

June 24, 2013

The Honorable Royce C. Lamberth
Chief Judge
United States District Court
for the District of Columbia
333 Constitution Avenue, NW
Washington, D.C. 20001

Dear Chief Judge Lamberth,

Thank you for your recent ruling. It gives this petitioner—an educator of America’s next generation—much hope that future researchers may come to know more than the current generation does about the Watergate era.

Discussion and Detailed Response

While I have no reason to believe they are being overlooked, I wish to bring to the court’s attention a few points before final disposition is made of my petition.

1) Records Received by Judge Sirica on 5/14/73

This matter may be addressed in either the sealed ex parte order (ECF 20) or the sealed ex parte memorandum opinion (ECF 21), but since I do not know for certain please allow me to raise it here.

On May 4, 1973, in the midst of *U.S. v. Liddy* and an active grand jury recalled on March 26, John W. Dean III made an unexpected motion to lodge certain records with this court that theretofore had been stored in his safety deposit box at a commercial bank in Alexandria, Virginia.¹

In his motion, Dean described the motivation behind his effort as two-fold:

First, his “...security clearance covering his possession and use of the classified security information...lapsed immediately upon his termination” on April 30, 1973 as Counsel to the President of the United States, and,

Second, referring to *U.S. v. Liddy*, the active grand jury, and recent Congressional action to create what became the Senate Committee on Presidential Campaign Activities, Dean stated “...the said documents may have ‘a bearing on the subjects under investigation.’”

¹ See *U.S. v. John Doe, et al.*, Misc. Case No. 77-73 (D.D.C.).

On May 14, Judge Sirica held a hearing on Dean's motion. According to the transcript of the hearing, when asked which agencies created the records in question, Dean responded "this was a combination of several agencies including the FBI and other national security agencies." On behalf of the government, Assistant U.S. Attorney Earl Silbert urged the court to take possession of the documents, since they remained government property. In addition, Silbert argued, "...Mr. Dean in his motion alleges these documents may have a bearing on the matter under investigation by the grand jury which is an arm of this court." Faced with no opposition, Judge Sirica ordered that the court take possession of the records. These records have remained in this court ever since, and have never been disclosed.

Following the hearing on May 14, the agencies responsible for the creation of the records in question² gathered to discuss what they considered to be a breach of security by Dean. They wanted their records back, but Judge Sirica did not yield. A classified FBI memorandum dated May 22 (Exhibit A), which this petitioner obtained via the Freedom of Information Act in late 2012, describes the seriousness among the concerned agencies that their records could fall into the hands of a Congress at the beginning stages of launching any number of inquiries into Watergate and other government activities.³

If securing return of these documents were not possible, the agencies concluded, the next best outcome was to make sure that the records turned over to this court remained with this court. Should they be treated as records subject to the FOIA, as we would likely interpret them to be today, or should they fall into the hands of Congress, a co-equal branch of government: *"...inference is likely to be drawn by Congressional committees that this committee⁴ was a prelude to the Watergate affair and the Ellsberg psychiatrist burglary."*

That is certainly not the conventional version of why either event occurred, and suggests we still have much to learn about the ICI and the role of the intelligence community in the run-up to the Watergate break-in.

² These agencies created the documents through their work on the Interagency Committee on Intelligence (ICI), a group formed in 1970 and chaired by J. Edgar Hoover. The committee was charged with the task of making recommendations to the Nixon White House on removing restraints in intelligence collection methods. John Dean had responsibility for liaison duties with the ICI through his role as Counsel to the President of the United States.

³ Another reason these records are of utmost importance is because when Dean removed his files from the White House over April 21-22, 1973, anticipating the end of his tenure, they included records from his work as Counsel to the President of the United States. Although a public official—and one of the most central figures to our understanding of Watergate—removal of his records subsequently distorted the archival record and has prevented the public's ability to inspect these records as they can any other records from the Nixon White House.

By being one of the first Watergate principals to leave the White House, Dean avoided the strict records retention requirements placed on later Nixon aides, which for some included the sealing of offices by the FBI so that records could not be removed. Dean then used the records he removed from the White House to seek immunity from federal prosecutors. Had Dean not removed the records turned over to Judge Sirica on May 14, 1973, this petitioner believes they would be available for research today at the National Archives-administered Richard Nixon Library & Birthplace, and our understanding of the path to Watergate would be different.

