: August 15, 1973

SUBJECT: Comments on article of James W. McCord, "What the FBI  
Almost Found," The Armed Forces Journal, August, 1973

The purpose of this memorandum is, pursuant to your request, to comment on the above article by James McCord. The theme of the article - that senior FBI personnel were prevented from pursuing leads they wanted to and therefore from discovering the truth behind Watergate - is false. It is based on inaccurate assumptions of fact and misleading statements. Because his article have received considerable publicity and because some of Mr. McCord's erroneous accusations have been asserted by others, I think it important that this response be somewhat detailed and the "record set straight."

1. Mr. McCord states that senior supervisory personnel of the FBI wanted to talk to him to obtain a confession in July, 1972, but were turned down "at the highest levels." Had they approached him, claims McCord, he would have confessed.

I have no knowledge whatsoever of any attempt by the FBI to talk to McCord that was rejected by any government official. To the contrary, on June 21, 1972, only four days after the arrest, John Denton and Daniel Mahan, both of the FBI Washington Field Office, tried to interview, separately and individually, McCord and the four Miami defendants who were still in jail for want of bail. This was done with my knowledge and approval and without prior notification to the retained counsel who represented all five defendants. 1/ Indeed this joint representation

1/ In fact this attorney complained bitterly in court the following day of this approach to his clients. I defended what the agents had done but acknowledged that in view of Massiah v. United States, nothing the agents obtained from one of the defendants could have been used against him.



was what induced the direct approach to McCord and the others; it is obviously impossible to persuade counsel representing one client to allow that client to cooperate with the Government when that cooperation may be to the detriment of other clients whom that lawyer also represents. In any event, McCord refused even to be interviewed by the agents, let alone give them any helpful information.

Furthermore, not once throughout the entire investigation, did McCord ever respond affirmatively to the many attempts law enforcement officials made to elicit the truth from him and his cooperation. On June 17, 1972, the day of the arrest and before his presentment in court, he gave virtually no information at all when approached by Gary Bittenbender, a member of the Intelligence Unit of the Metropolitan Police Department, but did indicate that no one else was involved in Watergate. Bittenbender previously knew McCord from his security work at the Committee for the Re-Election of the President.

2/ Once McCord retained his own counsel he could not, of course, be interviewed by the FBI without first securing the permission of counsel. See ABA, Code of Professional Responsibility, DR 7-104 (1971).

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On or about October 25, 1972, prior to the election and during the pre-trial motion procedures in this case, the prosecutors told Messrs. Shankman and Johnson who were associated with Mr. Alch in representing McCord, that the prosecution was prepared to make an extremely generous offer which included the possibility of accepting a one count guilty plea in return for McCord's complete and truthful disclosure of everything he knew and his truthful testimony as a witness at the trial. The prosecutors were advised that this offer was conveyed to McCord and squarely rejected by him.

Shortly before the trial which began on January 8, 1973, Mr. Alch reopened discussions with the prosecutors about a plea disposition. He was told that the prosecution wanted a guilty plea to three counts of the indictment; that a complete statement of facts would be made to the court at the time of the entry of the guilty plea; that thereafter McCord would be use-immunized and required to testify before the Grand Jury concerning everything he knew about the case. This offer was rejected by McCord. During the trial, Chief Judge Sirica, in effect, invited McCord to go before the Grand Jury and tell everything he knew about the case. This was also rejected by McCord.

3/ Mr. McCord states in his article, as he did in his famous letter to Judge Sirica, that he had no confidence in the United States Attorneys handling the Grand Jury.

McCord was not interested in confessing. To the contrary, he had only one interest: to beat his case. How else can one explain his alleged telephone calls to the Chilean and Israeli embassies for the purpose of obliging the Government to dismiss charges against him rather than disclose their interception. He decided to come forward only two days before his sentence when he could expect to receive a stiff jail sentence. If in fact McCord had really wanted to confess to an FBI agent of his own choosing, all he had to do was call him up. He obviously never did so.

2. McCord states that the FBI had to clear all leads with the Department of Justice before pursuing them and that many leads were killed by either the Department of Justice or the White House.

That statement is totally inaccurate. First, most FBI leads came out of the Washington Field Office. Except for interviews of White House personnel, witnesses in foreign countries, and Kenneth Dahlberg (because of alleged CIA association), I know of no clearance procedure followed by that office with Bureau headquarters, Justice, or the White House. The Washington Field Office and our office obviously made every effort to coordinate our investigations. There were leads we jointly decided the FBI was to pursue alone; there were certain critical witnesses, usually those represented by counsel, whom we preferred to deal with directly; and there were a number of witnesses interviewed first by the FBI and then by us. There were also innumerable leads followed by the FBI without any consultation with us or anyone else to my knowledge. I know of no leads developed by the FBI which were "killed."

