THE SATURDAY NIGHT MASSACRE (A)

Introduction

At 2:00 a.m., June 17, 1972, police arrested five men inside the headquarters of the Democratic National Committee, which was located in Washington's swanky Watergate apartment and office complex. It was clear that these were not ordinary burglars: they were carrying eavesdropping equipment, cameras, and lots of cash. One of them, James McCord, was employed as a "security consultant" for both the Republican National Committee, and the Committee to Re-elect the President, which was the central campaign committee for President Richard M. Nixon. A notebook owned by one of the burglars contained the name and White House telephone number of E. Howard Hunt, a "consultant" to Presidential special counsel Charles Colson. Hunt and McCord were quickly fired, and the White House, the Committee to Re-Elect, and the Republican National Committee all denied any complicity in the break-in. Former Attorney General John Mitchell resigned his post as Nixon's campaign chairman, explaining that his wife wanted him out of politics. After an investigation which Attorney General Kleindeinst called "one of the most intensive, objective and thorough" the FBI had ever conducted, the Justice Department brought charges only against the burglars, Hunt, and G. Gordon Liddy, the "finance counsel" of the re-election committee. Their trial was postponed until after the election.

Throughout the election campaign, however, the Washington Post, the New York Times, and a few other news sources carried a spate of stories that cast doubt on the White House's assertions of innocence. It was reported that law enforcement officials had been able to trace the source of the money the burglars had carried: it had come from a check handed to Maurice Stans (the finance chairman of Nixon's campaign) by Republican contributors, and had been routed to one of the burglars through a mysterious Mexican bank account. Furthermore, the Re-election Committee's financial statements left hundreds of thousands of dollars in campaign funds unaccounted for. And there were charges of illegal wiretapping and other kinds of misconduct. For example, Time magazine reported that the President's appointments secretary, Dwight Chapin, had hired one Donald Segretti to disrupt the primary campaigns of Democratic candidates. Herbert Kalmbach, the President's personal attorney, had paid the saboteurs with illegally diverted campaign funds.

Notes describing the sources used to prepare this case can be found on the final pages.

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Both the Times and the Post, however, were strongly liberal and had been fervently critical of the President. The administration, which had harshly condemned the "eastern liberal press," was able to dismiss these reports as partisan propaganda. Republicans in Congress managed to head off any official investigation there. And when Democratic Presidential candidate George McGovern called Nixon's administration the most corrupt in history, the voters snored. The hapless peace candidate had already been tagged as an incompetent and a leftist advocate of "acid, abortion, and amnesty." Emphasizing his historic trips to Peking and Moscow, and making only a few campaign appearances, the President won re-election by a landslide. When the Vietnam peace accords were signed in January, 1973, his opinion poll "approval rating" rose to almost seventy percent.

But during that same month, the Watergate burglars came to trial. Claiming that they had acted without orders from higher-ups in the administration or the Re-election Committee, all seven defendants pled guilty before Federal District Court Judge John J. Sirica. However, one of the burglars admitted that he was receiving payments from a source he could not or would not name. Reports appeared charging that the defendants had been paid and promised eventual presidential clemency in return for their guilty pleas and silence. Sirica angrily denounced the Justice Department's investigation, and threatened the burglars with heavy sentences if they did not come forward with the truth. McCord eventually did so and confirmed that the defendants had been pressured and paid to remain silent. In February, the heavily Democratic Senate voted to establish a select committee chaired by Senator Sam Ervin (D-N.C.) to investigate the scandal. And in March, FBI Director Pat Gray admitted to the Senate Judiciary Committee that the White House had inserted itself into the Bureau's Watergate investigation, even sending the President's special counsel, John Dean, to attend interrogations of administration officials.

By April, the administration's facade of innocence was cracked for good. Federal prosecutors, though fighting among themselves, were finally making some progress. Behind the scenes, lower-level aides to the President's closest advisors were rushing to tell the Justice Department what they knew before others implicated them. Leaks were flowing in torrents from the Justice Department's and the Ervin Committee's investigations. The press reported new charges involving higher and higher officials, until the allegations touched H. R. Haldeman, director of the White House staff, and John Ehrlichman, Nixon's domestic advisor. Since the two were Nixon's closest aides, charges that the President himself was involved in some of the offenses seemed more and more credible. And on April 19th, John Dean provoked feverish speculation by calling the newspapers to announce that he would not allow the administration to use him as a scapegoat in the affair.

Nixon decided to take dramatic action to clear the air and assure the public of his own innocence. In a televised address on April 30, he accepted (with pronounced regret) the resignations of Haldeman and Ehrlichman, and (without comment) the resignation of John Dean. And to restore faith in the Justice Department's investigations of the affair, Nixon called upon Secretary of Defense Elliot Richardson. From an old New England family, Richardson had made his name prosecuting cases involving political corruption, and had developed a reputation for (as Nixon put it) "unimpeachable integrity." He would move to the Justice Department, where he would have "absolute authority to make all decisions bearing upon the prosecution of the Watergate cases and related matters." If he wished, the new Attorney General would be authorized

to appoint a "special supervising prosecutor."

Richardson's confirmation hearings before the Senate Judiciary Committee were due to begin on May 9. On May 7, he released a statement in which he pledged to appoint "a special prosecutor and give him all the independence, authority, and staff support needed to carry out the tasks entrusted to him." Once he had chosen a nominee, he said, he would submit the name to the Committee for approval.

Despite his gesture, the issue of the special prosecutor's independence dominated the hearings, even before Richardson announced his nominee. Sitting on the committee were staunch liberal Democrats such as Kennedy, Hart, Bayh, Burdick, and Tunney, who were determined to prevent the administration from interfering with the Watergate investigation. As soon as the hearings opened, they pressed Richardson to grant the prosecutor complete independence. Richardson insisted on retaining "ultimate authority" over his nominee, as a matter of both law and personal responsibility. However, the senators continued to question him in great detail about the circumstances under which he would exercise this "ultimate authority." After three days, Richardson had promised that he would not interfere with the prosecutor's work in any way, except that he might dismiss him if "overwhelming evidence" indicated that he was guilty of serious misconduct. Furthermore, Richardson promised to resign rather than follow a presidential order to dismiss the prosecutor, in the absence of such evidence.

On May 18, after a frustrating search, Richardson nominated Archibald Cox, a Harvard Law School professor who had served as President Kennedy's Solicitor General. At the same time, Richardson released a set of guidelines that the two had agreed upon (see Appendix A). Cox would have authority to investigate and prosecute all offenses arising from the Watergate break-in, related to the 1972 Presidential Election, or involving "the President, members of the White House Staff, or Presidential appointees." In particular, Cox was guaranteed the right to subpoena evidence and contest in court any presidential claims of executive privilege with regard to that evidence. Richardson could dismiss him only for "extraordinary improprieties." This formula satisfied the committee, and the Senate confirmed Richardson as Attorney General on May 23. Cox and his newly hired staff set up shop in a Washington office building, under tight security. Within weeks, his office was operating at full steam, and by October, it had obtained guilty pleas and promises of cooperation from John Mitchell's aides Jeb Magruder and Fred LaRue, dirty trickster Donald Segretti, and several other figures.

Meanwhile, the Senate Select Committee chaired by Senator Ervin began televised hearings, in which charges were publicly made for the first time. In late June, John Dean appeared to drop his long-awaited bombshells. Among other things, he confirmed that the Watergate break-in was only a part of a campaign of espionage and sabotage, ultimately directed by John Mitchell, against the Democratic Presidential candidates. He testified that Haldeman had supervised the distribution of campaign funds to finance these activities and had received summaries of illegal political wiretaps. Furthermore, the three and Ehrlichman had joined in an effort to cover the links between the Watergate burglars and Nixon's campaign committee, fearing that investigators might follow the trail into their own offices. At one point, Ehrlichman had ordered Dean to throw potentially damaging evidence into the Potomac. But in the most explosive testimony the committee had yet heard, Dean described

meetings in which he and Nixon discussed the progress of the cover-up, and the payment of hush-money to the burglars. These actions constituted obstruction of justice, which was a felony and probably grounds for impeachment.

It appeared that Dean's charges would be difficult to substantiate until it was revealed that Nixon had installed a taping system in his official offices and on his telephones. The committee's counsel and the Special Prosecutor each subpoenaed tapes of specific conversations, and each brought suit independently before Judge Sirica when the President refused to comply. Sirica deferred action on the committee's subpoena, which raised sticky jurisdictional issues, but he quickly ordered the President to justify his refusal to comply with the Special Prosecutor's subpoena.

The President's legal team (which included Presidential Counsels J. Fred Buzhardt and Leonard Garment, as well as Professor Charles Alan Wright of the University of Texas Law School) argued that a President needs privacy if he is to conduct his business and receive honest advice. To allow anyone to examine tapes of a President's private conversations would irremediably change the character of the office and violate the constitutional principle of the separation of powers. Furthermore, Wright stated that Nixon had told him that one of the subpoenaed tapes contained "national security material so highly sensitive that he does not feel free even to hint to me what the nature of it is." Cox responded that he and the grand jury were entitled to "every man's evidence" while conducting a criminal investigation. Privilege did not extend to criminal acts, and there was now "strong reason to believe the integrity of the executive office [had] been corrupted."

At the end of August, Sirica ordered the President to deliver the tapes to his court. The judge would examine them, remove privileged or irrelevant portions, and allow Cox and the grand jury to see the rest. Both sides appealed the case, Wright asserting that the President's claim to privilege was valid, Cox insisting that he should receive the materials without prior screening. The Court of Appeals, which was stacked with liberal Democrats, seemed hesitant to make a decision. The justices urged the two sides to try to find a compromise out of court. On September 20, Cox and Buzhardt reported that three days of negotiations had uncovered no mutually acceptable middle ground.

The Appeals Court Decision

On Friday evening, October 12, 1973, the Court of Appeals announced a 5-2 decision affirming Judge Sirica's ruling. The Court stayed its order until the following Friday, October 19, to allow the President to file his expected appeal with the Supreme Court. Nixon had promised to abide by a "definitive" decision of the high Court, but no one was sure what he meant by "definitive." And if the President disobeyed a Supreme Court decision, "definitive" or otherwise, the nation would be faced with a constitutional crisis.

The Court's decision was of critical importance to at least three officials.

Elliot Richardson--Attorney General

Attorney General Richardson was working late at the Justice Department when the Appeals Court released its ruling. It was only two days since Vice-President Agnew had resigned, pleading "no contest" to income tax charges

stemming from an alleged kickback scheme with Maryland contractors. Richardson and his staff had spent most of the previous weeks in crucial and delicate plea-bargaining with Agnew's lawyers, balancing the symbolic need to punish the guilty, no matter how high their offices, with the practical fact that the nation could not afford to have a corrupt Vice-President while the President's own tenure was in doubt. The whole affair had to be managed under the nervous eyes of the White House, which knew that Nixon might have to face charges as well. At one point, the White House had balked at allowing Richardson to release an opinion that a sitting Vice-President could be indicted; the Attorney General got his way only after he and Solicitor General Robert Bork had both threatened to resign. In the end, Richardson's deft handling of the matter had won him praise from most quarters, even the White House. (As a New York Times editorial pointedly noted, he had "served not only the public interest of removing Mr. Agnew promptly but also the political self-interest of President Nixon."[1]) But Richardson was uneasy. His job was like a bullfighter's, he had told his aides; even if a matador killed his bull, he had to face another a week later. Whether the Court's ruling on the tapes would send another "bull" charging, Richardson could not be sure..

The White House, Richardson thought, had always regarded the Special Prosecutor's investigation with unnecessary suspicion. Richardson had been Archibald Cox's student at Harvard Law School, where they had developed a friendship and deep respect for each other's integrity. The Attorney General believed that "there was no one in the United States in whom the President could have had greater trust" for fairness than Cox. Cox probably wasn't sensitive enough to the possibility that others might think him unfair. He had certainly ruffled some White House feathers when he had invited Senator Edward Kennedy and Ethel Kennedy (Robert Kennedy's widow) to his swearing-in. And Cox's press secretary, Jim Doyle, had worked for the Boston Globe, one of the most anti-Nixon papers in the country. Doyle had done a fine and scrupulous job, Richardson felt, but the symbolism was unfortunate. The White House was simply all too ready to believe that Cox was no more than a ferocious Kennedy partisan. As J. T. Smith, one of Richardson's aides, recalls:

> White House staffers would call and say, "The Cox thing is out of control. It is hard to believe that he isn't trying to set up some perpetual inquisition that is going to plague the Republican Party until Teddy Kennedy runs [for President] in 1976." They talked and literally thought in those terms.

Even though the Attorney General had given up almost all of his authority over the Watergate investigation itself during his confirmation hearings, by October he was spending a few hours a week trying to mediate disputes between the White House and the Special Prosecutor's office:

> I fell into this relationship of sort of middle man because as time went on it seemed to me that I could be useful that way. I started out immediately after confirmation and taking office with a totally hands-off attitude, that I wasn't communicating either with the White House or Mr. Cox, but after a while it came to seem . . . that I could be useful since I was not counsel for either side in a sense.[2]

To describe this role, Richardson used a phrase coined by Justice Brandeis: "counsel for the situation." According to Jonathan Moore, one of Richardson's

aides, his approach stemmed from his basic political philosophy:

> Elliot is always trying to work out a legitimate and honest way out for everybody. He believes in not posturing, in trying to compromise, in trying to figure out a way for government to work in a highly charged political environment.

Richardson says he assumed that the White House's expressions of concern were sincere, and not merely the attempts of a guilty man to stymie the investigation. As Defense Secretary, he had been far too busy to follow the scandal as it developed, and "read the news stories perhaps somewhat less carefully than most newspaper readers." When offering Richardson the job as Attorney General, Nixon had been very open and appeared to be willing to cooperate with any investigation. "You've got to believe I'm innocent," he had said. "If you don't, don't take the job."[3] According to Richardson,

> I had two or three meetings during that week with people . . . who knew quite a lot about Watergate, and I began to get filled in on it a little. But [four days after meeting with Nixon] I decided I would have to propose the appointment of a special prosecutor, so I pretty much suspended the effort to learn anything in detail about it. The result was I never did.

Of course, Richardson could hardly have avoided hearing about John Dean's testimony that summer, and must have entertained at least an occasional suspicion about the President's guilt. Jonathan Moore has commented that by October

> I'm sure Richardson had not concluded that he was guilty. I think he was extremely confused about it, completely uncertain about it. Elliot's a Yankee lawyer: show me the evidence and I'll believe it. He really personally believes that a man should be considered innocent until proven guilty. And the fact that he was Attorney General obligated him not to try to get Nixon convicted because of his own suspicion, but just the opposite: to be sure that he was not convicted except by due process.

Assuming that the White House was dealing in good faith, Richardson had tried to encourage communication between the White House and the Special Prosecutor's office. According to J. T. Smith:

> [J. Fred] Buzhardt [one of the President's counsels] would call Richardson up and say, "Archie's talking to the Secret Service and it is none of his business." Richardson would say, "Well, Cox isn't a demon. He is a good man. Why don't you call him up and talk to him about it?" He would try to get the people in the White House to relinquish their paranoia.

The White House seemed especially concerned that Cox was investigating matters that fell outside of the jurisdiction specified in his guidelines. Richardson would check with Cox in each instance, and then try to reassure the President's aides:

> I kept pointing out to them that because of my own prior association with the administration, it was inappropriate for me to direct certain investigations. I should not be in the position of investigating the White House, for instance. It would raise questions in the public mind as to the fairness and completeness of the approach being taken. In these matters, either there should be no investigation or Cox should do it. And I would point out that some matters obviously had to be followed up.
>
> Well, they always understood it at the time, but there was an underlying resentment, perhaps fear, that kept reasserting itself at moments. . . .

The Attorney General knew that his efforts to defuse the President's suspicions had had only limited success. On three occasions, the President or his deputy, Alexander Haig, had actually told Richardson that Cox might be dismissed. In early July, Haig called about (erroneous) reports in the Los Angeles Times that the Special Prosecutor's office was investigating the use of federal funds to make improvements at Nixon's home at San Clemente, California. Haig warned that Nixon might move to dismiss Cox if he did not publicly state that he was conducting no such investigation, whereupon Nixon himself broke into the conversation to demand that Cox issue the statement within the hour.[4] Nothing more came of the matter, but on July 23, Haig called again, and according to Richardson,

> told me that the "boss" was very "uptight" about Cox and complained about various of his activities, including letters to the IRS and the Secret Service from the Special Prosecutor's office seeking information on guidelines for electronic surveillance. General Haig told me that "if we have to have a confrontation we will have it." General Haig said that the President wanted "a tight line drawn with no further mistakes," and that "if Cox does not agree, we will get rid of Cox." In this instance Mr. Cox agreed that the requests for information . . . had been overbroadly stated.[5]

J.T. Smith recalls that his boss

> was very upset. Richardson is an optimist about human nature. He has a great belief in rational man's being able to work out even the most intractable kinds of situations. He hated to see things get to that kind of flash point. Why were reasonable men talking about something as disastrous as firing Archie Cox during July? Something must be wrong. People aren't communicating. This is a situation that needs tending. We have to get things back on the track. This is awful!