⁴ The ICI.

Of concern to this petitioner is that there is currently no vehicle to obtain review or release of these records, given that they have resided at this court since 1973, beyond the reach of the FOIA. The records were created by public officials employed by executive branch government agencies whose records fall under the purview of the Freedom of Information Act. These records may have great bearing on the motive(s) behind the Watergate break-in, the details of which still to this day have never been established.

Since Dean turned over these records to this court during *U.S. v. Liddy*, while the grand jury was active, and because today they continue to legally and physically reside at this court, I respectfully urge the court to use its inherent authority to include these records among those to be reviewed for release by the National Archives in consultation with the Department of Justice. These could be the single most significant records sought by this petition. Surely, some of these documents are appropriate for release.

2) Presentence Investigation Reports &

3) Release of Illegally Intercepted Wiretap Information

The court has creatively yet judicially struck a proper balance between protecting the personal privacy of living individuals while releasing as many records as possible in order to clarify the historical record. However, regarding the release of illegally intercepted wiretap information, permit me to offer a compromise, should it be needed.

The goal of every aspect of this petition is to add to the historical record and put records in the hands of future generations of researchers. Disclosure of the names of those who were illegally wiretapped does that. In terms of adding to the historical record, obtaining the records of Baldwin's recollection of the telephone calls themselves—when redacted precisely and responsibly—would add even more to the historical record than would a list of names, as helpful as that could be on its own. Releasing only the contents of the conversations would also maintain the current level of privacy afforded to those overheard by Baldwin.

This petitioner is very pleased with the court's decision to release the list of names of those overheard on the illegally intercepted wiretaps, but if the Department of Justice is in agreement I would be willing to accept the contents of the conversations without the names if protecting their identities is a greater priority.

4) Grand Jury Information

The court has brought to the attention of this petitioner the valid concerns surrounding the continued right to privacy of living grand jurors, living figures who appeared before the grand jury, and living figures who may have been mentioned in such testimony:

Although the information sought by Prof. Nichter is more than forty years old, at least one of the subjects of grand jury testimony—[redacted]—is still living and these documents should remain sealed to protect his privacy. It is also possible that other individuals—grand jurors and witnesses—named in the materials are still living. Revealing the names of Watergate grand jurors and grand jury witnesses could bring these individuals or their families unwanted media attention. If interviewed, living former

grand jurors and witnesses may divulge information constituting a further breach of grand jury secrecy.

Despite the above statement, the court raises another important point:

Disclosure may be appropriate following the death of all persons named in the grand jury materials. The Court would also reconsider its ruling if it was presented with evidence that the named individuals had consented to release.

These statements by the court provide an opportunity to address several different issues:

- A. Living Grand Jurors, Living Grand Jury Witnesses, and Living Individuals Named in Grand Jury Materials. The National Archives and Records Administration Special Access/FOIA Division, located in College Park, Maryland, has the most competent and capable staff of professional archivists this petitioner has encountered at any archive in the world. A large part of their work involves complicated declassification, privacy review, or other legal issues before disclosure of records can take place. They routinely liaise with dozens of federal agencies, and over the decades the subject of Watergate has not been an insignificant part of their work. They keep a sophisticated, detailed obituary file, which greatly aids their work. Given that the vast majority of Watergate principals are deceased—including every figure who was a senior official in the Nixon administration—it would not be terribly difficult to review and release grand jury records related to these deceased individuals, while making precise, responsible redactions in cases where living officials are mentioned who have stated positively that they are not in support of disclosure. This petitioner has no desire to infringe on the rights of privacy of a living figure who genuinely prefers to be left alone, but I respectfully request the court to consider the fact that many Watergate figures are either deceased or have come out in support of disclosure, directly or indirectly, through overt statements of support, depositions and testimony in various Watergate-related cases over the decades, or through the income generated by decades of speaking and writing about Watergate.
- B. Living Figures In Support of Disclosure. As noted above, the vast majority of the principal Watergate figures are deceased. Among the living figures of greatest importance to *U.S. v. Liddy*:
- **G. Gordon Liddy:** Liddy has written, spoken on his radio show, and testified numerous times that he is in support of all sealed grand jury materials being released to the public. He provided very little cooperation with the grand jury, refused to answer questions, and disclosure of materials related to him would likely be without controversy or great substance.
 - **Alfred C. Baldwin:** Baldwin has never opposed release of *U.S. v. Liddy* records. Both contemporaneously and today he speaks openly about Watergate—though without disclosing the contents of the illegally intercepted wiretaps—and risked severe reprimand from Judge Sirica for his unauthorized interview in 1972 with the *Los Angeles Times*, the transcript and tapes of which are subjects of this petition. He has given candid interviews for other books since then, and he is