3. McCord implies that the FBI were not permitted, as would have been customary, to interview all personnel of the Committee for the Re-Election of the President (CRP). Had this been permitted and had Robert Reisner,

Magruder's administrative assistant, been interviewed, the FBI, McCord states, would have learned of Gemstone - the file of the intercepted wiretaps. Furthermore they would have learned from Powell Moore of Liddy's visit to Kleindeinst and his destruction of records at CRP on June 17th.

I have no knowledge whatsoever of any prohibition or limitation on CRP personnel to be interviewed by the FBI. To the contrary, so far as I know every lead at CRP was vigorously pursued. Reisner was never interviewed because his name simply never came up in any of the innumerable interviews conducted by the FBI at CRP, in the grand jury testimony of CRP personnel, or from any other leads that developed. Indeed, as Herbert Porter subsequently told us and testified before the Senate Select Committee, there was an attempt by committee counsel to keep Reisner from the investigators. Furthermore, there is no assurance or even likelihood that had the FBI interviewed Reisner, they would have learned of the Gemstone file from him. Reisner did not know the significance of Gemstone: he only knew there was a file by that name. Moreover, with CRP counsel insisting on attending all interviews of CRP employees, the latter never volunteered anything. Of those who knew the significance of Gemstone, McCord, Hunt, and Liddy asserted their Fifth Amendment privilege, and Sally Harmony (Liddy's secretary) and Jeb Magruder lied to the grand jury and the FBI. This is not intended to imply that if asked directly about Gemstone, Reisner himself would have lied about it, but the FBI agents would have had to be clairvoyant to ask about it.

With respect to Powell Moore, the FBI did interview him on July 24, 1972, on a subject matter unrelated to his activities of June 17th. Because they did not know beforehand and in all fairness had no reason to suspect his June 17th activities, however, and therefore did not ask the magic questions, Mr. Moore, with committee counsel present, did not volunteer what he knew beyond responding to the specific questions asked by the agents. This office never knew of Liddy's visit with Moore to Mr. Kleindeinst at the Burning Tree Golf Course on June 17, 1972, until April, 1973.

4. McCord claims that requests by senior FBI personnel for search warrants, apparently for his residence and vehicles, were rejected, either right after the arrest or after Baldwin's disclosures four weeks later.

That statement, so far as I know, is absolutely false since no such request was ever made. However, had such a request been made to me, I would have rejected it.

Following the arrest of McCord and the four from Miami in the Watergate Office Building, because Watergate hotel keys were found in their possession as was documentation of a rented car located at the Watergate, search warrants were immediately obtained for these rooms and the car. The warrants were obtained to search for evidence of identification - they had given false names - and for other evidence related to the burglary and bugging, primarily because of the proximity of the Watergate Hotel and rented car to the burglarized Democratic National Committee Headquarters. While legally sufficient in my view, the basis for obtaining those search warrants was slim - we had no direct evidence that seizable evidence was present in those rooms.

There was no basis at all, however, for obtaining search warrants for McCord's house or vehicles, miles away in Rockville, Maryland. Insofar as his article implies that it is customary FBI procedure to secure search warrants for the residences and cars of arrested defendants when tangible evidence is recovered on the scene, it is totally misleading and inaccurate. There must be probable cause to believe that seizable evidence is present in those places. If there is not, as was the case here, no warrant can be obtained. The mere facts of arrest and seizure at the scene are obviously not adequate.

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It was not until July 5, 1972, after extensive negotiations with counsel, that we first learned from Baldwin that on June 17th, he had taken electronic equipment and other materials to McCord's residence, brought some into his house and left the rest in the car. This was eighteen days after the arrest and twelve days after McCord was released from jail on June 23, 1972.

Had any FBI agent requested a search warrant then, I would never have approved it. For, there was absolutely no basis, let alone probable cause, for believing that this incriminating movable equipment was still there and had not been moved. The fact that the FBI did not request search warrants is proof by itself that they too recognized the total absence of any probable cause.

What we did do after receiving Baldwin's information

Subsequently we told McCord's counsel that if we did not get the equipment, we would charge Mrs. McCord with obstruction of justice. I had no intention of so charging her. The threat worked, however, and we received the equipment with a promise to McCord's attorneys that we would not use the fact of the receipt against McCord at trial.

There never was any evidence to establish probable cause that Hunt had seizable evidence in his home. Accordingly, no such warrant was obtained for his home.

I have no direct knowledge of what specific actions those whom McCord calls "senior supervisory personnel" wanted to take in the Watergate case. This is because my exclusive contact was with the Washington Field Office

and never with Bureau headquarters. Given the excellent working relationship this office had with the Washington Field Office, I cannot believe that had any of these "senior supervisory officials" wanted to take the action McCord claims they did, I would not have been notified of it. In fact, I never was. To my knowledge, all leads were actively and thoroughly pursued, with the only clearances and attendant delays those I have mentioned above.

cc. Archibald Cox  
Special Prosecutor