And on September 25,[6] Richardson had met with the President to brief him on the progress of the plea-bargaining with Agnew.

> After we had finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in

> substance, "Now that we have disposed of that matter, we can go ahead and get rid of Cox." There was nothing more said.

Richardson later testified, "I didn't take it seriously at the time. I thought it was just a general expression of irritation."[7] He may have been justified in not jumping to conclusions. According to Jonathan Moore, "With this White House, there were all sorts of nasty references to people--constantly." In any case, as Richardson later wrote:

> Whether this was an offhand remark or reflected a settled purpose I had no way of knowing at the time. It made no difference one way or another to what I had to do. I was well aware that the circumstances were precarious. All I could do, as "lawyer for the situation," was to try to cope as best I could with each problem as it arose.[8]

On leaving Nixon's office, he told Haig he would have to proceed as he had through a minefield on D-Day: by taking one step at a time.

One thing was clear. If the Appeals Court decision prompted Nixon to go through with his threat to order Cox dismissed, it would mean disaster for Elliot Richardson. If he carried out the President's order, he would be breaking his word to the Senate and to Archibald Cox. Furthermore, he would endanger his reputation for integrity, which was one of his most valuable political assets. And Richardson would feel the repercussions on a personal level. As Jim Doyle, Cox's press secretary, later put it:

> You see, I think at the bottom of it, if Elliot fired Archie, it meant that he could never walk down Beacon Street or across Harvard Yard again and hold his head high when he met friends.[9]

But resignation was a distinctly unpleasant prospect. He would be disobeying the President of the United States, and denying his personal loyalty to the man who appointed him. Some had spoken of the 53-year old Richardson as a likely Republican nominee for President, but resignation might anger enough Republicans to destroy that possibility. Finally, and not so incidentally, he would be out of a job.

But Nixon had to realize that ordering Cox fired would do him no good, either. It would destroy all vestiges of public trust in his administration, unless the firing seemed absolutely justified. And it was here that Richardson held a trump card. Nixon depended on Richardson to preserve his administration's image of integrity, and could probably not afford to lose him. If necessary, Richardson could win by threatening to resign. In the meantime, Richardson would use his talents to mediate the dispute over the tapes. Now that the White House had lost its first appeal, it might be more willing to compromise with Cox. Richardson offered his help to Cox (who had stopped by Richardson's office) before going to Boston for a weekend of well-deserved rest.

Archibald Cox -- Special Prosecutor

This Friday's court ruling had not been a surprise to Cox. He had been hearing rumors for several days, and knew that the decision was likely to go his way. He also knew that a favorable ruling could bring trouble.

> The rumors were awfully strong and seemed to be awfully reliable. I had figured it out for myself that if I were the President and were not going to comply, I would disobey the Court of Appeals. I wouldn't wait to disobey the Supreme Court. So I think I did have a sense of building tension.

He had met with Richardson Friday morning, and had opened his ears wide for hints, assuming that the Attorney General was hearing the same rumors and might offer some information of his own on Nixon's attitude. In fact, Richardson had leaned back and started to philosophize about government, as he often did with friends, in a way that has always fascinated and amused his old teacher. Cox recalls:

> In rather vague, abstract terms, what seemed to me to have been three things came through. One was how important it is to distinguish real matters of principle from things that aren't really matters of principle. Was he softening me up? Then he said, "Well, the surprising thing is that when you do get a principle and really make clear that you're going to stand on it, you get your way surprisingly easily." Was he now trying to stiffen my back? Or was he just talking about the Agnew thing? Then, "Well, losing your job isn't as bad as having your head cut off." This could have been that he had gotten in a jam on the Agnew thing. Or he might have been telling me that I was about to lose my job, but don't feel too badly. Or maybe, he was worried that he was going to lose his job and was comforting himself . . .

Cox wasn't sure whether or not he was being told something. Cox felt he could expect absolute scrupulousness and integrity from Richardson, but not absolute openne-s. After all, Richardson was in a delicate position; if he passed on certain kinds of information, he might be construed as applying improper pressure. Returning to his office, Cox had recounted the "byzantine" conversation to Jim Doyle, his press secretary, who had a keen political sense. "Of course, he didn't know any more what to make of it than I did."

Once the Court had announced its decision, Richardson and Cox talked again. The Attorney General made his offer to help find a compromise of the tapes case. Because the two enjoyed a close relationship, talking frequently, and not discussing their conversations even with close aides, Cox felt he could be entirely open with his old student. The Court had given him a victory, but the point was not to wave the decision in the President's face. Cox felt he would have a strong case before the Supreme Court, but he did not wish to be unreasonable. He would happily consider any compromise that would allow him to complete the investigation and prosecute the guilty. However, his previous efforts to find a compromise with Nixon's lawyers had not borne fruit. The two briefly explored the possible areas of compromise; then Richardson was off to Boston.

Cox was aware that he might be steering into a constitutional crisis:

> There was always hanging over this thing sort of the remote worry, but not just an abstract philosophical one: Am I

> going to be the first fellow who prompts the President to disobey a court order and get away with it? If he gets away with it, what price is our system of government going to be spending for a good many years? You know, this was something that one couldn't help having on his mind.
>
> It was pretty clear in my mind that if the President disobeyed a court order that I was going to do everything I could to build up sentiment for his impeachment. I had been thinking in terms that such a challenge might come and it would be my job to do what I could to prevent it from being effective.
>
> I had faith more than anything else that people do appreciate the importance of the role of law in this country.

But, he said later, "the Constitutional worries never did in fact shape the case." His decision to go after the tapes had been perfectly straightforward from his point of view. He was in charge of a criminal investigation, in which a grand jury might wish to bring indictments. The tapes were unquestionably material evidence for the grand jury's probe, and also for any trials that might ensue. True, Cox might manage to prove his cases against the accused without the tapes, but, ironically, the defendants might be able to have the charges dismissed on the grounds that the government was withholding evidence that might exonerate them. And finally, the tapes might settle the question of the President's guilt.

In September, at the urging of the Appeals Court, Cox had sat down to explore possible formulas for compromise with J. Fred Buzhardt, the President's counsel. They agreed to keep the content of their negotiations secret in order to encourage frankness. Buzhardt began by offering to provide, in place of the tapes themselves, written summaries that would contain some verbatim sections but be mostly in the third person. Cox responded that the courts would probably refuse to accept such materials as evidence. The two continued discussions for several days, and were joined by Leonard Garment and Charles Alan Wright. Cox considered proposing to accept verbatim transcripts of only part of the conversations, if he also received an affidavit from a neutral party stating that no relevant portions had been omitted. According to Jim Doyle,

> Cox asked me, "What would the public reaction be to our accepting less than the actual tapes?"
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> "Massive suspicion," I said. "The press will decide you've been had. But we can live with that if you're comfortable with it, and if it will work in court."
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> "I'm not at all comfortable with it," he said, "but I'm not sure we'll get any more than this from the courts."

Henry Ruth, the Deputy special prosecutor, Philip Lacovara, Cox's counsel, and Peter Kreindler, another advisor, reluctantly agreed that Cox should make the proposal. At a meeting with the three White House lawyers, the Special Prosecutor gave them a six-page document, which he said was not a firm offer, but could serve as the basis for discussions. He had suggested former Soli-

citor General Lee J. Rankin as the neutral party, but emphasized that he would consider other candidates. Wright looked at the proposal and said, "Who is going to go in and tell the President that he won't be believed? Nobody is going to do that." Cox responded, "Well, sometimes someone ought to do that with Presidents. I know what it's like to work with Presidents who don't want to listen to reason, but sometimes they have to be told." The President's lawyers said they would read the proposal more thoroughly. Cox left the meeting, and 45 minutes later received a call from Buzhardt who rejected the idea. They then reported the failure of their negotiations to the Appeals Court.[10]

Now that the Appeals Court had decided in his favor, Cox's hand had been strengthened somewhat. However, the prospect of a constitutional crisis over the tapes case loomed as large as ever. He was still willing to search for a compromise.

But to accept an unsatisfactory compromise simply to avoid a confrontation would be to fail in his job and to betray the trust of the Senate, the public, and his own staff, which by now was an extraordinarily cohesive and committed group.

> There was something crying to be done: to get to the bottom of the thing in a way that people would have confidence in. The job clearly was vindicating morality and law in the public eye. To prosecute those against whom you thought there was a proper case.
>
> The single most important question was to clarify the President's position one way or the other if you could do it. That was always very much on my mind. It was then very much an open question.

Public confidence in government was at an ebb. If the evidence showed that the President himself was guilty, that would be unfortunate, but it was best to get the truth out:

> I thought things were in a posture when pressing the investigation and pressing prosecutions would not reduce faith in government. To the extent it was effective, it would do more to increase it. As to whether it would be enough [to restore confidence], that is quite different. You would do what you could do.
>
> All life is a gamble, but my gamble would be on the exposure rather than the cover-up.

Over the summer Cox had made several requests for evidence from the White House. He had received some of the material, but despite letters to Buzhardt, he was still waiting for some of it. Cox believed that the White House was stalling, and furthermore he had received reports that documents belonging to some White House staffers were being transferred to the President's own files where they could be included in the claim of executive privilege.

Cox knew that at least some Presidential aides were anything but happy about his activities:

> The impression I got as the summer wore on was that there were two distinct views about Cox in the White House. There were some people in the press office who were engaged in peddling to the press, and no doubt in telling everybody in the White House, that Cox was a real bastard. In fact, I was told by one reporter that one of them had said,, "You'd all appreciate what an evil man Cox is. If you'll just come 'round to my office I'll prove it . . ."
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> Some reporters led me to believe that Melvin Laird [Nixon's domestic advisor], for example, did not see me as doing any more than my job. Elliot kept telling me that Buzhardt understood my position, and always spoke in warm terms about our relationship, and my conduct vis-a-vis him.

Cox could only guess at Nixon's own attitude, even in retrospect:

> The President, himself, probably from the beginning had a very deep suspicion. After all, he can't have helped knowing that I was in the 1960 campaign [of John F. Kennedy, Nixon's successful opponent]. And, while my role was a good deal less important than it was billed as being, he probably got the billing and not the facts. Like many of these myths, he probably thought of my connection with Ted Kennedy and the Kennedy family as being much closer than it is. I talk to Ted now and then over the phone, but in no sense are we, you know, close. I am not an advisor. I have nothing to do with family affairs. I doubt whether the President perceived that.

In any case, some presidential assistants, Cox had heard, were spreading the story that the prosecutor's office was infested with McGovernites and was practically a Kennedy front group.

Cox and his staff were particularly vulnerable to such charges. According to most observers, Cox saw himself as fair and expected others to see him so. When he invited Ted and Ethel Kennedy to his swearing-in, he was surprised at the reaction, as he later commented:

> I thought of these things as purely personal. It never entered my head as to how the press would play it. I think that this is literally true.

Furthermore, as James Doyle later observed, it is something of a journalistic convention that "anybody from Harvard is a Kennedy guy until he can prove otherwise." Doyle did his best to remind Cox of the pitfalls of appearing partisan, but avoiding this appearance was hard. When Cox had been appointed, he had called upon two colleagues from Harvard Law School, James Vorenburg and Philip Heymann, to help him hire his assistants.

> . . . Since they felt speed was of the essence, they turned to the old-boy network--law professors who they knew could put them in touch with the best and brightest of recent Ivy League graduates. Selection was done largely by grades in school, clerkships and litigating experience. An occa-

> sional young bright might be a Republican--like Philip Lacovara, of Columbia Law School, a summa cum laude and campus manager there for Goldwater in the 1964 campaign. But most were Democrats, decidedly Kennedy-oriented. Of the five senior attorneys, all were Ivy Leaguers. All nine of the Assistant Special Prosecutors were Ivy Leaguers. Of the administrative staff and staff lawyers, all but four out of twenty-five were Ivy Leaguers. Of the total of thirty-seven lawyers finally recruited, all but one were Ivy Leaguers, and of these, no less than eighteen were young Harvards.[11]

Doyle put out a "press kit" detailing the backgrounds of the staff, and soon found himself trying (unsuccessfully) to convince a friend not to write that the Special Prosecutor's office was imbued with the verve and spirit of John F. Kennedy's Camelot. A CBS reporter read the resulting article and did a story that emphasized the staff's campaign experience, which was mostly for Democratic candidates. Meanwhile, White House staffers were circulating the press kit gleefully.

The Special Prosecutor's office had never been able to shed this aura completely, although by October the press generally was giving Cox and his staff favorable play. Doyle and the office had built a solid reputation for principled straightforwardness.

The White House's attitude reinforced Cox's sense that his job was "an iffy thing."

> I think I really thought there were all kinds of bad fates that could befall me. Indeed, I rather thought that it was a "no-win" job. But, having taken a number of no-win jobs, some of which came out pretty well, that didn't turn me off. My being fired wasn't specifically in my mind from the beginning, but it soon became a very real possibility.
>
> I didn't give a damn. Let's say I didn't want to give them a good reason for firing me, but that was more just because it would reflect on me that I had behaved in some way that justified it.
>
> I didn't have anything to lose. I wasn't going anywhere--I was too old to be going anywhere. I had no desire to go anywhere anyway--genuinely so. For both reasons, you would do what you could. I wasn't likely to suddenly lose out of [my tenured position at] Harvard whatever I did. I don't mean to sound irresponsible. Taking the job had been a serious step.

On September 24 (during the negotiations on Vice President Agnew's resignation) Elliot Richardson had called Cox and said, "I'm afraid that there is going to be an explosion. It will be bad for you, bad for the President, and bad for the country." Discussing the remark with Jim Doyle, Cox commented that while Nixon might manage to fire the Special Prosecutor himself, he probably could not fire the whole staff. "I think it will be up to Hank [Ruth] to carry on and up to everybody else to stay at their posts," he continued. "Hank and I have already had this conversation," responded Doyle, "and I think he's convinced."[11a]

But a month had passed without any "explosion". Both before and since, Cox had heard plenty of rumors that he was going to be fired, but they had all proved to be premature.

Richard Nixon -- President of the United States

The Appeals Court decision came at the end of a hard week for President Nixon. On Wednesday, Vice-President Agnew, charged with taking bribes from more contractor in his White House office, had finally resigned, ending weeks of plea-bargaining with lawyers from the White House and the Justice Department. Nixon, anxious to sever Agnew and his scandal from his own hard-pressed administration, had been willing to let Agnew resign without penalty, but Attorney General Richardson had insisted on an admission of guilt. Nixon had searched for a successor on Thursday, and on Friday announced his choice, House Minority Leader Gerald Ford, in a White House ceremony that was so cheerful even some Republicans called it vulgar. Meanwhile, the war in the Middle East was raging into its second week. Secretary of State Kissinger was battling in Washington to resupply the Israelis, whose losses had been heavy. The Defense bureaucracy was sluggishly arranging private charter flights. On Saturday morning, Nixon presided over a meeting on the problem where, furious, he ordered: "Get the supplies there with American [military] planes! Get moving! I want no further delays!"[12] Then he left for Camp David, the Presidential retreat in Maryland, where he would decide what to do about the Court's decision.

Nixon realized that the tapes stored in the White House basement contained the purest kind of political dynamite. A clear example is his conversation with John Dean on March 21, 1973. According to a transcript later prepared by the House Judiciary Committee's staff, the two discussed the progress of the cover-up. At one point, Dean warned that the Watergate burglars' demands for hush money would be more than the White House could handle. The transcript continues:

President: How much money do you need?
Dean: I would say these people are going to cost, uh, a million dollars over the next, uh, two years.
President: We could get that.
Dean: Uh huh.
President: You, on the money, if you need the money, I mean, uh, you could get the money. Let's say--
Dean: Well, I think that we're going--
President: What I meant is, you could, you could get a million dollars. And you could get it in cash. I, I know where it could be gotten.
Dean: Uh huh.
President: I mean it's not easy, but it could be done. But, uh, the question is who the hell would handle it?
Dean: That's right. Uh--
President: Any ideas on that?
Dean: Well, I think that would be something that Mitchell should be charged with.
President: I would think so too.
Dean: And get some, get some pros to help him.
President: Let me say, there shouldn't be a lot of people running around getting money.

In late April, at the President's request, H.R. Haldeman listened to the tapes of that and other conversations, took notes, and reported back. On June 4, trying to anticipate the charges John Dean might make in his upcoming testimony before the Senate Select Committee, Nixon himself played that and other tapes (still before their existence had become publicly known). After listening, Nixon described the conversation to Ron Ziegler, his press secretary, but told him that after saying, "We could get a million dollars," he had added, "But it would be wrong." Nixon was sure that Haldeman would confirm his version of events before the Senate committee, but he was still uneasy. The taping apparatus, still in operation, caught the following:

> President: What I was saying about [the material on the tapes] is that it's reassuring up to a point, but in fact, uh, at least, in this whole business we, we sat there and we conspired about a cover-up [tape unintelligible] or not. We did talk about it on the twenty-first. That's a tough conversation. Unless Haldeman explains it--which he will. [Sighs] But I think we can survive that, too.
> Ziegler: Yes, Sir.
> President: Do you?
> Ziegler: Yeah, absolutely. We'll survive it all.
> President: I had the [unintelligible] to recollect what I thought that we'd have to be facing a Goddamned traitor. Uh, I mean, why "we could raise a million dollars," as I told him, and then went on to say, "But how the hell would you get it to him? It's wrong," that's the key thing. Haldeman remembers that. He's got--
> Ziegler: Sure he would say that.
> President: Hm?
> Ziegler: You would not have, you have not approved of anything.
> President: Approve it--never.