currently writing his own book on the subject. In 1972, in need of funds to cover legal expenses, he tried to sell his story, and always hoped that his role in Watergate might produce income. He clearly has no problem with unsealing grand jury records related to his involvement, which may not even result in learning anything new given the number of prior disclosures made by him.

- **John W. Dean III:** Dean wrote in support of Prof. Stanley Kutler's 2011 petition before this court to unseal President Nixon's grand jury testimony. In fact, he stated he was in support even though his right to privacy could be potentially breached: "My activities relating to the events associated with Watergate and other matters may have been discussed in President Nixon's grand jury testimony. If that is the case, I have no personal objection to disclosure of any such testimony."

C. A "broad-based and unified support" demonstrated by a "consortium of historical associations and Watergate scholars." I would like to draw the court's attention to the letters of support of *In re Petition of Kutler*, 800 F. Supp. 2d 42, 43 (D.D.C. 2011). Many were written so generally in support of unsealing Richard Nixon's 1975 grand jury testimony that they could have been written in support of my petition. How could they logically be in favor of openness and discovering the truth about Watergate through the release of President Nixon's grand jury testimony, but not the testimony of Watergate principals who—unlike Nixon—were more likely to be in a position to know something about the origins and planning for the Watergate break-in?

The following are excerpts from the declarations of support that speak broadly to the historical importance of unsealing Watergate grand jury records and placing them in the public domain:⁵

- **Stanley Kutler:**⁶ "Events over the years have kept alive interest in Watergate's unresolved questions."
- **Julian Helisek:**⁷ "From June 1972 to July 1975, three grand juries investigated various aspects of the Watergate scandal, at times simultaneously. The grand juries took testimony from hundreds of individuals and handed up numerous indictments in what the *New York Times* called 'the most momentous criminal investigation in American political history.'"

⁵ The titles and professional affiliations of these writers of declarations of support were accurate at the time they wrote their declaration.

⁶ Stanley Kutler is a Professor Emeritus of history and law at the University of Wisconsin.

⁷ Julian Helisek is a fellow at Public Citizen Litigation Group.

- **Richard J. Davis:**⁸ “As a former prosecutor, I understand and support the need to maintain grand jury secrecy. As time goes on, however, some of the key interests underlying the secrecy of grand jury proceedings diminish...I believe that the fact that a former President testified about criminal activity that occurred during his Administration, and in which his top staff were involved and which led to his resignation, presents one of the exceptional cases in which the historical importance of the material outweighs the need for secrecy.”
- **John W. Dean III:**⁹ “If there is another living person who has more first-hand knowledge of the events described as Watergate than I do, including both those matters that transpired with the Nixon White House as well as the work of various investigators and prosecutors, that person is unknown to me...My activities relating to the events associated with Watergate and other matters may have been discussed in President Nixon’s grand jury testimony. If that is the case, I have no personal objection to disclosure of any such testimony.
- **David M. Dorsen:**¹⁰ “Both for historical reasons and for the important task of educating the public about the consequences of official misconduct, it is essential that the sworn testimony of Nixon be released. Only in this way can the full account of a major event in the country’s history be known and understood.”
- **Mark Feldstein:**¹¹ “In my professional judgment, it is astounding that the 35-year old transcript of President Nixon’s grand jury testimony still remains sealed and unavailable to scholars, journalists and the public. No ongoing law enforcement investigations are underway. No corporate trade secrets are at risk. No obvious privacy concerns present themselves given the death of Nixon and most of the people from that era who might be mentioned in the last President’s testimony. And any possible threat to national security that potentially could be caused by revealing sources and methods—an extraordinary unlikely possibility given how much time has elapsed—could easily be dealt with by precise and modest redactions...The issues at stake in this testimony remain of vital interest to historians, journalists, and the public in order to understand the complete

⁸ Richard J. Davis was an assistant special prosecutor with the Watergate Special Prosecution Force (WSPF) from 1973-1975.