In late June, in public testimony before the Senate Select Committee, Dean described the exchange (although he incorrectly placed it on March 13), and recalled that Nixon had said raising a million dollars would be "no problem." Haldeman's turn to testify came after the existence of the taping system was revealed. He described the conversation between Dean and Nixon, using, he said, the notes he had taken while listening to the tapes:

> The President said "There is no problem in raising $1 million, we can do that, but it would be wrong."

In fact, Haldeman's notes, which were later turned over to grand jury, did not contain the final exculpating phrase. By October, therefore, Nixon was hoarding evidence not only of his original obstruction of justice, but of Haldeman's perjury. One might suspect that Nixon was aware of other "tough conversations" scattered through the subpoenaed tapes.

He may have had another reason to resist release of the tapes. According to later testimony, there was at this time an extremely suspicious eighteen-minute erasure in the middle of one of Nixon's conversations with Haldeman. If the tapes were shared with the court, so would knowledge of this gap. Nixon may also have

known that two of the subpoenaed tapes could not be found.* (His lawyers were to claim the two had never been recorded.)

And the tapes that did exist were going into what Nixon must have considered enemy territory, where he could not expect them to be reviewed sympathetically. Judge Sirica would receive them first. Nixon had admired him because he had a reputation as a "hanging judge," who gave long sentences. Ironically, Sirica had been outraged by the silence of the Watergate burglars and had broken the case open by threatening to sentence them to prison terms of 35 and 40 years.

Then the tapes would go to the Special Prosecutor, Archibald Cox. Nixon's hostility toward Cox can be dismissed as cynical self-protection, but it certainly could have sprung from a deep and heartfelt suspicion. The two men were scarcely acquainted, but Nixon probably knew all that he needed to form a judgement about him. First, Cox was a Harvard professor. Nixon's administration was heavy with Harvard men, but he had always felt a sense of resentment against the eastern intellectual establishment which the university seemed to represent. More important, Cox was an associate of the Kennedy family, against whom Nixon had an enmity that was nearly an obsession. His distrust had probably taken root after John F. Kennedy's victory in 1960, in an election which Nixon felt had been stolen. And in the late 60's and early 70's, few Senators were as vocal in their criticism of Nixon's policies as Massachusetts' "Ted" Kennedy. The Senator had figured in the Judiciary Committee hearings that spurred Cox's appointment, and thus Nixon could have found it very easy to convince himself that Cox was a partisan hatchet holder. In July, Nixon received a memo from his speechwriter and advisor Pat Buchanan, which told him exactly what he was ready to hear: The Special Prosecutor was leading

> a fifth column . . . dominated by McGovern-Kennedy types. . . Our adversaries do not simply wish to show Nixon's involvement, they wish to castrate the President, to strangle the New Majority in its crib, to reverse the democratic verdict at the polls in November. The Left has an enormous stake in Watergate; they really have nothing else; and they fully intend the exploitation of this scandal to cancel the Nixon Counter-Revolution.[13] . . .

To Nixon, the problem must have seemed clear. Cox was always going beyond reasonable bounds. Delivery of these tapes, however damaging to the administration, would not satisfy him; requests for more would follow. And somewhere on these reels of tape, Nixon must have feared, was that conversation where he'd be proven guilty beyond a shadow of a doubt.

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*Of course, it is possible that Nixon himself made the erasure and/or "lost" the two tapes.

Nixon told the public that he was defending the principle of "executive privilege," which was rooted firmly in the constitutional doctrine of the "separation of powers"; The principle had been expanded by President Truman when he refused to let members of his staff testify before Red-hunting congressional committees. The justification was that a president could not receive honest advice from his aides if they knew their words would be made public. Nixon cited Truman's actions as precedent for his own.

Nixon's claim in this regard had been somewhat weakened by a curious letter he had written to Senator Ervin when he had first refused to surrender the tapes:

> Before [the tapes'] existence became publicly known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth. However, as in any verbatim recording of informal conversations, they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways.

If Nixon was trying to cover himself in the event that the tapes were eventually turned over, the effort backfired. Senator Ervin had scoffed:

> The President says he has heard the tapes, or some of them, and they sustain his position. But he says he's not going to let anybody else hear them for fear they might draw a different conclusion.[14]

Nixon had presented his position to his advisors as he had to the public: as a defense of principle. None of the men surrounding Nixon at this time had been involved in the cover-up, and all thus found it possible to believe Nixon's protestations of innocence. Furthermore, the staff generally shared Nixon's distaste for the Kennedys and therefore his suspicion of Cox.

But even Nixon's closest advisors found his tenacity on this particular point of principle at best perplexing, at worst ominous. Why would an innocent man cling to the tapes this way? Almost all of them had urged him to make them available somehow, but he had absolutely refused. Once, he had allowed one of his lawyers to listen to one conversation,[15] but otherwise, he had denied them access. And the issue of the tapes aside, Nixon's behavior had not been altogether reassuring.

For instance, when J. Fred Buzhardt, Jr., had left his post as general counsel to the Department of Defense to take John Dean's place as the President's special counsel, one of his first assignments was to prepare a White House explanation of Nixon's role in the Watergate affair. Nixon had refused to write or even to dictate his recollection of events, but instructed Buzhardt to compose a statement and then bring it to the President for approval. "That's wrong, try it again," Nixon would say, and Buzhardt would return to his desk and write a new draft.[16]

Buzhardt commiserated often with former General Alexander Haig, who had left his job as Vice Chief of Staff of the U.S. Army to take Haldeman's place as Chief of the White House staff. The two had known each other at the Defense Department. "I'll help the guy," Buzhardt had told Haig, "but I'm not about to go to jail for him." Haig concurred.[17]

On the other hand, Professor Charles Alan Wright, who had been hired especially to argue Nixon's side of the tapes case, believed that the subpoena was an outrage, and that the court would decide for Nixon.

> I thought it was a matter of public voyeurism, that everybody in the country would just love to be able to hear what the President of the United States is like when he has his hair down.[18]

Wright had lost the first two rounds, but he was willing to carry the case to the Supreme Court.

Nixon's problem that weekend was to find a way to stymie the investigation, even if that meant getting rid of Archibald Cox, but to do so without inciting an outcry from the public or a mutiny among his own advisors. He could effectively stymie the investigation by protecting the confidentiality of Presidential documents. And he could enlist his staff to aid him in protecting this confidentiality.

First, it might be possible to pursuade Cox to restrain his inquiry. Nixon's lawyers knew that the Special Prosecutor had shown some inclination to compromise during September; perhaps he could be pushed further. (Considering the speed with which the lawyers rejected Cox's proposal, it is not clear that Nixon was informed of the negotiations.)

If Cox could not be convinced, the President's options were much less attractive. He could carry the case to the Supreme Court, but the decision could go against him. If he did lose, he had two options. First, he could turn the tapes over and risk subpoenas for others. Second, he could defy the Supreme Court. As a result, he might find himself charged not only with causing a constitutional crisis, but also breaking his own promise to obey a "definitive" court decision. The public and the Congress might not stand for that. Furthermore, to disobey the Court might be to lose the support of his lawyers, who were supposed to obey a code of ethics. That Sunday's New York Times reported that:

> [Nixon's] own chief domestic advisor, Melvin R. Laird, who disagrees sharply with Mr. Nixon on the tapes, has been spreading word in Washington that he fears Mr. Nixon might not obey a decision of the Supreme Court to release the tapes.[19]

Disobeying the Appeals Court was less blatant, but shared some of the disadvantages.

But there was one other option, suggested, of all places, on the pages of that venerable liberal journal, The New Republic. Two weeks before, Yale Constitutional Law Professor Alexander Bickel had written:

> Special Prosecutor Cox is not only the President's adversary, he is also the President's subordinate. Mr. Cox has no constitutional or otherwise legal existence except as he is a creature of the attorney general, who is a creature of the President. Both exercise in behalf of the President and subject to his direction the President's constitutional responsibility and authority to "take care that the laws be faithfully executed." To the extent, therefore, that the President's adversary is Mr. Cox, the President is litigating with himself . . . For if he loses in the guise of Charles Wright he can discard his mask of Archibald Cox. He can discharge Mr. Cox and appoint someone else in his place--perhaps Mr. Wright, if he chooses--who will follow his direction to abandon the demand for the White House tapes.[20]

Nor could Cox claim independent authority from the Watergate Grand Jury, Bickel had argued, since the Grand Jury was meant to shield citizens from unjust indictments, not to serve as a sort of Special Prosecutor's bureau.

There were problems with what the President and his advisors had come to call the "Bickel Option," however. The first was public opinion. Simply to dismiss Cox, without any real justification, might appear to be an admission of guilt. Such an action would probably anger the Senate Judiciary Committee as well. But much more important, the President felt he could not fire Cox directly.* Only the Attorney General, Elliot Richardson, could do that.

Haig, who spoke with the President's authority, and the President himself had repeatedly told Richardson that Cox was going too far. Whether Richardson wasn't complaining enough, or whether Cox wasn't listening, the White House staff didn't know, but their messages simply weren't having the desired effect. Richardson, like Cox himself, had been running off on his own too much. For instance, he had infuriated Nixon by reopening the investigation of the killings at Kent State University without even telling the White House. But Richardson was also a valued "team player," and his wide-ranging reputation for probity was far too valuable an asset to lose.

Richardson was sure to object to an attempt to fire Cox without good cause. On the other hand, he was always eager to arrange a compromise. If necessary, the White House must have thought, he could be offered one. Nixon had the basis for such a compromise: in late September, he asked his personal secretary, Rosemary Woods, to begin transcribing the subpoenaed tapes.

On Sunday morning, October 14, Nixon attended church for the first time in six months.[21] By that afternoon, Nixon and his advisors apparently had made their decision. Haig called Richardson at his home and asked that he come to the White House at 9:00 Monday morning. He mentioned the Middle East crisis and Friday's court decision and suggested that the Attorney General would meet with Haig alone first, then with Nixon.[22] Richardson promised to be there.

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*However the Justice Department's Office of Legal Counsel had concluded, in a memorandum requested by Attorney General Richardson, that the President could fire Cox directly.

The Negotiations

Monday, October 15

Richardson arrived at the White House at 9:00, but was met not only by Haig but by Buzhardt. Haig began to talk about the military situation in the Middle East. Israel was advancing far beyond the Golan Heights into Syria. The battle around the Suez Canal was at a crucial point. The Soviet Union had been resupplying Egypt all along, and the United States had just begun to do the same for Israel. The situation was critical; the Soviet Union was clearly tempted to exploit it. Haig showed Richardson a threatening telegram from Brezhnev and said that the President's authority must not be impaired.[23] After about ten minutes, Richardson interrupted: "I'm ready. I'll go home and pack my bags. Where do you want me to go?"[24] According to Richardson:

> That part about packing the bags was in effect a way of saying, "Come off it, Al." I was kidding him; not puffed up with the notion that I was indispensable.

Haig replied, "That's not exactly what I had in mind," and got to the point: the threat to the President's authority now was Archibald Cox. As Richardson recalled the plan: "The President would himself prepare an authenticated version of the nine subpoenaed tapes for presentation to the District Court . . . and the President would fire Special Prosecutor Cox as a way of mooting the case."[25] Published accounts state that Richardson was "startled,"[26] but also "outwardly calm."[27] The three talked for two and a half hours. Richardson argued that firing Cox would be a disaster for everybody. There had to be alternatives--couldn't the President appeal to the Supreme Court? Haig replied that Nixon was impatient with the long appeals process and wanted the problem cleared up quickly. Buzhardt said that, a month before, Cox had suggested having a third party verify transcripts of the tapes. However, he continued, the two sides had been unable to agree upon a verifier.[28] Apparently, finding a neutral third party struck Richardson as a minor problem. He seized upon the idea, emphasizing that compromise was possible. And by the end of the meeting, he had made it clear: he had pledged to fire Cox only for "extraordinary improprieties," but the Special Prosecutor had committed none. Richardson would himself resign rather than fire Cox. But Buzhardt and Haig seemed to be holding firm.[29]

Richardson returned to the Justice Department for a budget meeting. Beforehand, he ran into Deputy Attorney General Ruckelshaus and told him, "We've got a real problem. It may be even worse than the Vice President."

"Good Lord," responded Ruckelshaus, "how could that be?"[30] When Richardson told him that the White House wanted to fire Cox, Ruckelshaus scoffed. The public reaction would be disastrous.[31]

At 12:10, Haig called Richardson to say he had a suggestion for a compromise that might satisfy Nixon and allow Cox to keep his job: they could ask Democratic Senator John Stennis of Mississippi to listen to the tapes and verify the accuracy of the transcripts Nixon would prepare. Richardson said that "it was an idea that deserved to be considered."[32] Haig promised to try to "sell" the plan to

Nixon. At 1:15, Haig called again, after what he said had been a brutal argument with the President. Nixon had insisted that Cox agree that once the "verified" transcripts were turned over, "this was it." Furthermore, if Cox rejected the compromise, Nixon expected Richardson to fire the Special Prosecutor. Haig told Richardson to call back by 2:30 with his answer.[33]

Lunching with Jonathan Moore and J.T. Smith, Richardson described the White House initiative. They all realized that the White House was deadly serious. Richardson had discussed the "third-party verification" plan before with both the White House and with Cox, but as Moore remembers:

> This time it came up with a thrust, a precision, a drive that was real. We were anticipating the problem with Cox coming to a head. But we didn't know how it would come or that it would come quite suddenly, or with this much force. Because there was now a lot of force behind it.

They realized that Stennis was a very skillful choice, as Moore recalls:

> First he's got a reputation for honesty. As Elliot is in the habit of saying (it makes me grimace every time), "Stennis would rather have his fingernails and toenails pulled out one by one than to ever state an untruth." Second, he was a judge. Third, he understands and is committed to national security. It's a nice mix.

Also, the Senator was a Democrat (though he was a stalwart supporter of the President). Richardson began to refer to the transcript plan as "the Gospel according to St. John."[34] Either at that point, or at one of the other meetings Richardson's staff held that week, someone pointed out a further trait which made Stennis ideal from the White House's point of view: the Senator was hard of hearing.

Richardson, who had been asked to jump off a cliff first thing in the morning, thought the Stennis plan worth a try. He told his staff that he was quite willing to present it to Cox, although he realized that Cox might have perfectly understandable objections. His aides tried to disabuse him of his optimism. Haig's reversal that morning seemed fishy; Richardson might be walking into a set-up that would force him to fire the Special Prosecutor. As one aide recalls:

> I think Haig had gained and held our respect as a man doing a terribly difficult job in a terribly difficult time out of his own conception of the national interest, who was willing to work twenty hours a day, and undergo a great deal of personal, mental, and emotional strain.
>
> This is not to say we didn't perceive him as being a ruthless man who sometimes lied to us. We never knew for sure whether he was acting on his own or whether he was acting on direct Presidential orders.

Another adds:

> I thought Richardson had a problem reaching a decision that other people were playing their own games, trying to cut him up a little and not telling the truth all the time. To him, deciding that might represent a kind of moral condemnation of the person. My approach was, "They've got different interests, a different style and technique. You've got to be able to recognize, without feeling that you are damning the man's soul, that he will be shading it; he will be cutting corners." By that time, after long experience with that White House, Richardson was much more skeptical.
>
> We were all suffused with the notion that Haig was someone you never underestimate, someone who is very good to have on your side when you're in trouble. But, he was serving the President, and the President was in a helluva jam. The interests of Haig, the President, Richardson, the Justice Department, and the Special Prosecutor were not the same. We were always trying to sort out where the interests coincided and where they didn't. By trying to sort that out we tried to figure out what Al Haig was up to.
>
> Would the compromise go? Is there something in it that can work? Can Archie be persuaded to accept it? If he doesn't what are the next steps? What's hidden in the plan that we're not being smart enough to figure out?

And, Smith asked Richardson, exactly what did Haig mean by "this was it?"

> I pushed him hard on this point. I said, "What are they talking about? Is 'it' with regard to these particular conversations?" Or is 'it' with regard to ever getting more information from the White House?" At this point, I think, Richardson decided that ambiguity would be the better part of valor.

Richardson called Haig at 2:55, 25 minutes late. Haig couldn't take the call, but called back at 3:20. Moore remembers Richardson saying:

> I think this is a good enough way to proceed. I will talk to Archie about it. It is his decision, but I will attempt to work it out with him. I will point out why I think it is right.

But Richardson explicitly refused to agree to fire Cox. Neither he nor Haig raised the issue of Cox's right to subpoena other materials or tapes. Haig promised to contact Stennis.

Haig sped to the Senator's office accompanied by Buzhardt, who had known Stennis for more than fifteen years. For the past three they had been especially close, since Buzhardt was the Pentagon's General Counsel and Stennis was the chairman of the Armed Services Committee. As Stennis said later that week, he had developed "a lot of confidence in" Buzhardt,[36] and listened attentively to the proposal. Would Stennis verify summaries of the disputed

tapes? The seventy-two year old Senator said he was still not fully recovered from the gunshot wounds he had suffered in a mugging several months before. He lacked the stamina to go through every tape. Southern gentleman to southern gentleman, Buzhardt offered his aid, and Stennis accepted and thanked him. But there later emerged sharp disagreement on where they had agreed the summaries would go. Stennis later insisted that he promised to verify transcripts for the Ervin Committee only:

> There was never any mention about the Court. I wouldn't have done it if there was. No, no, no. I was once a judge and the courts can ask for what they want.[36]

Furthermore, he wanted Senator Ervin's approval before agreeing to participate. However, Haig and Buzhardt did not move immediately to pin down Ervin's approval.

The Attorney General arrived at the White House a little after 4:00 to meet with Haig and Buzhardt. They told him that Stennis had agreed to help. Richardson said he would talk with Cox and offer the compromise. Buzhardt and Haig seemed to think that the Special Prosecutor be receptive to the plan. Richardson recalls:

> I was given the impression that Cox had virtually agreed at an earlier stage to having a third party verify the tapes. It turned out later that that wasn't exactly the way it worked. They were going to use former Solicitor General James Lee Rankin as a kind of neutral arbiter with respect to claims of executive privilege or national security.[32]

Therefore, Richardson had good reason to be confident when he sent word asking Cox to come to the Justice Department around 6:00. "The crisis could still be managed," as he recalled. The "counsel for the situation" who had steered the Agnew crisis to a happy resolution just might be able to do the same for the tapes.

Archibald Cox remembers "sitting with his 'antennae quivering'"[38] as Richardson explained the Stennis proposal. Richardson later testified:

> I am sure I indicated to Mr. Cox on Monday afternoon that the situation was one of some stress from my point of view. I didn't want to be explicit about it because I didn't want him to feel that he was being pressured to take this deal under the threat of being fired if he wouldn't. I thought that was one sure way of leading him to conclude that the matter shouldn't even be discussed . . . And in other conversations during the week I indicated to him that I felt under a very considerable sense of time pressure.[39]

Cox's antennae were indeed picking up something like this, as he later testified:

> It was clear to me in my discussions with the Attorney General, from his manner, and his evident concern, that matters were coming to a crisis for him as well as for me. I don't mean to give the impression that he said so in so many words. But it was evident to me from his tone and manner--possibly I imagined it, but subsequent events tend to confirm that I drew the proper inference.

They agreed that it would be desirable to find some solution to the conflict over the tapes, but Cox was not to be rushed into an agreement.

For the next seventy-five minutes, Cox explained the many problems he saw in the plan Richardson was proposing. First, Cox wanted specific and careful guidelines governing the review of the tapes and the omission of irrelevant material. Second, Senator Stennis was barely recovered from the attack of some months before. Was he the best candidate for the job? Third, in some instances, the meaning of remarks on the tapes might depend on their tone. Transcripts would be of only limited use, and might not be accepted as evidence by the courts. If the Courts refused to accept the transcripts, would the tapes be made available? Fourth, there were many other materials other than the tapes that could shed light on the conversations. Would Cox be allowed to subpoena participant's notes and the like? Finally, the subpoenaed tapes pertained only to the investigation of the cover-up, but Richardson and Cox had long agreed that Cox's jurisdiction was far wider than that. As an example, the Special Prosecutor noted that conversations with former Attorney General Richard Kleindeinst might lead him to seek other tapes for an investigation of presidential interference in an anti-trust suit against the ITT Corporation. Cox was concerned that if he renounced his right to the tapes presently under subpoena, he might be denied access to other tapes and other documents. Cox noted that he had put forward a very careful proposal involving a neutral party a month before. He would give Richardson a copy if Buzhardt had no objections.[41]

Richardson was due at the White House for a black-tie dinner honoring departing Secretary of State William Rogers. The two agreed to meet the next morning to continue their discussions.

According to Jim Doyle, the Special Prosecutor did not seem perturbed:

> I had waited at the office for Cox, because I feared the worst from this late summons to Richardson's office. He stopped for only a minute--his wife, Phyllis, was keeping dinner warm for him--to tell me that Richardson wanted to work on a compromise in the tapes case and that he feared he would be tied up with this subject quite a bit in the next few days. I noticed nothing unusual about Cox's manner except that he was in a hurry to get home. Later that night I got a puzzling telephone call from an old friend, reporter Christopher Lydon of the New York Times. Chris and I had cut our teeth together as newspapermen in Boston, and we sometimes spoke in the tribal codes of that area. "Hey," he began, "what's up between your guy, El Trick and the big E?" . . . I wondered if Lydon knew more than I did. Months later, he told me a friend had seen Cox leave Richardson's office

> "looking like he had just been told to clean out his desk." Cox tried to hide his anxieties from the rest of the staff most of the week, but somebody perceptive obviously had seen him in an unguarded moment. I assured Lydon that there was nothing of note to report on, which I believed at the time. As events developed, Lydon and I became suspicious of each other. Lydon came to think I had lied to him to cover up the developing crisis. I came to think that Richardson or one of his aides had quickly leaked a version of events to Lydon to increase pressure on Cox to settle the case, and that Lydon had withheld valuable information from me . . . [42]

Tuesday, October 16

Early Tuesday morning, Cox convened a meeting of his senior staff in his office and described the proposed compromise. The staff was clearly not happy with it. And when Cox threw Stennis' name into the air, he probably might as well have tossed a bomb. After all, that arch-conservative had even made a speech praising Nixon's courage in facing the Watergate affair: "You know what it is to 'tough it out,' and we admire that quality in you."[43] "We'll never get a fair shake from that guy,"[44] one assistant moaned. Cox commented later:

> The Stennis proposal was a damned ingenious thing. Senator Stennis is a demigod in Washington, particularly in any respect that involves personal integrity. On the other hand, in terms of anything that you would think of as Cox's natural constituency around the country, his reputation is certainly different. So it somewhat put me in position where, if I bought it, I was dead with my natural constituency, whereas if I rejected it, I was dead with a lot of people in Washington. Of this I was very aware. My responses were influenced by not wanting to get in a position of either buying or rejecting Senator Stennis as such.[45]

He left for Richardson's office.

Richardson had in the meantime received a phone call from Haig and made his own call to Buzhardt. Cox arrived at 10:00, giving Richardson a copy of the proposal he had submitted to the White House a month before.[46] Richardson acknowledged that Cox's concerns were legitimate, but said that if they failed to produce an agreement by Friday, "the consequences will be very serious for both of us."[47] They discussed which points were negotiable and which were not.[48] Cox later testified

> . . . When I raised [the] question, "What rules will . . . apply to the papers other than the tapes covered by the subpoena," the Attorney General said, "Oh, you fight that out. We will simply leave it unresolved."[49]

Cox suggested that the discussion would be clearer if Richardson put the proposal in writing, and the Attorney General agreed.[50]

But almost immediately, Richardson was off to New York, where he was due to make a speech dedicating the new police headquarters at the behest of Mayor John Lindsay. When he returned to Washington at 5:30 that afternoon, he had already begun to write his proposal. He called Cox immediately on landing, and met with his staff. He made two calls to General Haig, at 7:00 and 7:10. By the second of those calls, Haig had emphasized two things. First, it would not be good to have a meeting of everyone concerned to work things out--the press might notice that something was going on. Second, if Cox and the White House were to have an agreement, it would have to come by the close of business on Friday.[51]

Meanwhile, word leaked out that Richardson and Cox were meeting.

> Cox had agreed to hold a long-scheduled off-the-record background session Tuesday evening for a dozen reporters who regularly covered the prosecutor's office. One of the reporters asked Cox if he was working on any compromise plans. Cox tried to downplay the point but admitted that he and Richardson had been discussing the possibility. This was shortly after the session began at 5 p.m.
>
> A few minutes later the NBC News correspondent excused himself, saying he had work to do. At 6:30 p.m., John Chancellor came on the air. "NBC News has learned that Special Prosecutor Archibald Cox has been approached by Attorney General Elliot Richardson on the matter of the White House tapes," he said. "The story is that Richardson asked Cox whether there is any way to settle the issue, an issue now apparently headed for the Supreme Court. A Justice Department spokesman would say only that the two men met yesterday, and again today. And the spokesman would not rule out the possibility that the tapes were discussed.[52]

Wednesday, October 17

Cox spent the morning with aides, who were eager to offer their opinions on the Stennis plan. As Jim Doyle described it:

> My turn came when I went to brief him on the day's news. It seemed to me that it would be hard to settle for any proposal where one man became the arbitrary instrument to replace the accepted system of grand juries, judges, and petit juries. Part of our job was to convince the American people that the system operated, and operated with integrity.
>
> Yes, Cox said, but there were some things you just couldn't convince some people about. "Sometimes there are things you have to do because you believe them to be for the best," he said. I'll turn your own words around on you: You do what's right and have faith that you can make people understand."

> Well, I said, perhaps in a democracy such as ours, if a majority of the people refuse to believe in the method you've chosen, then it's not the right method.
>
> "No," he said, "I would never accept that."
>
> "If Archie rejects this plan," Jim Neal said, "many people--maybe not the New York Times, but many people--will think that Archie Cox is setting himself up as a Super-President, with the power to do whatever he wishes without any check, to make any demands he wants on the President of the United States." . . .
>
> Neal suggested that the courts be brought into the process at the outset by having Stennis appointed a "Special Master" under a court order, a common procedure in arbitration cases, and one which would give the Stennis plan greater legitimacy . . . .[53]

While Cox and his staff talked and waited, Richardson was putting the final touches on his proposal. He called Cox once more before completing the draft. (One early draft is shown in Appendix B of this case.) At 11:45, he called Fred Buzhardt, who arrived at his office at 12:10. Buzhardt read the proposal, and took a copy with him so he could get another opinion.

Richardson left for a 1:00 lunch date with Henry Kissinger at the State Department. During their conversation, Kissinger was called away for a phone call. On returning, he said it had been Nixon. Richardson remembers him continuing: "The President really does want to get rid of Cox. He started talking about it in the middle of our talk about the Middle East just now." By no means heartened by the news, Richardson returned to the Justice Department. "If you ever lighted candles," he told a Catholic aide, "now is the time to do it."[54]

While in a 3:00 budget meeting with the Director of the F.B.I., Richardson received a call from Buzhardt, who said he was coming over. At 3:30, the President's lawyer arrived with a few suggested changes in the proposal. Richardson recalls:

> I gathered that he had shown my draft to the President and that the revisions reflected his conversation with the President.[55]

Buzhardt had deleted a section called, "Other Tapes and Documents," which included the sentence, "The proposed arrangement would undertake to cover only the tapes heretofore subpoenaed by the Watergate Grand Jury at the request of the Special Prosecutor." After all, Buzhardt explained, the agreement was clear on its face, and no one had ever suggested that it covered anything more than these tapes. Richardson felt the deletion was reasonable; in any case, time was running out. He sent Cox the resulting document, which was entitled "Proposal Submitted by the Attorney General":

The Objective

The objective of this proposal is to provide a means of furnishing to the court and the grand jury a complete and accurate account of the content of the tapes subpoenaed by the special prosecutor insofar as the conversations recorded in those tapes in any way relate to the Watergate break-in and the cover-up of the break-in, to knowledge thereof on the part of anyone, and to perjury or the subornation of perjury with regard thereto.

The Means

The President would select an individual, the verifier, whose wide experience, strong character, and established reputation for veracity would provide a firm basis for the confidence that he would put above any other consideration his responsibility for the completeness and accuracy of the record.

Procedure

The subpoenaed tapes would be made available to the verifier for as long as he considered necessary. He would also be provided with a preliminary record consisting of a verbatim transcript of the tapes except (a) that it would omit continuous portions of substantial duration which clearly and in their entirety were not pertinent and (b) that it would be in the third person. Omissions would be indicated by a bracketed reference to their subject matter.

With the preliminary record in hand, the verifier would listen to the entire tapes, replay portions thereof as often as necessary, and, as he saw fit, make additions to the preliminary record. The verifier would be empowered to paraphrase language whose use in its original form would in his judgement be embarrassing to the President and to paraphrase or omit references to national defense or foreign relations matters whose disclosure he believed would do real harm. The verifier would take pains in any case where paraphrased language was used to make sure that the paraphrase did not alter the sense or emphasis of the recorded conversation. Where, despite repeated replaying and adjustments of volume, the verifier could not understand the recording, he would so indicate.

Having by this process converted the preliminary record into his own verified record, the verifier would attach it to a certificate attesting to its completeness and accuracy and to his faithful observance of the procedures set forth above.

Court Approval

Court approval of the proposed procedure would be sought at two stages: (a) in general terms when or soon after the verifier began his task, but without identifying him by name, and (b) when the verified record was delivered to the court with the verifier's certificate. At the second stage, the special prosecutor and counsel for the President would join in urging

> the court to accept the verified record as a full and accurate record of all pertinent portions of the tapes for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access.
>
> Assurance Against Tampering
>
> Submission of the verified record to the court would be accompanied by such affidavits with respect to the care and custody of the tapes as would help to establish that the tapes listened to by the verifier had not at any time been altered or abbreviated.

At 6:20 that evening, Richardson called Cox to gauge his reaction. Cox had indeed read the proposal, but as he later testified, he felt "These matters were far too important and far too serious for us to do overnight."[56] He told Richardson, "I think that I should respond to you in writing because it would be more careful that way."[57] If Richardson had any quick mental flashes, that day's events had provided plenty of material: Nixon babbling to Kissinger, an assistant lighting candles . . .

> I tried to convey to Cox the sense of time pressure being communicated to me. I didn't want to do so starkly, because I didn't want him to feel he was being delivered an ultimatum."[58]

Richardson might not be able to stay the axe beyond Friday. But how to make this clear to his old friend? Cox noticed that Richardson seemed worried:

> Elliot and I had quite different senses of what ought to be the pace of things. Elliot was in this desperate hurry. He thought of Friday as the crisis. "That's when we file or don't file a petition to appeal the case." My sense of timing was, "Hell, Elliot, let 'em file the petition. Or I will agree to a stay as long as we try and work out any solution, compromise--whatever you want to call it. Let's work on it long enough to really work it through instead of feeling that we had to be rushed into something."
>
> Elliot kept saying, "Well, Friday's when the petition has to be filed."

While Cox and Richardson talked back and forth, Judge Sirica rejected the Ervin Committee's subpoena for tapes on the grounds that he had no jurisdiction to settle a suit between the executive and legislative branches. The committee's lawyers began to prepare an appeal of Sirica's ruling.

That evening, Richardson gave a dinner party to celebrate Ruckelshaus's confirmation as deputy attorney general, and welcomed Solicitor General Robert Bork, columnist David Broder of the Washington Post and his wife, and a few other guests. After the meal, Richardson turned the conversation to a profound consideration of the moral duties of public officials. Driving home, Broder asked his wife, "What the hell was going on back there?"[59]

Thursday, October 18

Word of the negotiations was circulating furiously. Anthony Lewis's column on the Op-Ed page of Thursday's New York Times read:

> [Richardson has] held some long sessions with Cox, reportedly in a new effort to find a compromise on the tapes. Some observers are suspicious of Richardson's motives, believing he is out, one way or another, to remove this last big threat to the President. Others find it natural enough that Richardson, after the general approval of his performance in the Agnew case, should try to be a Solomon on the tapes. . . .
>
> Suppose, for example, that Nixon's lawyers came to Cox in the next days or weeks and offered this settlement: The President will end his blanket refusal to produce these tapes; he will give you transcripts of everything on them that is relevant to the grand jury investigation; but he alone will determine what is relevant.
>
> . . . [Cox] is in a terribly delicate position now . . . And he is essentially alone in all this. He has no institution behind him, no powerful colleagues, no party. . . .

At the White House, responding to questions, Deputy Press Secretary Gerald Warren revealed that Richardson had been meeting with the President's lawyers. But he refused to comment further.

Archibald Cox was certainly aware that his situation and Richardson's were ticklish. A self-described "agonizer," he had to make a decision that might irremediably affect the course of his work, or even his very tenure.

> Outside the office, I consulted a very good friend of mine, an intimate friend, about the so-called "Stennis Compromise." He said, "You can't turn it down. You'll be dead."
>
> Obviously, I must have been doing some thinking of it both ways, or I wouldn't have bothered him.
>
> There was another man I tried to see and talk about it--sort of an elder statesman type. I am getting to the point where there aren't many elder statesmen around--it's very troublesome.