⁹ John W. Dean III served as Counsel to the President of the United States from 1970-1973, and from 1973-1975 was the key witness in the Watergate-related investigations undertaken by the United States Attorney for the District of Columbia, the Watergate Special Prosecution Force (WSPF), the Select Committee on Presidential Campaign Activities of the United States Senate, and the Impeachment Inquiry on President Richard Nixon undertaken by the Committee on the Judiciary of the United States House of Representatives. Before becoming the government’s key prosecution witness, he pled guilty to conspiracy to obstruct justice in connection with his role in the Watergate cover-up.

¹⁰ David M. Dorsen was Assistant Chief Counsel of the Senate Select Committee on Presidential Campaign Activities from April 1973 until November 1974.

¹¹ Mark Feldstein is an Associate Professor of Media and Public Affairs at The George Washington University.

Watergate narrative. Despite the passage of time, the importance of the Watergate crisis is difficult to overstate, not only in American political history but also in contemporary journalism.”

- **Don Fulsom:**¹² “...Watergate involved a vast web of criminality that forced a president to resign in disgrace and sent 25 of his top aides to prison. Unsealing Nixon’s testimony might, in some way, even assist us in finding ways to avoid such abuses of presidential power in the future.”
- **David Greenberg:**¹³ “Watergate remains one of the most important events in American history. It was the greatest constitutional crisis in American history since the Civil War, the most serious abuse of presidential power and the only one that led to a president’s resignation, and a transformative event that remade American politics. It contributed significantly to the decline of public trust in the president and the government, to the concern among journalists with scandal and high-level wrongdoing, and to a political culture of partisan antagonism and retribution. Watergate and Nixon’s name remain synonymous with presidential corruption and crime. For thirty-five years the “-gate” suffix has been routinely attached to scandals large and small, attesting to Watergate’s continuing cultural importance. Although there were many other important aspects of Nixon’s presidency, virtually all historical overviews of his presidency begin with Watergate...the unsealing of Nixon’s testimony may answer, or help to answer, lingering mysteries about Watergate. For example, it is not known whether Nixon authorized the Watergate break-in or knew about it in advance.”
- **Kenneth J. Hughes, Jr.:**¹⁴ “The historical importance of, and public interest in, the collection of abuses of power covered by the umbrella term of Watergate are great and widely recognized. The Watergate investigations riveted the nation in 1973 and 1974. They resulted in the criminal convictions of a large number of high government officials and the resignation of a President. Watergate has remained relevant throughout the years, as is evidenced by the frequent affixing of the suffix “-gate” to the scandals of the day. Richard Nixon’s role in the scandal was central, but remains controversial. Release of his grand jury testimony would remove a no-longer necessary veil of secrecy from an important part of the record and thereby help dispel the myths that government secrecy engenders.”

¹² Don Fulsom is an adjunct professor of government at American University, and a former Nixon White House correspondent for United Press International (UPI), and a UPI bureau chief in Washington, DC.

¹³ David Greenberg is an Associate Professor of Journalism and Media Studies and of History at Rutgers University.

¹⁴ Kenneth J. Hughes, Jr. is the Nixon Tapes Project Editor with the Presidential Recordings Program (PRP) of the Miller Center of Public Affairs at the University of Virginia.

- **Thomas Long:**¹⁵ The historical interest in Watergate has only grown over time. As more and more Watergate-related documents have become available to researchers, scholars have produced a growing library on the subject. However, absent from the available primary source materials is what President Nixon stated while under oath before the Watergate Grand Jury, which has secured the unfortunate reality that speculation is the primary manner by which any scholar can discuss President Nixon's role in this unprecedented constitutional and national crisis—an appalling embarrassment for a free and democratic society.”
- **Keith W. Olsen:**¹⁶ “Watergate merits continued analysis, and in a democracy that means access to all relevant archives...history deserves full access to all relevant documents.”
- **Eric S. Perlstein:**¹⁷ “Revealing the contents of Richard Nixon’s testimony will profoundly contribute to existing scholarship and aid future research.”
- **Melvin Small:**¹⁸ “Although few presidencies have produced so much archival material so soon after its termination, there are still scores of questions that remain about President Nixon and the lacunae in our understanding of Watergate...I have come to realize that we are still far from nailing down the complete story.”
- **Raymond Smock:**¹⁹ “Access to records that reveal how the United States Government conducts its business is an essential requirement of our representative democracy. If the public is ill-informed, or misinformed about actions of elected officials, our Constitutional government suffers and could fail...unsealing the transcript of President Nixon’s federal grand jury testimony will enable historians, journalists, and other writers to spread this important information to the American public. Without an informed public, as Madison, Jefferson, and other Founders put it, our system of representative democracy could fail.”
- **Barry Sussman:**²⁰ “It is not just my own point of view that persuades me that interest in the Watergate scandal and Nixon remains high 35 years after the grand jury disbanded and 38 years since the story broke. Watergate is taught in high