But a conviction had formed in Cox's head that he could not accept the proposal as stated; it left too many loose ends. If the White House were really interested in coming to a reasonable agreement, there was no need for him to hurry. If Nixon were going to fire him and defy the Court of Appeals, he would not make a reasonable deal anyway. Cox says he undoubtedly considered alerting members of the Senate Judiciary Committee to the situation, but must have rejected such ideas. If he had talked to Senator Eastland or Senator Scott, the ranking members, they probably would have recommended that he accept the help of their colleague, Senator Stennis. He undoubtedly thought of talk-

ing to Senator Philip Hart of Michigan, not so much because he was on the committee, but because he was a close friend. But, as Cox later commented, seeking out all these people would have been almost as bad as inviting them all to a big party.

He called Richardson at 12:00 to explain his position, but Richardson was unable to talk and returned his call at 12:45. The Attorney General said nothing to shake Cox's faith in him.

> I felt virtually certain that Elliot would not go back on his promises before the Senate Committee. That is not in any way based on anything that Elliot said at all except for one thing I'll get to. I felt that Elliot Richardson doesn't do that sort of thing. He knows when it comes to certain things: right and wrong, and being a gentleman and not being a gentleman. If I may put it in that old-fashioned way: he was a gentleman.
>
> Now, Elliot [as part of Nixon's administration] has fudged on a lot of civil rights issues and other things that I might not fudge on. Elliot would see a clear difference, as indeed do I, between those and this question.
>
> Now there is one other thing. Elliot and I had had a few words, very much in passing, but nevertheless their significance had not been lost on me, and I guess it wasn't lost on him. I had observed at some point that the only way I could be fired is by getting the Attorney General to fire me. Maybe I had said, "the President can't fire me." Elliot acknowledged that that had been looked up and that there was doubt about the power of the President to fire me [that is, directly]. That was very casual, and what interested me was that he did acknowledge that somebody looked it up on their side.
>
> But neither Elliot nor I, at that stage, was much given to dwelling on critical things.

At mid-morning, Cox sat down and drafted a written reply to Richardson's proposal.

> Cox and his top staff worked over this draft, making only minor changes but one important exclusion. They deleted a sentence that said, "I can hardly be expected to negotiate these issues with the implicit threat of dismissal hanging over my head if the negotiations are unsatisfactory to the other party."[61]

By mid-afternoon, they had prepared the following memorandum, which they immediately sent to Elliot Richardson's office.

> The essential idea of establishing impartial but non-judicial means for providing the special prosecutor and grand jury with an accurate record of the content of the tapes without his participation is not unacceptable. A

courtroom "victory" has no value per se. There should be no avoidable confrontation with the President, and I have not the slightest desire to embarrass him. Consequently, I am glad to sit down with anyone in order to work out a solution along this line if we can.

I set forth below brief notes on a number of points that strike me as highly important.

1. The public cannot be fairly asked to confide so difficult and responsible a task to any one man operating in secrecy, consulting only with the White House. Nor should we be put in the position of accepting any choice made unilaterally.

2. Your idea of tying a solution into court machinery is a good one. I would carry it farther so that any persons entrusted with this responsibility were named "special masters" at the beginning. This would involve publicity but I do not see how the necessary public confidence can be achieved without open announcement of any agreement and of the names of the special masters.

3. The stated objective of the proposal is too narrow. It should include providing evidence that in any way relates to other possible criminal activity under the jurisdiction of this office.

4. I do not understand the implications of saying that the "verbatim transcript...would be in the third person." I do assume that the names of all speakers, of all persons addressed by name or tone, and of all persons mentioned would be included. [After the letter was typed, Cox added in handwriting; "The last is too broad. I mean to refer only to persons somehow under investigation."]

5. The three standards for omission probably have acceptable objectives, but they must be defined more narrowly and with greater particularity.

6. A "transcript" prepared in the manner projected might be enough for investigation by the special prosecutor and grand jury. If we accept such a "transcript" we would try to get it accepted by the courts (as you suggest). There must also be assurance, however, that if indictments are returned, if evidence concerning any of the nine conversations would, in our judgment, be important at the trial, and if the court will not accept our "transcript" then the evidence will be furnished to the prosecution in whatever form the trial court rules is necessary for admissibility (including as much of the original tape as the court requires). Similarly, if the court rules that a tape or any portion must be furnished a defendant or the case will be dismissed, then the tape must be supplied.

7. I am glad to see some provision for verifying the integrity of the tapes even though I reject all suggestions of tampering. Should we not go further to dispel cynicism and make provision for skilled electronic assistance in verifying the integrity of the tapes and to render intelligible, if at all possible, portions that appear inaudible or garbled?

8. We ought to have a chance to brief the special masters on our investigations, etc., so as to give them an adequate background. The special masters should be encouraged to ask the prosecutor for any relevant information. What about a request for reconsideration in the case of an evident mistake?

9. The narrow scope of the proposal is a grave defect, because it would not serve the function of a court decision in establishing the special prosecutor's entitlement to other evidence. We have long pending requests for many specific documents. The proposal also leaves half a lawsuit hanging (i.e, the subpoenaed papers). Some method of resolving these problems is required.

10. I am puzzled about the practical and political links between (a) our agreeing upon a proposal and (b) the demands of the Ervin committee.

11. The Watergate special prosecution force was established because of a widely felt need to create an independent office that would objectively and forthrightly pursue the prima facie showing of criminality by high Government officials. You appointed me, and I pledged that I would not be turned aside. Any solution I can accept must be such as to command conviction that I am adhering to that pledge.

Richardson had spent his morning preparing to explain a proposed reorganization of the Justice Department at an 11:30 meeting with reporters. However, his audience was at least as interested in his meetings with the White House and with Cox. Richardson refused to comment. However, Reporter David Broder managed to convince a "Justice Department spokesman" to confirm Richardson's meetings with Cox. Thus both sets of meetings had been confirmed in time for Friday morning's papers.

Richardson talked on the phone to Garment and Haig around noon, and to Buzhardt and Haig shortly before a meeting they had scheduled at 6:00 to consider Cox' reply.

Meanwhile, Charles Alan Wright, the President's advocate, had arrived from Texas in order to present the appeal, as he explained at a news conference less than a week later:

> I spent the first half of last week . . . in Austin teaching my classes, preparing a petition for certiorari that I fully expected to file on Friday. Indeed, the petition was in print . . . We even had a check for $100 to the clerk to pay the filing fee all ready to go.
>
> I was not aware at the time of the compromise negotiations, and when I was informed of them when I got up here at 2:00 Thursday afternoon, I was astonished that the President was willing to make such a reasonable, indeed I think an extraordinarily generous proposal. Having been privy to the President's thinking throughout the summer, I know how very deeply he values the principle of confidentiality, and that only the most persuasive evidence to him that the national interest required a limited intrusion could have persuaded him to make that proposal.

So there gathered at the White House that Thursday evening Haig, Garment, Buzhardt, and Wright, for the White House; and Elliot Richardson, for the situation. His was an unenviable position, he thought, but still not a hopeless one. Richardson's optimism was soon dashed.

He began, "I have a response from Archie."[62] Wright said, "Could I see the proposal that he's responding to?"[63] Richardson, at least, was left with the impression, correct or not, that Wright had never seen his "Proposal" before. Cox's reply, Haig volunteered, was a clear rejection of the compromise. He said that what Cox had proposed was completely different in spirit from the "Stennis Proposal," and could not be considered. [64] The other White House men agreed. The public would see that Cox had been unreasonable. The Special Prosecutor would be fired, and the investigation taken over by Richardson and Henry Peterson, (the head of Justice's Criminal Division), who had headed the Watergate investigation before Cox had taken over. Richardson says he protested, and "outlined the problems which would attach to any Cox firing and objected particularly to a suggestion that I and Henry Peterson could take over the Watergate investigation."[65] Such an investigation, he argued, would have no credibility at all. But Wright was singing the praises of the Stennis plan: the President's offer was absolutely unprecedented, amazingly generous. "Charlie, you are very convincing," Richardson said, "Why don't you talk to Archie: Maybe you can do better than I have."[66] Wright said he'd try, but the others were firm; if Cox was not convinced, he would be fired. Richardson left, disconsolate.

Cox usually didn't leave word at the office of his evening plans, but this day he had casually told his deputy, Henry Ruth, that he'd be going to his brother's house in Virginia. Cox was in the midst of dinner when the phone rang; it was Ruth, who delivered the message that the Special Prosecutor should call a "Marshall Wright" in Haig's office at the White House.* When Cox did so, he heard a familiar voice at the other end and said, "Oh, it's you, Charlie." Five nieces and nephews were scampering at Cox's feet as he heard Wright reply, "Here are some conditions you can't accept." Wright insisted that Stennis would have to be the verifier, that the Senator could not be named a "special master" of the court as Cox had suggested, and that Cox would have to agree to renounce all efforts to subpoena the original nine tapes or any other White House documents." Cox found Wright's tone "decidedly nasty" and "designed to elicit rejection." He replied, "The way it sounds to me, what you are insisting on is out of the question, but why don't you put it in writing."[67] Wright, however, insists that the conversation was merely "exploratory," and that the question of further subpoenas was "to be left open, a matter for negotiations in the future rather than something that we were going to be resolving at this time." Furthermore, Wright says he did not mean to break off negotiations.[68]

Meanwhile, doubting that Wright would pursuade Cox to accept the proposal, Richardson decided that he had no alternative but to resign. In haste, he scribled a set of notes to help explain his resignation to the President the next morning, on the assumption that Cox would be fired, and that Richardson and Henry Peterson were expected to take over the investigation. The notes concluded:

---

*There was in fact a Marshall Wright at the White House, working for the National Security Council.

> In short: Since I appoined Cox on the understanding that "I would fire him only for extraordinary improprieties" on his part, and since I cannot find him guilty of any such improprieties, I cannot stay if he goes." [See Appendix C for full text.]

Late that night, according to Woodward and Bernstein's The Final Days, Buzhardt and Haig talked. Richardson was unhappy about firing Cox, but there might be a way to split them. In his letter, Cox had insisted that he be guaranteed the right to subpoena further evidence, but Richardson might think it reasonable to leave the point for further argument. They went to Nixon and told him that Richardson was with them on the compromise. They thought Cox would resign if ordered to accept the Stennis plan. But Nixon insisted that the Special Prosecutor must be denied access to any further tapes. Buzhardt repeated: "Leave it open." Nixon exploded: "No, No, period!" Buzhardt realized that he had just seen his negotiating room blown away.[69]

Friday, October 19

The morning papers reported that Richardson was apparently trying to arrange a compromise on the tapes, but his effort was already dead. At 8:00 a.m. Richardson, Moore, Smith, and Richard Darman, another of Richardson's close aides, arrived at the Justice Department for what looked like the last meeting they would have while Richardson was Attorney General. He read them his reasons for resigning, and then asked his secretary to type up the handwritten notes. He called Buzhardt at 8:15 to see how things were going between Cox and Wright. There was apparently no vital news as yet, but Richardson decided to call Ruckelshaus, who would be next in line at Justice. At 9:15, he called Haig, who said negotiations were still proceeding. Richardson told Haig that he wanted to see the President if the talks broke down,[70] a clear signal that he meant to resign.

Meanwhile, at 8:30 a.m., Cox received the letter that he had asked Wright to send. According to Jim Doyle:

> Cox read the letter and laid it on the conference table. The rest of us--Ruth, Lacovara, Kreindler, myself--crowded around it. "Very clever lies," Cox said. For him that was strong language.[71]

The others read the letter:

> Dear Mr. Cox:
>
> This will confirm our telephone conversation of a few minutes ago.
>
> The fundamental purpose of the very reasonable proposal that the Attorney General put to you, at the insistence of the President, was to provide a mechanism by which the President could voluntarily make available to you, in a form the integrity of which could not be challenged, the information that you have represented you needed to proceed with the grand jury in connection with nine specified meetings and telephone calls. This would have also put to rest any possible thought that the President might himself have been involved in the Watergate

> break-in or cover-up. The President was willing to permit this unprecedented intrusion into the confidentiality of his office in order that the country might be spared the anguish of further months of litigation . . .
>
> Some of your comments go to matters of detail that we could talk about, but your comments 1, 2, 6, and 9, in particular, depart so far from [the President's proposal] and the purpose for which it was made that we could not accede to them in any form.
>
> If you think that there is any purpose in our talking further, my associates and I stand ready to do so. If not, we will have to follow the course of action that we think in the best interest of the country. I will call you at 10:00 to ascertain your views.

Cox took this "to mean that it wouldn't be long before I could go to the coast of Maine"[72] (where the Special Prosecutor had a summer place). Aides took Wright's letter to a bank and placed it in a safe deposit box.[73] Cox sent back a letter that began "Dear Charlie," and stated that he could not accept the limitations Wright wanted to impose:

> Your . . . paragraph referring to my comments 1, 2, 6, and 9 requires a little fleshing out although the meaning is clear in the light of our telephone conversation. You stated that there was no use in continuing conversations unless I would agree categorically to four points.
>
> . . . Point one was that the tapes must be submitted to only one man operating in secrecy, and the President has already selected the only person in the country who would be acceptable to him.
>
> Point two was the person . . . could not be named Special Master.
>
> Point three was that no portion of the tapes would be provided under any circumstances . . . even if the edited transcript contained evidence of wrongdoing and . . . even if it meant dismissal of prosecutions against former Government officials who have betrayed the public trust.
>
> Point four was that I must categorically agree not to subpoena any other White House tape, paper, or document . . . Judging from the difficulties we have had in the past . . . we would have little hope of getting evidence in the future.
>
> These points should be borne in mind in considering whether the proposal put before me is "very reasonable."

> I have a strong desire to avoid any form of confrontation, but I could not conscientiously agree to your stipulations without unfaithfulness to the pledges which I gave the Senate prior to my appointment . . . [for the full text, see Appendix D]

Then, Cox headed for U.S. District Court to hear John Dean plead guilty to one count of obstruction of justice.

The White House received the letter and interpreted it as a rejection. Haig called Richardson and told him that the President would see him right away. The Attorney General told his aides, "Until now, I haven't been nervous. Now I am."[74] Moore recalls:

> Richardson was all geared up to blast off, assuming this model of Thursday night. And, he was going to go to the President to do it. He was demanding a meeting with the President of the United States, which you don't do that often, because one way or the other, you don't make out very well by it.

Richardson's aides shook his hand and he headed for the White House with his resignation notes in his pocket.

But when Richardson arrived, as Moore later put it, "they all folded on him." Haig met him and said, "Maybe we don't have to go down the road we talked about last night. Suppose we go ahead with the Stennis plan without firing Cox."[75] Richardson was simply not prepared for this:

> You have to realize that I'd come in there to resign. When you get ready to hurl yourself against a closed door and it turns out to be glass and you go crashing through and find yourself in a heap on the other side, you have to pick yourself up and reassess the situation.[76]

The Thursday night meeting reconvened, as Buzhardt, Wright and Garment dropped by Haig's office.

While Richardson read a copy of Cox's letter to Wright, Haig went out, saying he would try to convince Nixon not to fire Cox. Richardson expressed surprise that the Special Prosecutor thought he would be barred from further subpoenas--the proposal had said no such thing. At this point accounts of the day's events diverge sharply. Richardson says that the group agreed that Wright would send Cox a letter assuring him that they intended to impose no such restriction:[77]

> When I urged that a new letter be written to Cox setting the record straight, no one pointed out that there was no misunderstanding. No one said that Cox's letter correctly reflected the restriction put to him by Wright the night before.[78]

But The Final Days (which does not identify its sources) says that Buzhardt merely explained that the stricture had been placed the previous night at Nixon's own insistence, and that Richardson offered no objection to this.79* The letter that Wright eventually sent was not consistent with what Richardson felt had been intended:

> Dear Archie:
>
> . . . It is my conclusion . . . that further discussion between us seeking to resolve this matter by compromise would be futile, and that we will be forced to take the actions that the President deeems appropriate in these circumstances . . . I do wish to clear up two points, however . . . I note these points only in the interest of historical accuracy . . .[For the full text, see Appendix E]

Haig returned and said that the President had agreed not to fire Cox, but added that it had been "bloody, bloody. I pushed him so hard my usefulness to the President may be over."80 The participants began to consider a wide range of options for implementing the Stennis plan. According to Richardson:

> All sorts of scenarios were being thrown around and I was trying to decide how I felt about each, one at a time. I do recall that we discussed the possibility of linking to the Stennis plan a flat order to Cox on future access to White House materials, some way of saying, 'This is all you get." Someone asked how I thought he would react to such an order and I thought he would probably resign. But I never gave any clear indication of my attitude on this. I hadn't had time to think through the implications.81

The Final Days seems to say that Buzhardt suggested issuing the order to Cox.82 But one of the other participants,** quoted (but not identified) in J. Anthony Lukas' book Nightmare, remembers:

> Elliot must have realized that one way or another the President was determined to get rid of Cox. If Cox was fired, under any pretext, Elliot would have to resign. But if Cox could be induced to resign, Elliot might be able to stay on. So he said, "Why not simply order Cox to abandon all further subpoenas for White House materials?" Someone asked "would that make any difference?" and Elliot said, "Yes, I think he would resign."83

---

*Richardson, however, states that he "had no part in the drafting of Wright's letter and was not present when it was drafted."

**By process of elimination from Lukas's list of sources, this seems to be Leonard Garment, who related a similar account to Jonathan Moore.

Richardson felt sure he had not approved any order to Cox. The others knew that all week he had been firmly and consistently opposed to forcing Cox to accept any compromise, which he had demonstrated by insisting that Wright send Cox that letter. But still, Richardson had not explicitly and strenuously objected to giving Cox an order. The White House men had him!

There was more discussion of ways they might get Congressional and perhaps Judicial approval for the Stennis plan. When the meeting broke up, they were ready to move on the Stennis compromise. Haig said at his news conference the next week:

> . . . We concluded at that meeting that with or without Professor Cox, we should attempt to resolve this dreadfully controversial issue by procceding with the proposal providing Senator Ervin and Senator Baker would agree. The results would be the turnover of the product of this effort to both the courts and to the Senate committee in the persons of Senators Ervin and Baker.[85]

A White House aide later commented:

> The whole thing was an example of wishful thinking. We were all huffing and puffing to keep the plan up in the air, so we didn't ask all the hard questions that needed to be asked.[86]

They hurried to find the Senators. It turned out they were both out of town speaking about their committee's Watergate investigation. Reached in Chicago al 11:30, Baker agreed to take the first scheduled flight back. The White House caught Ervin at the New Orleans Airport and convinced him to come to Washington as well.[87]

But Elliot Richardson left the meeting convinced that nothing had been decided, and that he and the President's aides were going to consult again that afternoon. He arrived at the Justice Department at 11:00, and surprised his staff with the news that he was still Attorney General. When he told them that he had said that Cox would resign if ordered not to subpoena more documents, Moore exclaimed "Why in hell did you think <u>that</u>?" Richardson assured him that no harm was done--the White House would check with him before acting. About 1:00, Haig called to say that Senator Baker had given his assent to the compromise, and that Stennis was eager to proceed, even without Ervin.[88] (Stennis later denied this.) Richardson turned back to his aides and continued the discussion. A few minutes later, Deputy Attorney General Ruckelshaus arrived and joined them. Everybody sent out for sandwiches. Over lunch, Richardson came to the conclusions that, as Moore recalls:

> This prohibition thing is terrible. It compromises Cox's role too much. Archie's objections are reasonable and

> responsible. I think the Stennis compromise is okay, but he doesn't, and he is the guy that has got to decide. That was the nature of the relationship and my commitment.

Richardson thought there was still negotiating room:

> Up to then, I'd been able to defuse each situation that had arisen. I'd managed to turn off the Monday proposition. I'd managed to turn off the Thursday proposition. Friday afternoon, I went to work to turn off the Friday morning proposition.[89]

Richardson and his aides tried to put themselves in the White House's shoes, as Smith remembers:

> And we sat there and tried to scheme up a way of presenting it to them so that they would agree with the logic for not doing it . . . It didn't fit the context to say, "If you give Cox an order not to seek other material, it will be unconscionable and immoral and I will have to resign." So, we came up with the story: "Look, you have got a proposal. You have a terrible problem with the tapes and you feel very strongly about it. The Stennis proposal is not all that unreasonable on its face. You may get away with announcing it to the public, but don't screw up a good thing by giving an order which Cox won't be able to live with. That order will become the focus of attention rather than the merits of the compromise proposal."

At 2:05, Richardson had his secretary place a call to Cox's office. But the Special Prosecutor had stepped out a half-hour before to buy a book to read over the upcoming Veteran's Day weekend. As Doyle described it:

> A half-dozen of us headed for Brentano's via every possible route that Cox might take. Ruth and Kreindler ran into him on the street. I reached the store, where I was met by John Barker. As we huddled, a woman came up to us and said, "Are you looking for your boss? He's back at the office and he needs you right away."
>
> When we returned, Cox was on the phone with Richardson, who was being casual. He said he had heard that morning that Cox was about to name President Nixon as an unindicted co-conspirator in an indictment concerning large amounts of money routed to the Nixon campaign by the dairy industry. If that wasn't true, he would like to be able to put the story to rest.
>
> Cox told him that there was no substance at all to such a rumor. Richardson did not give Cox any reading on how things were going that day; but as they talked about the situation, Cox mentioned that if the situation deteriorated he might find it necessary to make public their correspondence of recent days. He hoped that Richardson would not consider that a breach of confidence. No, Richardson said, he thought some of the para-

> graphs, particularly the introduction to Cox's comments on the Stennis proposal, looked as though they had been written for the public.
>
> "Well, it was sincerely written and sincerely meant," Cox said, "but you must have written many of these letters yourself where you believe they may become public. You say what you think, but you say it in the best possible way."
>
> When the conversation ended, Cox knew that White House paranoia was still high, given the Dean guilty plea and the rumor that Nixon was about to be named in an indictment. And Richardson knew, too, that Cox was not about to quietly fold his tent and steal away into the night if things did not go his way.[90]

At 2:25, Richardson called Haig, and, according to Jonathan Moore:

> He argued against the order to Cox on two grounds. First, there was the tactical political point: don't infect the Stennis proposal, which might go on its own, with the order to Cox. Second, he said "What I said this morning was wrong--Cox won't resign." Then he reiterated that he expected there to be further consultation.

One of Richardson's aides remembers that Haig was noncommittal, and said that Richardson's argument gave him no problems. Another says that Haig told Richardson he agreed and would carry the argument to the President. Richardson tried to call Buzhardt, who wasn't in.

At the White House, the staff was rushing to assure Stennis' participation by cementing the approval of Senators Ervin and Baker. Both arrived in mid-afternoon and were rushed to a meeting with Nixon, Buzhardt, and Haig, where they and the Senate Watergate Committee were offered the verified transcripts. The White House staff impressed upon them the urgency of the situation in the Middle East, and the resulting need to resolve the national debate over Watergate.[91] Ervin said later that he repeatedly asked what Cox thought of the proposal, but Nixon kept changing the subject. According to Aaron Latham's article, "Seven Days in October," after about forty minutes, the Senators agreed to recommend the plan to the committee.[92] The committee's final report states:

> After the meeting, it was suggested in the press that these Senators had agreed to a "compromise" of the committee's lawsuit whereby the committee would forego its litigation in exchange for "summaries of certain tapes that would be verified by Senator John Stennis. . . . The fact of the matter . . . is that Senators Ervin and Baker agreed to no such compromise. While the President unilaterally offered certain materials to the committee, there was not even a tentative commitment by its Chairman and Vice Chairman that, as a quid pro quo, the suit would be withdrawn. To the contrary, it was clearly understood by Senators Ervin and Baker that the committee, in all events, could pursue its lawsuit. Moreover, these two Senators understood that the President was offering the committee verbatim transcripts of the conversations at issue, not mere "summaries."[93]

Buzhardt phoned Stennis to tell him Ervin and Baker agreed with the plan.

Buzhardt returned Richardson's call at 4:30 and heard the same arguments Haig had. He called Richardson again at 5:40 and apparently handed the phone to Haig, who told Richardson that the plan had bipartisan support in the Senate. When Richardson objected, Haig answered, "This will help you with your constituency, Elliot."

"And what constituency is that?"

"Republicans."[94]

Richardson was getting worried and called Melvin Laird at 6:10. According to Jonathan Moore, "Laird was always a guy you'd try to get on your side in a situation like this." But Laird wasn't in. In fact, he was with White House liaison chief Bryce Harlow, hearing Haig explain the plan for the first time. Laird warned, "The only way this thing can float is if Elliot's on board a hundred percent. Otherwise it will sink to the bottom of the sea."[95] Haig told him that Richardson was with them. Laird returned Richardson's phone call at 7:08, but that was at least 8 minutes too late.

At 7:00, Haig called Richardson to read him the following letter, which he said was already on its way over:

Dear Elliot: October 19, 1973

You are aware of the actions I am taking today to bring to an end the controversy over the so-called Watergate tapes and that I have reluctantly agreed to a limited breach of Presidential confidentiality in order that our country be spared the agony of further indecision and litigation about those tapes at a time when we are confronted with other issues of much greater moment to the country and the world.

As part of these actions, I am instructing you to direct special prosecutor Archibald Cox of the Watergate Special Prosecution Force that he is to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I regret the necessity of intruding, to this very limited extent, on the independence that I promised you with regard to Watergate when I announced your appointment. This would not have been necessary if the Special Prosecutor had agreed to the very reasonable proposal you made to him this week.

Sincerely,

Richard Nixon

Richardson responded in controlled fury. "Al, given the history of our relationship on this, I would have thought that you would have consulted me prior to sending this letter."[96] He said he had thought there was going to be further discussion, and didn't see how this letter could have been written considering his objections. Haig said he had twice carried Richardson's warnings to the President, who had twice insisted that the tapes matter be cleared up immediately.

According to The Final Days, Haig hung up, assuming that Richardson still supported the Stennis compromise, but was hesitating to fire Cox. The White House staff quickly decided to deliver the order to Cox through a public announcement. That way, they would not have to wait for Richardson. They had to hurry to write a press release.[97]

By 7:20, when the President's letter arrived at the Justice Department, Richardson was fuming. He was to develop the conviction that he had been the victim of a White House ruse. As he said months later:

> I was angry and upset. But it was not until my meeting with counsel for the House Judiciary Committee [in May, 1974] that I fully understood the significance of this sequence of events. The President, I finally realized, thought he had found a formula for getting rid of Cox without precipitating my resignation. I was not to know until the last possible moment that the restriction on Cox was an integral part of the White House plan, and when I learned that the President had brushed aside my arguments against the restriction, his letter directing me to impose it was already on its way.[98]
>
> I think now that the only hypothesis that fits all the facts is that the President set out to fire Cox on some basis which would also keep me on board. I did not think that until fairly recently.
>
> The trouble was that if it was the President's intention through Haig to precipitate a result in which Cox was gone and I was still on board and defending the approach that had been followed, they were a little too cute. They didn't do what they needed to have done to be sure that I was on board. I would have had to suspect what amounted virtually to duplicity to react more sharply than I did as of, say, Friday afternoon.
>
> The White House backed off two earlier approaches at the prospect of my resignation. I didn't put it as a threat. So I was aware that the avoidance of my resignation was a significant factor, or might be. But the events of Friday were such that I wasn't given enough opportunity to react, since they didn't really come clean with me on what they were going to do.
>
> If I overestimated my capacity to do what I was trying to do that week, it was not so much because I thought I was a particularly gifted person for the role of "counsel for the situation," but that I underestimated the resistance and paranoia of the White House. I think I still underestimated it as of my resignation.

Jonathan Moore comments:

> I don't think Haig and the others thought they had Elliot "on board" after that Friday morning meeting. I think that they figured they'd keep him in a state of befuddlement, run up to the Hill, put the thing together, and pretend that he went along with it. I am afraid that what really happened was some really deliberate deceit--a faith that Richardson was to be bought off in the crunch. That's what really misled them.
>
> But also, there was this whole terribly complex situation. People in that White House communicated with each other notoriously badly. They didn't tell us what was going on and they didn't even tell each other everything. And the exhaustion, the paranoia . . .

One of Richardson's aides saw Haig's sudden reversals that week as a deliberate negotiating tactic, perhaps learned from Haig's old boss, Henry Kissinger.

The Special Prosecutor had been waiting in his office all afternoon, expecting a crisis. Indeed, the White House had announced a major press briefing several times, but kept postponing it. James Doyle recalls, "We were dangling, no one was giving us any real information. We thought we were going to get fired--at least I did." No one at the Special Prosecutor's office knew of Richardson's meetings with the White House. At one point, Doyle talked over the phone to Jonathan Moore, who tried to reassure him that Nixon couldn't fire everybody that abruptly. Meanwhile,

> Kreindler and [Henry Ruth's assistant Carl] Feldbaum visited each task force and suggested that the lawyers go through their files, pull the most important memoranda, especially those that recommended for or against a specific prosecution, and make copies. The lawyers were told that "it might be a good idea if you took these home over the holiday weekend to review." The Xerox machines worked overtime for the rest of the day, and through Saturday.[99]

Finally, at 5:23, Cox received Wright's letter breaking off negotiations. Doyle later commented:

> This letter and the telephone call of Thursday night were the first strong indications to us that the White House was carrying on a two-track program of negotiations: The written record was to reflect Richardson's reasonable and restrained approach, while the ultimata and threats were made by the "back channel," as Haig might have referred to it. Al Haig had earned his reputation.[100]

Doyle suspected that within the hour the President would "hold a news conference in the East Room" and give everybody the sack. At Doyle's urging, Cox noted the time he received the letter so he could prove that the President hadn't given him time to respond. According to Doyle,

> We waited an hour. Cox had been convinced from the outset that at least part of the motivation for forcing negotiations under a deadline was an attempt to raise our anxiety level and perhaps cause mistakes. He was in no mood to sit around and wait when it was not his move. So at 6:30 p.m. he announced he was going home, unless somebody had an objection. Nobody did.[101]

Doyle did the same, only to find his wife waiting with a message left by a radio reporter: the White House staff was drafting a statement. At 7:15, Doyle telephoned Cox, who said to meet him at the office.

At 7:30, ten minutes after receiving the President's letter, Richardson called Cox and said, "I have a letter. I am going to read it to you. It is for your information . . ."[102] After reading the letter, Richardson emphasized that he was not delivering the President's order, merely keeping the Special Prosecutor up to date. Cox remembers Richardson saying that he was considering asking to meet with the President to argue that the order should be withdrawn. Finally, Richardson told Cox that Ervin and Baker would support the compromise.[103] Richardson hung up to work on his press statement in answer to the President's letter, which he assumed would become public.

Jim Doyle arrived at the Special Prosecutor's office just after Richardson had read Cox the President's letter.

> "Ervin and Baker have endorsed it," Cox said, with a look of anger in his eyes. "That is a body blow. Spineless!" he said, and then repeated it: "Spineless!"[104]

The White House was ready to move. Nixon personally called Stennis to assure his cooperation,[105] and at 8:15, the White House released its press statement. Cox was portrayed as the lone dissenter from an otherwise universally approved scheme. The statement said that Watergate was undermining the nation's ability to conduct its international affairs. Therefore, the President had decided to impose upon Cox an unprecedentedly generous compromise that had been offered by the Attorney General, and approved by Senators Ervin and Baker of the Senate Select Committee. The Special Prosecutor would receive tapes verified by Senator Stennis, and would be ordered "to make no further attempts by judicial process to obtain tapes, notes, or memoranda or Presidential conversations. (For the text of the Statement, see Appendix F.)

Meanwhile, according to The Final Days, Bryce Harlow was calling members of the Cabinet to inform them of the White House's action. He figured that Richardson knew already, and wasn't going to call him, but at 8:30, the White House operator told Harlow that he had gotten the Attorney General on the line.

> "Elliot," Harlow said, "I didn't mean to call you. There is no point in my talking to you about this compromise. You already know about it. I've been calling all your damn peers around the country and telling them . . .

"Well, Bryce," Richardson replied, "I'm sitting here preparing a press statement. I'm not at all sure I can do what has been requested of me. I will not do what the White House asks of me."

"What are you talking about, Elliot?"

"I've never been so shabbily treated in my life."

"Elliot, there is no sense in your telling me. I don't know, and I don't want to know. Just don't do anything irretrievable or irrevocable."

Harlow decided Haig must have heard of this, and went to get a martini. Haig called him to see what the Cabinet thought of the action.

"I didn't bother to call you," Harlow replied, "because they all liked it. Except Elliot, of course."

"What do you mean, 'except Elliot, of course'?"

There was a pause, and then Harlow said:

"Al, don't tell me. It can't be that you don't know what Elliot is about to do?"

"What do you mean?"

"He's drawing up a press statement. He feels put upon and shabbily treated."

"That's absolutely dumbfounding," Haig said. "On what grounds does he feel put upon?"