¹⁵ Thomas Long is an Assistant Professor of History at California State University, San Bernardino.

¹⁶ Keith Olsen is Professor Emeritus of History at the University of Maryland.

¹⁷ Eric S. “Rick” Perlstein is a historian of 20th-century American political history.

¹⁸ Melvin Small is Distinguished Professor Emeritus of History at Wayne State University.

¹⁹ Raymond Smock is the Director of the Robert C. Byrd Center for Legislative Studies at Shepherd University.

²⁰ Barry Sussman was a *Washington Post* editor from 1965 to 1987.

schools and colleges and is often the subject of debate even now...making Nixon's grand jury testimony public would help to restore faith in the legal justice system and would be extremely valuable for scholars."

- **Julian Zelizer:**²¹ "So much attention has been paid to the 1960s that historians overlooked the important significance of the decade that followed—one that many argue was more important to the current era. Better understanding Richard Nixon's presidency and Watergate will be central to our historical research on this period...President Nixon's grand jury testimony would be a valuable addition to our archival data from the period. The more information that we have about what actually happened during this scandal, the better equipped historians will be to produce their work. So much of Watergate has been understood through partisan eyes (whether through Nixon's opponents or supporters), that it is crucial to have historical data from which we can develop our historical understanding of these events."

Conclusion

Adding to the historical record has been the consistent aim of this petitioner throughout. It is my hope that the Department of Justice will consider the ideas and suggestions presented here and that early compromise may be possible even before the court issues a final order.

Finally, the court has brought to my attention the fact that it has no power to unseal any Court of Appeals records that may have been generated during the course of appeals from Judge Sirica's courtroom. Since sealed records of *U.S. v. Liddy* generated in the Court of Appeals may exist, I respectfully request this court to certify this question to the U.S. Court of Appeals for the District of Columbia Circuit. (Once again, I apologize for my ineloquence in making this request. Perhaps by the time this case has concluded I will qualify for an honorary law degree from some institution, even though it should probably not come from an institution that is ABA accredited.)

In all seriousness, thank you for considering these points.

Sincerely,



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²¹ Julian Zelizer is Professor of History and Public Affairs at the Woodrow Wilson School of Public and International Affairs at Princeton University.

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5010-106

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 12-14-2011

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. E. S. Miller

DATE: 5/22/73

FROM : T. J. Smith

TJS

SUBJECT:

INTERAGENCY COMMITTEE ON
INTELLIGENCE (AD HOC)ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE~~CONFIDENTIAL~~

1 - Mr. E. S. Miller

1 - Mr. T. J. Smith

CLASSIFIED BY 14828/6/16/04
EXEMPT FROM GDS CATEGORY 2,3
DATE OF DECLASSIFICATION INDEFINITE

Mr. Felt	_____
Mr. Baker	_____
Mr. Callahan	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Gebhardt	_____
Mr. Jenkins	_____
Mr. Marshall	_____
Mr. Miller, E.S.	_____
Mr. Soyars	_____
Mr. Thompson	_____
Mr. Walters	_____
Tele. Room	_____
Mr. Baise	_____
Mr. Barnes	_____
Mr. Bowers	_____
Mr. Herington	_____
Mr. Conmy	_____
Mr. Mintz	_____
Mr. Eardley	_____
Mr. Hogan	_____

E. S. Miller to Felt memorandum 5/18/73 captioned as above outlined request of Mr. J. Fred Buzhardt of the White House for a comprehensive outline of the history and events relating to the Interagency Committee on Intelligence. This memorandum provided the genesis of the committee and enclosed a letterhead memorandum for the Department's review and concurrence before delivery to Buzhardt.