Harlow said he had no idea.106

At 9:05, Cox called Richardson, who asked the Special Prosecutor if he had any idea what was going on. Cox read him the President's press release, which an aide had gotten from the Washington bureau of The Los Angeles Times. The press release made no mention of the letter Richardson had received. "Have I got this letter or haven't I got this letter?" Richardson asked. Cox said he didn't know, and (tongue-firmly-in-cheek) suggested calling the White House.107

A few minutes later, Solicitor General Robert Bork heard of the White House's announcement and, sure that the dispute over the tapes had been solved, called the office: "God, I've just heard the news Elliot! It's great!" Richardson was apparently able to contain his enthusiasm.108 At 9:48, Richardson called Cox to tell him he was preparing a statement "making clear my objections to the President's instruction."109 But a few minutes later, he decided that not having been publicly ordered to do anything, he could go home without issuing his press release.110

Haig phoned the Attorney General at home. Aaron Latham's article gives Richardson's account of the conversation:

> [Haig said] that he had heard the Attorney General felt he had been shabbily treated.
>
> Richardson said, "Well, I'm home now. I've had a drink. Things look a little better and we'll see where we go from here."[111]

"Elliot described it as a fairly terse conversation," remembers Jonathan Moore. The account in The Final Days is more expansive (and presumably is Haig's version):

> [Haig] angrily led him back through the events of the week, reminding him that he had been party to each phrase of the compromise. He had gone along with everything that had happened, even the restrictions on future access. And on that, Haig reminded him, the President was inflexible. Haig had, after all, taken Richardson off the hook by having the order issued through the White House, rather than forcing Richardson to issue it himself. So why was Richardson so upset?
>
> "You're probably right." Richardson replied. "I'm home now. I don't feel so bad about it now that I've had a drink. Things look a little better and we'll see where we go from here."[112]

Richardson tried to draft a letter to the President. His wife suggested titling it "The Mahogany Coffin," to symbolize going out in style.[113]

Meanwhile, Cox and Doyle had been rushing to release a reply to the President's statement. As Doyle later wrote:

> This was the beginning of a long weekend, with Veterans Day to be celebrated on Monday. Much of Washington--the journalists covering the White House, the lawyers in our office--had made plans to go away. . . [114]
>
> The evening news shows were over and would not be back for two days. The morning newspapers were on deadline and would hardly have time to search for much reaction to the President's move. It would be days before we could catch up, if ever, unless we acted immediately.[115]

Only Cox, Doyle, Ruth, one secretary, and the security guards were at the office. Doyle comments:

> I can't remember specific conversations, but I really don't believe anyone said, "We've got to respond." I think it just happened. The reason that nobody disagreed was that I had been explaining to Archie on a regular basis--and especially that week--what the White House was up to: spreading the story that we were partisan and that a compromise was in the works. UPI had carried that story Thursday from their White House guy, and I had been very busy trying to get to the right people at UPI to say you're buying a pig in a poke.

> Archie said, "I can dictate." I said, "Well, look I can't take dictation--I can take it on a typewriter." He came down to my office and dictated the statement to me. We tried to make it brief.
>
> It was very clear to me that if I waited for the secretary to type it, I was going to blow whatever chance I had to get the statement on the eleven o'clock news--and I thought there might be specials on that night as well. At this point, the office was flooded with waiting reporters.

Doyle xeroxed the statement, gave the secretary the original to type, and dashed to the law library, which was the only room in the Special Prosecution Force's headquarters that was open to reporters. Doyle picked up both of the room's phones, called UPI and AP, and read Cox's statement to everybody simultaneously:

> In my judgement, the President is refusing to comply with the court decree . . . For me to comply with [the President's] instructions would violate my solemn pledge to the Senate and to the country to challenge exaggerated claims of executive privilege. . .
>
> I cannot be a party to such an arrangement. I shall have a more complete statement in the near future.

When the television cameras arrived, Cox went upstairs to read the statement personally. When a reporter asked whether he would resign, the Special Prosecutor replied, "No--hell, no." He later commented:

> I don't think there was ever any thought in my mind or talk in the office about resigning--it was so obvious it wouldn't be the right thing to do. You took the job to investigate, and that might include fighting. You were rather expected to fight. The President might not be entirely amenable to everything, so the fact that there was a collision, under those circumstances, wouldn't be like a sharp collision on a matter of policy between the President and someone who was part of his administration.
>
> Simply, one was in a situation where there was no duty of loyalty to the President. Consequently, he could say what he would. You had to go about doing what your job was. To resign would be to run away from it.

Doyle lingered to answer reporter's questions and went downstairs to volunteer to set up a press conference for the next day.

> Again, I don't remember anyone specifically saying, "should we have one?" I remember presuming we had to and sort of announcing that and nobody saying anything.

An officer of the National Press Club called to say he thought he could get Doyle the Club on short notice. By 11:00 p.m., Doyle had reserved the club's ballroom for 1:00 p.m. Saturday afternoon, and sent the announcement out on the wires. According to Doyle:

> If Haig is to be believed, the White House didn't get that message, for some reason. They continued to say they were very surprised that Cox went so public so quickly. And they ignored the Friday night statement, although it was in the Saturday morning papers and it was on the air.

According to The Final Days, whenever Buzhardt did hear "about Cox's conference, he thought: Cox is going to resign; that will be tough, but the President can weather it."[116]

The President himself was by now preoccupied with another crisis. Brezhnev had sent word that the Soviet Union was greatly concerned about the situation in the Middle East; Kissinger had to come to Moscow immediately. The Secretary of State departed after midnight.[117]

Saturday, October 20

The banner headline in Saturday morning's New York Times read "NIXON TO KEEP TAPES DESPITE RULING: WILL GIVE OWN SUMMARY: COX DEFIANT." And, just below, in slightly smaller type, there was news of an Israeli counterattack: "Israel Reports 10,000 Men and 200 Tanks Across Suez--15 Mile Gain Cited."

At least one person got out of bed still in an optimistic mood. As Charles Alan Wright said at his press conference three days later:

> I see in the [press] room a former student of mine who dropped by my hotel room about 10:30 Friday night when I was about to collapse exhaustedly into bed, and as he can tell you, my mood was euphoric. I checked out of the Madison Saturday morning thinking I was done with White House employment forever, that the American people would give a tremendous sigh of relief at the thought that we are going to hear what is in these tapes, and now we are not going to have a constitutional crisis.

The atmosphere was somewhat blacker at the Justice Department, where Richardson, Moore, Smith, and Darman were meeting again, trying to answer Nixon's letter. Richardson took a call from Haig at 10:20,

> and told the general that he was writing a letter to the President, which he would send over that morning. He said it would tell the President that his instructions gave Richardson "serious difficulty," and it would propose a number of steps that might rescue the compromise. Haig was courteous but had little comment. He seemed somewhat puzzled about Cox's impending news conference, which was now the only subject of interest in Washington. Haig did not tell Richardson that the White House was already receiving considerable reaction by telephone and telegram that was unfavorable.[118]

Richardson and his aides continued work on the letter. Darman, still furious, produced a draft that began, "I am returning herewith your letter of October 19 . . .,"[119] but "that was simply not Richardson's style."[120] He finally settled on:

> Thank you for your letter of October 19, 1973, instructing me to direct Mr. Cox that he is to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations . . .
>
> As you point out, this instruction does intrude on the independence you promised me with regard to Watergate . . . At many points throughout the nomination hearings, I reaffirmed my intention to assure the independence of the Special Prosecutor . . . his charter specifically states that "the Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions." Quite obviously, therefore, the instruction contained in your letter of October 19 gives me serious difficulty . . .
>
> In the circumstances, I would hope that some further accommodation could be found along the following lines: . . . Any future situation where Mr. Cox seeks judicial process to obtain the record of Presidential conversations would be approached in the basis of the precedent established with respect to the Watergate tapes . . .
>
> If you feel it would be useful to do so, I would welcome the opportunity to discuss this matter with you.

Richardson was proposing one final compromise, but as Smith said, "Already, people were sort of stumbling around in the rooms . . . There was no hope in Mudville on Saturday morning." Richardson later said, "I was trying to clarify my position even though it might be too late."[121]

But it was Archibald Cox who would make the next move. As Jim Doyle wrote:

> The mood in his office shortly after 9:00 A.M. was one of confusion. For most of the week, the war of the tapes had been waged with only Cox's inner circle taking part. Except for Jim Neal, the task force leaders had been concentrating on their own business with only a moderate awareness of the building tension. Now everyone was around the conference table, including Archie's close friend Phil Heymann, who had flown down from Harvard. There wasn't enough room for everybody. Some people were angry, others despairing, still others just sad. There was a babble of voices and opinions. It was the first time in my memory that I saw confusion in that room.
>
> Someone told Cox to go for broke, that it was all over, and that he should kick Nixon a few times on the way out the door. Others counseled caution. After all, this fight was with the

President of the United States, and decorum would be important. People started citing various arguments and incidents that Cox should be sure to raise at his press conference. Cox said the only question in his mind was whether he would have the strength to remain composed, and his voice started to crack. "What the hell is wrong with showing a little emotion at a time like this?" I asked. The others disagreed. Any emotion would surely be seen as weakness.

"All of you can help me most by going back to your offices and writing out the ideas you think should be included, " Cox said. "I need a little time alone to compose my thoughts." We left him alone.

Throughout the offices on the ninth floor telephones were ringing unanswered. The Western Union Telex machine, which received messages addressed to Cox directly from the point of origin, had been clattering constantly since the night before. There were a couple of hundred messages from citizens expressing support.

It was a scene of busy desolation. Very few of the secretaries had reported to work. Most of the lawyers were in their offices drawing up lists of items they had requested from the White House that had not been forthcoming, or writing memos on points that Cox should consider for the press conference. Cox's own secretary, Florence Campbell, had been out of town, a severe loss at such a time. The telephone on her desk was constantly ringing. Congressmen and senators were calling for information.

Many staff members were phoning every contact on Capitol Hill . . . seeking support. Representative Michael Harrington of Massachusetts, a liberal Democrat, called me and asked, "Is there anything I can do?"

"Call Elliot and stiffen his backbone," I said. "If he buckles it will be a disaster." Harrington made the call, but Richardson did not speak with him.

[Another Cox staffer] got through to a friend in the office of liberal Republican Senator Richard Schweiker of Pennsylvania and asked him to join the small chorus of voices in Congress, led by Senator Walter Mondale of Minnesota, warning the White House against any moves against Cox.

He's up next year," the aide said. "We can't get out front on this." Later, when the climate seemed more suitable, Schweiker held a news conference calling for Nixon's resignation.

> Cox sat alone at his desk and slowly filled a yellow pad with notes for his news conference. A hand-lettered sign on his door said, "Please Don't Enter. Archie Is Busy."[122]

Meanwhile, Doyle's assistant was telling the manager at the National Press Club that he would need "a small table, a blue drape for a background, and a very large American flag."[123]

At 11:00 a.m., Cox addressed the staff in the office's library. He asked them to stay at their posts even if he were dismissed. At 12:30, Cox and his wife left to walk to the press club.[124] He commented later:

> It was very clear to me that I mustn't get in a position where it was clinging to a job that people saw. What they would have to see was that the President was challenging the rule of law, the court decree.

The Attorney General's staff was urging him to read Cox the letter to the President. "We thought it was terribly important for both men that Archie know before going in front of the cameras that Richardson was--in writing--refusing to carry out the President's order," says Moore. An 11:30 call to Cox apparently went unanswered. Richardson called Haig at 12:43, perhaps to read him the finished draft of the letter. Moore tried to contact the Special Prosecutor. At 12:55, he finally reached James Doyle and said, "Get him on here, Jimmy!" Doyle did so. As Aaron Latham described it:

> Richardson started reading his letter and Cox started getting nervous. This time he was the one in a hurry. Cox remembers, "It was getting awfully tense, getting up to air time, and Elliot was on the phone."[125]

With the television lights glaring, Cox didn't have much time to think what message Richardson might be sending. After the Attorney General had finished, Cox stepped out before the cameras, and began what may have been the best news conference ever. As Theodore White described the opening:

> Gangling, gentle and firm, combining the qualities of old Mr. Chips and Joan of Arc, the Special Prosecutor opened at his best--and then proceeded to get better. "I am sorry to have had to bring you in on such a lovely day," he said. And it was a lovely day, autumn in Washington, the leaves yellowing, the sky blue and the barometer high, a cloud floating by occasionally.

Cox made an opening statement:

> There were three reasons for asking you to come in today. One, I wanted to give you the background of the events of last night, including the relevant papers that lead up to them. Second, it seemed to me that having taken a stand that attracted some attention, I owed it to the public and to you to answer as many of your questions as I properly can. There are still some limitations on what a prosecutor can say in public . . . Third, I thought I wanted to say a word or two about my personal attitude in this matter. I sort of hoped you would understand it. It may be too personal, but I'll try. I read in one of the

> newspapers this morning the headline, "Cox Defiant." I do want to say that I don't feel defiant. In fact I told my wife this morning I hate a fight. Some things I feel very deeply about are at stake, and I hope that I can explain and defend them steadfastly. I'm not looking for a confrontation. I've worried a good deal through my life about the problems of imposing too much strain upon our constitutional institutions, and I'm certainly not out to get the President of the United States. I'm even worried, to put it in colloquial terms, that I'm getting too big for my britches, that what I see as principle could be vanity. I hope not. In the end, I decided that I had to try to stick by what I thought was right.

Cox outlined his objections to the "Stennis Compromise" much as he had in his letters to Wright and Richardson. He then briefly described the history of his relationship with the White House, through his conversation and correspondence with Wright. He then took questions:

> . . . Are you going to wait for the President to dismiss you?
>
> I'm going to go about my duties on the terms on which I assumed them.

In response to other questions, Cox said that he would bring the President's failure to comply to the attention of either the Appeals or the District Court, and that he might ask for a contempt citation against the President. He said he did not believe that anyone but the Attorney General could give him direct orders or fire him. He commented about his dealings with Buzhardt; then fielded a question about Richardson:

> I've been dealing with Fred Buzhardt, and I may say, too that he has behaved in dealing with me, in an entirely honorable way, except he's too damn slow [in sending material].
>
> [A reporter:] Mr. Cox, I think you believe that Attorney General Richardson will not fire you.
>
> He may, you know. I'm not saying that no one can fire me. Of course, eventually, there are ways of firing me. I don't know what Attorney Richardson will do.
>
> Now, eventually, a President can always work his will. You remember when Andrew Jackson wanted to take the deposits from the Bank of the United States and his Secretary of the Treasury wouldn't do it; he fired him, and then he appointed a new Secretary of the Treasury, and he wouldn't do it, and he fired him. And finally he got a third who would. That's one way of proceeding.

(At the Justice Department, the Attorney General and his aides looked up from the television set long enough to exchange glances. They thought he was doing one heck of a job.) Sarah McClendon, a reporter for United Press International, asked "How could you expect to succeed in this job?" Cox replied:

> Well, I thought it was worth a try. I thought it was important. If it could be done, I thought it would help the country. And if I lost, what the hell.

When asked if the Senate Committee, in agreeing to the arrangement, hadn't undercut his position, Cox replied:

> Well, I'm sure that the Senate Committee agreement will mean a great deal, yes. All I can do is state what seems to me to be the case . . . I have sort of a naive belief, if you will forgive me for being corny, that what's right will prevail in the end.

And the final question, asked amid growing laughter over its implications:

> Speaking about the public reaction to this type of thing, would you think it would be helpful if there was an outpouring of telegrams, calls and mail on the subject to let the President have some idea of what the public mood is on this subject?

Cox answered with abashed chuckles:

> Well, that's . . . <u>You</u> all know more about that than I do. I don't know the answer to that.

Sarah McClendon yelled, "Sir, you are a great American," and the correspondents rushed out to write their stories. According to Jim Doyle:

> Archibald Cox was a different man after his press conference. He had done very well indeed, and he sensed it. . . . As he walked along Fourteenth Street with his wife, John Barker [Doyle's assistant], and me, Cox began to wonder aloud what Elliot Richardson was likely to do. He was still uncertain, although he thought he could guess. He told us about the letter Elliot had read to him over the telephone before the news conference.
>
> "I know there is a regulation against spiritous beverages on federal reservations," Cox said, "but I could do with a drink." . . .
>
> . . . Archie stopped long enough to have a beer with several members of his staff in his office. Once again he saw no point in waiting around. It was the other team's move. . . . He headed home to change clothes and go for a short hike.[127]

But at the White House, an aide pounded a table and bellowed, "insubordination."[128] Cox's press conference was clearly the last straw for the President.

> . . . He had issued a clear order to Cox, who was an employee of the executive branch. Everyone in the government was going off on his own tack . . . Kissinger and the new Secretary of Defense, James R. Schlesinger, were openly fighting. Treasury Secretary George P. Shultz and Budget Director Roy L. Ash were going at each other in public. There was no way the President could hold the government together in the fact of Cox's grandstand challenge on national television. There was a war on in the Middle East. He needed to show he was in control. He told Haig to have Cox fired.[129]

Just after Cox's news conference ended, at 2:07 p.m.,

> Leonard Garment called Elliot Richardson from Haig's office. Except for Thursday night, when he joined the hue and cry for Cox's firing, Garment had played no part in the unfolding action since September, when he was one of those rejecting Cox's proposal for compromise . . .
>
> Garment had been reading Richardson's letter to the President, which made it pretty clear that the Attorney General wasn't going to fire the special prosecutor. He was calling because Alexander Haig was beside himself with anger, confusion, and embarrassment. Apparently Haig had assured the President that Richardson would be "on board" at the crucial moment. The crucial moment was here, and Richardson was not "on board."[130]

Garment said that Nixon was worried about the effect of a major upheaval in the government while the Middle East situation was deteriorating. Richardson responded that he had already considered the argument and didn't find it compelling. At 2:20, Haig called and ordered the Attorney General to fire Cox. Richardson replied, "Well, I can't do that. I'd better come over and resign."[131] Richardson asked to meet with the President to explain his decision. Haig then suggested that Richardson fire Cox first and then resign.[132] As Jonathan Moore recalls it, Richardson replied, "You can't be serious," and hung up. Incredulous, Richardson described Haig's suggestion to those gathered in the office. Solicitor General Bork, who had just arrived, exclaimed, "Why, that would be a murder-suicide!"