When [] turned over documents to the U.S. District Court 5/14/73 which he had kept in a safe-deposit box, newspaper reports revealed that several documents were turned over. We quickly surmised that one of the documents was the 43-page "special report" of the captioned committee which was turned over to the White House on 6/26/70. Since the news items referred to the other documents as supporting papers, we had to assume these were internal documents relating in some manner to the committee or its report. Smith to Miller memorandum 5/22/73 enclosed a copy of these documents obtained from the Department 5/21/73 for information and review of the Acting Director.

On 5/15/73 at a meeting called by the Pentagon of representatives of the intelligence community, including the FBI, CIA, National Security Agency, and Defense Intelligence Agency, Mr. [] Army General Counsel, revealed that the Defense Department had obtained a copy of the documents turned over to the court by [] on 5/14/73 and he noted that there were nine documents altogether, one of which was the 43-page "special report" prepared by the FBI for the White House, dated 6/25/70.

Mr. [] described the other documents in general, noting that only three of the other eight were sensitive and related to the national security, the others being political in nature. We had no opportunity to review the documents at that time, although one of the documents was summarized by [] This one was an undated document entitled

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DATE OF REVIEW 5-22-93

Memorandum to Mr. E. S. Miller
 Re: Interagency Committee on
 Intelligence (Ad Hoc)

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"Operational Restraint on Intelligence Collections" (five pages) which went into detail concerning recommendations and rationale for removing restraints on intelligence collection methods which Mr. J. Edgar Hoover opposed. This document is classified "Top Secret." Mr. [] said that copies of the documents would be furnished later to the FBI and CIA.

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Purpose of the Pentagon meeting on 5/15/73 was to plan steps which had to be taken to make sure that national security interests were protected insofar as public disclosure of the [] documents were concerned, since the "special report" contained extremely sensitive details relating to sensitive sources and methods used in intelligence collection efforts by the intelligence community, the unauthorized disclosure of which could seriously damage the national security and the conduct of foreign affairs.

A meeting had already been arranged by Pentagon officials with Senator Stuart Symington, Acting Chairman of the Senate Armed Services Committee, on 5/15/73 to brief him on the problem and to seek his help in interceding with Senator Ervin's Select Committee to investigate the Watergate matter. The U.S. District Court had ordered that copies of the documents were to be turned over to the Select Committee. It was pointed out to the group that you and I had contacted Senators Ervin and Baker on 5/14/73 and that both were sympathetic to the problem and had agreed to afford the documents proper security if we could assure them they were unrelated to the Watergate case, the Pentagon Papers case, or to political espionage or sabotage. However, the group felt that additional approach should be made to Senator Symington.

On 5/15/73 you and I accompanied Mr. [] and representatives of CIA and National Security Agency to a meeting with Senator Symington. Senator Harry Byrd and members of the committee staff, Messrs. James Woolsey and Ed Braswell, were also present. Mr. [] explained the problem concerning possible public disclosure of the documents and he furnished a copy of the 43-page "special report" to

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 Re: Interagency Committee on
 Intelligence (Ad Hoc)

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Senator Symington for review by the staff members. [] also revealed that three of the other documents were also sensitive and should be suppressed. He only turned over two of the three documents, however. The purpose was to allow the committee staff to evaluate the claim of the intelligence community that the documents should not be disclosed during committee testimony.

Senator Symington then asked that the representatives of the intelligence community meet with him and his staff again on 5/16/73 and that we be prepared to justify on a paragraph-by-paragraph basis just what must be protected in the national interest. Each agency then went over the documents with that view in mind. We made a very careful study and marked certain paragraphs and pages as being so sensitive that public disclosure could be damaging to the national security. CIA and National Security Agency concurred in most every instance and added points not affecting FBI interest.

The portions set aside by us had to do with protection of three live sources whose identity could be exposed through public disclosure; discussion of the use of surreptitious entry of foreign embassies; the opening of mail; and the expansion of use of electronic surveillances. We also noted that admissions of weaknesses and lack of coverage or knowledge would also be damaging. (S) (U)

On 5/16/73 we again met with Senator Symington, who also brought Senators Henry M. Jackson, Strom Thurmond, Harry Byrd and Sam Nunn, as well as Messrs. Woolsey and Braswell. Mr. William Clements, Deputy Secretary of Defense, acted as spokesman for intelligence agencies under the Defense Department umbrella. Senator Jackson acted as Chairman since Senator Symington had to leave for a period. Senator Jackson voiced sympathy for the problem of protecting national security information, but clearly indicated suspicion that White House aides had made efforts to pervert the facilities of the intelligence agencies, and he stated emphatically that because of such activity the "White House is already impeached." He explained that he did not mean the President, but rather the office of the Presidency. He said that for this reason great care had to be exercised

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not to interfere with Congressional efforts to uncover wrongdoing. He emphasized that the documents in question may well contain national defense information, while simultaneously containing information linking certain persons to the illegal activities related to Watergate.

It was soon noted that the day before three documents had been mentioned by Mr. [] but that only two had been provided. This soon became a heated issue, particularly when Mr. [] declared that only one paragraph of the third document was pertinent, the rest being a political matter. Sensing that [] was attempting to hide something, Senator Jackson criticized [] actions to Mr. Clements and the third document as well as the remaining five were turned over to the committee.

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Senator Jackson, upon reading in the third document that Mr. Hoover had objected most strongly to surreptitious entry and electronic surveillance, said the other documents strongly supported testimony before the committee earlier by former CIA Director Richard Helms, who testified that efforts had been made to involve the CIA in illegal activity. Senator Symington, who had returned to the meeting, agreed with Senator Jackson and denounced what appeared to be efforts by Defense Department to get the committee's support on the one hand and simultaneously hold out information bearing on the overall issue of White House efforts to pervert the intelligence community's true mission.

The group was again told to advise the committee staff just what particular parts of the documents are vital to the national security interest, and this was done. A meeting was to be called subsequently after the staff had gone over the suggested excisions. A meeting is now scheduled for 2:30 p.m., 5/23/73.

Although efforts were made to get copies of the eight documents [] had released to the Court on 5/14/73 with the 43-page "special report," [] delayed furnishing copies and on 5/18/73 Mr. Clements issued orders forbidding release to the FBI or CIA of copies of the documents. Finally, after some difficulty, copies were furnished by the Justice Department on 5/21/73.

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On 5/22/73 The Washington Post carried an article relating to the documents in question and quoted Senator Symington concerning the proposal for breaking into foreign embassies. Although Senator Symington did not disclose details of the documents in question, he revealed much of the essence of the 43-page "special report" and parts of the other eight [] documents." Senator Symington indicated that after the documents have been sanitized for national security purposes, portions will be made public. Senator Symington told the press that the documents were provided to the Armed Services Committee last Wednesday by the Defense Department, the FBI, and other agencies. For the record, these documents were turned over to the committee by the Defense Department without consultation with the FBI or to our knowledge National Security Agency or CIA.

Now that public disclosure has been made of at least some of the documents, it is believed pertinent that the eight documents accompanying the 43-page "special report" be analyzed.

1. One of the documents is an undated, five-page document entitled "Operational Restraint on Intelligence Collections." It was undoubtedly prepared by Tom Charles Huston, the White House staff member who was one of the motivating forces behind the Interagency Committee on Intelligence. This document summarizes the various recommendations of the Interagency Committee for removing or relaxing operational restraints on intelligence collection, and gives rationale in each instance for the recommendation. This document was likely the basis of the Huston letter to the FBI dated 7/23/70 instructing Mr. Hoover to remove restraint imposed by him on surreptitious entry, mail coverage, electronic surveillance, and campus informant development.

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2. A memorandum to Huston 7/14/70 from H. R. Haldeman refers to recommendations Huston had proposed (those in the five-page document described above) and stated these had been approved by the President. There is no other document among the eight that Haldeman could have been referring to since all but one were dated subsequent to 7/14/70. The second paragraph of Haldeman's memo to Huston does not seem to relate to the undated document, since nothing is mentioned therein about implementation.

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Therefore, some inference has to be drawn that a relationship existed between the "special report" dated 6/25/70, the undated document summarizing recommendations in the "special report," and the Haldeman memorandum saying that the President had approved the recommendations.

3. The next chronologically related document is a memorandum for H. R. Haldeman from Tom Charles Huston dated 8/5/70. In this memorandum Huston is evidently expecting a meeting between Mr. Hoover, Mr. Haldeman, and the Attorney General, probably concerning the Interagency Committee recommendations that Huston had ordered Mr. Hoover to implement and which Mr. Hoover declined to do except on express written instructions in each instance by the Attorney General. A letter to this effect was sent to the Attorney General 7/27/70.

Huston, in his 8/5/70 memorandum, was suggesting a tack which Haldeman might follow to counter opposition Mr. Hoover might voice concerning removal of restraints as contained in Huston's letter of 7/23/70. Huston outlined a persuasive argument in favor of removal of the restraints. He also suggested that at some point Hoover had to be told who is the President; that he had become totally unreasonable; and his conduct detrimental to domestic intelligence operations.

Huston pointed out that if Hoover got his way it would look like he was more powerful than the President. Through the use of the initials RN, Huston implied that the President was fully aware of the situation.

Huston stated that Mr. Hoover could be expected to raise certain points and he provided suggested counterarguments. He used a vulgar colloquial expression to emphasize his point. It is to be noted here that Senator Symington was particularly incensed when he read this vulgar expression in the context in which it related to Mr. Hoover, whom he described as a close personal friend.

This five-page document ended with a critical summation of Mr. Hoover's opposition.

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4. The next document is a short Huston to Haldeman memorandum dated 8/7/70 noting that Mr. Hoover had departed for a three-week vacation on the West Coast, and recommending that Haldeman meet with the Attorney General and secure his support for the President's decisions (concerning recommendations mentioned above).

5. The next document of pertinence is a memorandum for the Attorney General from [] dated 9/18/70 concerning the creation of an Interagency Domestic Intelligence Unit. In this connection, Mr. Hoover had opposed a recommendation in the 43-page "special report" that a permanent interagency committee on domestic intelligence be established.

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This particular document points out the strong opposition of such a unit and therefore the first step was to bring the FBI fully on board to guarantee proper and full participation in the program. It was suggested that a request be made of Mr. Hoover to assign an Agent to the task of locating appropriate housing. It was also suggested that the Interdivision Intelligence Unit of the Department of Justice be used as a cover for the interagency intelligence unit.

The memorandum pointed out that rather than have a blanket removal of restrictions (or restraints) on intelligence collections, the interagency intelligence unit would decide on the type of intelligence needed and then proceed to remove the restraints as necessary to obtain such intelligence. In other words the interagency intelligence unit would function as a device to block Mr. Hoover's opposition to removal of restraints.

The memorandum points out that the interagency intelligence unit was to be created for both operational and evaluation purposes. Such language suggests that representatives of the committee would actually engage in intelligence gathering activity and based on a broad knowledge of succeeding events, inference is likely to be drawn by Congressional committees that this committee was a prelude to the Watergate affair and the Ellsberg psychiatrist burglary.

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6. A memorandum from Huston to Haldeman dated 8/25/70 related to the Subversive Activities Control Board and does not appear to be related to the other documents.

7. A 9/21/70 Huston to Haldeman memorandum concerned the Internal Revenue Service and its efforts to monitor activities of ideological organizations such as the Jerry Rubin Fund, Black Panthers, etc. Two additional documents relating to this matter were attached.

8. A memorandum for H. R. Haldeman from Huston dated 9/10/70 related to air hijackings but referred to Mr. Hoover running a one-man show. Sarcasm was evident in this document.

When taken as a whole it is believed that in spite of the fact the Interagency Committee on Intelligence was formed in 1970 to critically analyze the national security intelligence collection capability on the part of the intelligence community and to make recommendations to correct any deficiencies, the material turned over by [] when viewed in today's climate of political hysteria and recrimination supports the thesis by some that the Interagency Committee on Intelligence was only a link in a chain of events in which White House personnel were conspiring to involve the intelligence community in acts of political espionage and political sabotage.

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Mr. [] Army General Counsel, described above, commented on 5/17/73 that these documents could be used by those opposed to the Nixon Administration to paint a picture of efforts to create a Hitlerian regime or a Nixon oligarchy.

All of the documents clearly show strong opposition of Mr. Hoover to the use of the FBI for purposes he deemed improper. From that standpoint any further surfacing of the documents will tend to show the FBI as being resistant to political pressures. We should, however, in the interest of national security and conduct of foreign affairs, continue to resist any further public disclosure of the documents and if possible [] should be prosecuted for his part in removing the documents from the White House and turning them over to the U.S. District Court.

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ACTION:

For information and record purposes. Further developments
will be reported as they occur.

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