Bork had come to the department to do some work of his own, and watched Cox's news conference in the press room, where Richardson's secretary found him and summoned him to the Attorney General's office.[133] Richardson explained the situation and gave Bork the President's letter. Bork read it and said, "Who would write a dumb letter like this?"[134]

The Attorney General called the aides he had asked to check on the department's order of succession, and found that after Deputy Attorney General Ruckelshaus came Solicitor General Bork; after that, no provision had been made.[135] Ruckelshaus said he would resign rather than fire Cox. Like Richardson, he had made a commitment to the Senate not to fire Cox. The Attorney General turned toward Bork.

> You may have to decide if you are going to carry out [the President's] order to fire Cox," Richardson said. Bork, according to a witness, "looked like somebody had just hit him in the face with a bucket of wet shrimp." His first reaction was anger. He said, "I've been here four months; I thought I was going to be the government's lawyer in the Supreme Court of the United States. It's something I've dreamed about all my life. And this is the fourth time in four months I've been faced with whether or not I'm going to resign." Then he started to pace.[136]

Bork thought a bit and said that the President was the head of the executive branch, so "somebody has to carry out the President's order. But then how could I stay on and be regarded as an apparatchik? I'd have to resign too." Otherwise, people might think he had fired Cox merely to further his own career. Richardson said that Bork's decision about Cox was his own, especially since the Solicitor General had made no commitments regarding Cox to the Senate, but the Department had to be kept functioning. Bork should stay on.[137]

Meanwhile, the President was trying to justify his position to Garment, who was his "house liberal." Nixon felt he had no choice but to fire Cox, even if Richardson had to go as well. Kissinger was in Moscow talking to Brezhnev; what would the Russian leader think if Cox were allowed to defy him? Garment pointed out that Richardson felt he was being asked to break his promises to the Senate. Nixon replied, "Elliot's not doing this, I'm doing it."[138] Garment finally concurred.

Nixon then talked to the "house conservative," Pat Buchanan, who agreed that Cox had to go. The President said he had to show strength with Cox if he wished to be respected in Moxcow. A Harvard professor could not be allowed to defy the President of the United States. Nixon admitted that his actions might spark cries for impeachment, but he could stand up to those, he said.[139]

It was now 4:00; Richardson had arrived, and Haig had again argued that Richardson owed it to his country to delay his resignation. Richardson said sarcastically that he could write a resignation letter, get it notarized to prove he had written it on October 20, and let it surface in a week. Haig seemed to think it would be a good idea. Richardson demanded to meet with the President. He was not going to be turned aside again.[140] Richardson entered as Pat Buchanan left. Theodore White described the ensuing scene:

> "The President understood," said Richardson, "that my resignation was a 'given.' That I couldn't carry out his instructions to tell Cox not to seek documents. But he hoped I was not going to use this occasion as a means of creating any more difficulties than I could help.
>
> "Then he shifted," recalled Richardson, "asking why I had to resign now. He was desperately concerned about the Middle East situation. From the perspective of Moscow . . . Brezhnev and his colleagues in Moscow could not conceivably understand the specific defiance of his orders by Cox in that afternoon's press conference. It was like the 1970 action in Cambodia--he wanted to show Moscow and Peking his determination; and to do that he would pay the necessary domestic price to do it."
>
> Richardson, like Kissinger, . . . had always been treated with special dignity and respect by the President. But Nixon's appeal to Richardson now was blunt. "He was concerned," said Richardson, "that my resignation would jeopardize his efforts in Moscow, jeopardize cease-fire in the Middle East. He really put it on me. He was really tough."[141]

As Richardson later told Aaron Latham, "I had the feeling, 'God, maybe the bombs are going to drop!'"[142]

> But Richardson saw no way to postpone his resignation. He could not carry out the President's orders on this day and fire Cox. Nor could he delay announcing his departure. "If I delayed my resignation for a week, it would be seen as a capitulation to public criticism."
>
> For a long strained moment, the President looked Richardson steadily in the eye, and then Richardson repeated: he could not do it.
>
> "Let it be on your head," said the President gravely, and went on bitterly to say that he was sorry Richardson did not put the nation's interest above his own concerns. At which point, Richardson said sharply, "Mr President, what seems to be involved here is a perception of national interest. I'd like to feel that what I'm doing is in the national interest." There was an edge to his own voice, Richardson recalls, and the President responded more or less apologetically that there were different perspectives on the national interest.
>
> Richardson rose, stood at Nixon's desk and made a ceremonial farewell, talking of the privilege of serving the President, acknowledging all his kindnesses and wishing him well.[143]

At 5:15, Richardson returned to the Attorney General's office and announced, "The deed is done."[144] Darman may have noticed that the sentence was more Shakespearean than Greek. Darman and the others watched in final relief as Richardson wrote out his letter of resignation, paying great attention to sentence structure and form. Ruckelshaus went to his office to answer a phone call from Haig.

Haig told Ruckelshaus that the Middle East situation was critical. Cox had to be fired. Ruckelshaus suggested waiting a week to fire Cox if things were so serious. Haig replied, "Your commander-in-chief has given you an order. You have no alternative."

"Except to resign."

Haig asked him to fire Cox first. Ruckelshaus refused, saying, "If you really are determined to get rid of Cox, I think Bork may be your man."

Bork took the phone. Haig asked him to come to the White House, and sent Buzhardt and Garment in a car to pick him up. The three left rather hurriedly: Buzhardt later had to call J.T. Smith to ask him to send over some official Justice Department stationery.[145]

Bork later testified that when he arrived at the White House,

> General Haig began to dicuss the importance of preserving the President's ability to control the executive branch at a time of international crisis. I said, "You need not go on. I have made up my mind to obey the directive.[146]

Bork added that he hadn't decided whether or not to resign afterwards, but the White House men did not seem to care very much about that. "I'll draft a letter," said Wright. Replied Bork, "Make it spare."[147] Bork signed a letter "discharging" Cox from his "position as Special Prosecutor." Then he was taken to the President's office.

> Richard Nixon was standing by his desk looking tired and very gloomy. The two men shook hands.
>
> "Well, you've got guts," the President said. Then he added, "Do you want to be Attorney General?"
>
> It was not a job offer. Nixon was thinking out loud, perhaps wondering about this man he had barely met before.
>
> "That would be inappropriate, Mr. President," Bork said.
>
> "All I want is a prosecution, not a persecution," Nixon said.
>
> The conversation died away. Bork headed back to the Justice Department.[148]

That evening, the President signed a letter instructing Bork not only to discharge Cox but also to "return to the Department of Justice the functions now being performed by the Watergate Special Prosecution Force." Apparently, the White House did not ask Bork to carry out this second instruction that night. An Evans and Novak column on the following Tuesday reported that the White House expected the Special Prosecutor's staffers to resign once their boss was dismissed.[149]

About 7:00, Richardson telephoned to tell Cox of his resignation.

> Since both men had clerked for Judge Learned Hand, Richardson read a quotation from The Iliad which the judge had inscribed on a picture of himself. The inscription was in Greek, but Richardson translated, "Now, though numberless fates of death beset us which no mortal can escape or avoid, let us go forward together, and either we shall give honor to one another, or another to us."[150]

His friend seemed to understand.* Then, Richardson received a call from the White House; they had accepted his resignation, but had decided to say they had fired Ruckelshaus. He thought that was a low blow.[151]

At 8:00, a White House aide called Cox, who was waiting with his wife Phyllis and daughter Sally at his Virginia home.

> The man simply asked for Cox's address. Archibald Cox understood what was coming. He hung up the telephone and returned to the living room. "I should have warned that fellow about the landlord's dog," Archibald Cox said. "He may get eaten alive."
>
> "They will send another," Sally said.[152]

The messenger took hours to find Cox's house.

> He finally arrived, a young man in an open-necked shirt. He politely handed Cox his dismissal papers and asked for a signature. Cox signed the receipt, closed the door, and said to his wife, "Couldn't they have sent a chap with a proper necktie?"[153]

At 8:20, Ron Ziegler spoke to waiting reporters in the White House briefing room:

> President Nixon has tonight discharged Archibald Cox, the Special Prosecutor in the Watergate case. The President took this action because of Mr. Cox's refusal to comply with instructions given Friday night through Attorney General Richardson . . .
>
> Further, the office of the Watergate Special Prosecution Force has been abolished as of approximately 8 p.m. tonight. Its function . . . will be transferred back into the institutional framework of the Department of Justice, where it will be carried out with thoroughness and vigor . . .

---

*For the full passage (King Sarpedon's address to King Glaukos) and Richardson's comment on it, see Appendix G.

> In his statement Friday night, and in his decision not to seek Supreme Court review . . . the President sought to avoid a constitutional confrontation . . . . That action . . . was accepted by responsible leaders in Congress and in the country. Mr. Cox's refusal to proceed in the same spirit of accommodation, complete with his announced intention to defy instructions from the President and press for further confrontation at a time of serious world crisis, made it necessary for the President to discharge Mr. Cox . . .

Ziegler announced that Richardson had felt obliged to resign and that Ruckelshaus had been dismissed. The "Saturday Night Massacre" was official.

At 9:05, FBI agents sealed off the Special Prosecutor's office on Haig's instructions. They had been ordered not to allow members of the staff to remove anything from their offices. Jim Doyle tried to remove a framed copy of the Declaration of Independence, but was stopped by Angelo Lano, an agent who had been the FBI's liaison with the Special Prosecutor's office. "It's the Declaration of Independence, Angie," Doyle said. Just stamp it 'void' and let me take it home."[154]

At 9:30, the FBI similarly sealed the Attorney General's office (but not before Jonathan Moore had loaded his files into his Volkswagen and puttered off). The agents had obviously been summoned in a hurry; one of them was "wearing a t-shirt and looked terribly embarrassed." Richardson had gone home, and was notified by his secretary, who was in tears. Smith took the phone and told him, "About all I can tell you is they don't have high-topped boots on."[155]

Members of Cox's staff began streaming into their office when they heard of the White House announcement. Deputy Prosecutor Henry Ruth and Press Secretary Jim Doyle held an impromptu news conference in the office's law library at 10:00 p.m. Around the reporters milled members of Cox's staff, "their faces," said the New York Times the next day, "hinting at efforts at self-control, efforts that were not always successful." Ruth "tried to speak for his colleagues":

> I guess we all expected something to happen. I guess what I did not expect was to meet an FBI agent who told me I could not take out a love letter to my wife . . . One thinks in a democracy this would not happen . . .

Doyle, "his composure as shattered as Mr. Ruth's," read a statement that Archibald Cox had dictated to him:

> Whether we shall continue to be a government of laws and not of men is now for Congress and ultimately the American people [to decide].[156]

Epilogue

The reaction that evening was as near instantaneous as it had been at Pearl Harbor, or the day of John F. Kennedy's assassination—an explosion as unpredictable and as sweeping as mass hysteria.

It began within an hour of Ziegler's statement with the honking of cars outside the White House as protestors held up signs saying "HONK FOR IMPEACHMENT." NBC and CBS geared up for ninety-minute special shows which spread consternation nationwide. The telegraphic response began to spurt even before their shows were off air. By Tuesday morning Western Union had processed more than 150,000 telegrams ("the heaviest concentrated volume on record"); by Wednesday evening the volume had reached 220,000. At the end of ten days the total was 450,000. It was "as if a dam had broken," said one Congressman. Republican Senator Javits of New York reported that of the 1,150 messages he received, less than ten supported the President.

By Monday, as Veterans Day weekend closed, the political leaders began sounding off, Republicans as vehement as Democrats. A telephone survey by David Broder of the Washington *Post* brought these responses: from the Wyoming Republican Chairman, Jack Speight: "I just can't believe what's going on in that zoo. It's like 'tune in tomorrow for the next adventure.'" From Minnesota Republican National Committeeman Rudy Boschwitz: "You've heard of that play, *Stop the World, I Want to Get Off*. That's how I feel right now." From the liberal Republican Governor of Michigan, William Milliken: "I deplore what happened. It's a setback in efforts to restore public confidence in government. . . . Clearly we face a constitutional crisis."

The turmoil spread. Deans of seventeen law schools (including Harvard, Columbia, Yale, Stanford) joined in a petition that Congress "consider the necessity" of impeachment now. Churchmen inveighed. Students rallied—at Columbia, they heard one of their deans call the President "a paranoid egomaniac, a quintessentially hollow man." At Duke Law School, Nixon's alma mater, 350 students petitioned for the removal of Nixon's portrait from Duke's student courtroom. . . .

The Baltimore *Sun*, which had supported Nixon in 1972, declared that he had now "lost touch with truth and principle." The *New York Times* and the Washington *Post* disagreed in their responses. The *New York Times* favored immediate resignation, "The one last great service that Mr. Nixon can now perform for his country." But the Washington *Post* favored "exorcising" the President by the Constitutional process of impeachment and trial. The Detroit *News*, the Denver *Post*, the Atlanta *Journal* and other papers demanded resignation now—or else impeachment. The most respected columnist in Washington, the late Stewart Alsop, previously a judicious supporter of the President, wrote that in the last few weeks, Nixon had both acted the lion and played the fox, "But . . . there is in him something of still another symbol-animal: namely, the ass."

And, finally, *Time* magazine sounded off. Its history as the nation's leading news weekly had begun fifty years before with a cover portrait of Uncle Joe Cannon, and it had continued since as the voice of evermore civilized patriotism. Now it put to press the first editorial in its history: "The President Should Resign."

"Richard Nixon and the nation have passed a tragic point of no return," wrote managing editor Henry Grunwald. "It now seems likely that the President will have to give up his office; he has irredeemably lost his moral authority, the confidence of most of the country, and therefore his ability to govern effectively. . . . Despite ample instances of past government corruption, nothing can be found . . . even remotely approaching the skein of events that the word Watergate no longer defines or contains. . . . The whole White House pervaded by an atmosphere of aggressive amorality—amorality almost raised to a creed. . . . His [the President's] integrity and trustworthiness are perhaps the most important facts about him to his country and to the world. And these Nixon has destroyed. The nightmare of uncertainty must be ended. . . ."

The White House had defied the courts. If the law did not bind the President to obedience in this instance, what laws could prevent him from other abuses of power, public or secret?

The question was now not one of burglary, break-in, cover-up, but of power itself—and the White House had been caught in a total misreading of the American mind. If there was anything that Richard Nixon prided himself on in his inner soul, it was his political instinct—that he understood the common people of America, in their precincts, with their fears, suspicions and aspirations, better than any of the wise men of the news system, the Establishment, the Ivy League schools. He had played skillfully on such fears and suspicions for twenty-seven years of active politics—and had won. But he had not understood how easily these same atavistic fears and suspicions of all power, of all government, could be turned against him. Willfully, for months, he had locked out of his mind what he knew of his administration's actions, his own actions, his own past impulses. He stood now doing the people's business, brilliantly, on the international scene. And in a single spasm on Saturday evening he had thrown away the enormous honor he might have gained for his world performance by a PR ploy. He was denying to the courts that evidence which the law insisted must be examined.

No less astounded were the men of his personal staff. Too preoccupied with the war, too compartmentalized to see the political picture whole, they had failed to recognize the question the President's act must raise. Isolated in their pockets, hardened by years of press hostility, they had for weeks and months ignored editorials, protests, denunciations, even appeals from within their own party. Now, as the firestorm burst, they could answer to no one the primitive question of everyone: What was the President hiding? Overwhelmed by public reaction, denied support by their party, stabbed by telephone calls from personal friends, wincing at letters from old companions, they realized too late what furies were at large. A letter to Ray Price, the President's speechwriter, from one of his oldest friends was typical. "I write," said the hand-scrawled letter, "because of an old respect and affection I have for you. . . . I know that it is your integrity and loyalty that keeps you from defecting from hopeless causes . . . but I do not believe that you will ever derive personal satisfaction from loyalty to a man who is at least venal, selfish and the worst traitor to our country in its history—at worst a felon."

--From Breach of Faith, by Theodore H. White, pp. 268-270.

Besides the lasting effect on public opinion, the massacre resulted in several immediate, practical effects. First, Nixon had to surrender the tapes.

> On the morning of Tuesday, October 23, the President dispatched two aides, Bill Timmons and Bryce Harlow, to test the political waters on Capitol Hill. Soon they were back with frozen toes. The House of Representatives was in turmoil. Thundering denunciations of the President's "arrogance" ricocheted through the chamber. Majority Leader Thomas P. "Tip" O'Neill, Jr., of Massachusetts referred a barrage of impeachment resolutions to the House Judiciary Committee for "speedy and expeditious consideration." Republican leaders warned Timmons and Harlow that they would not speak up for the President unless he produced the subpoenaed tapes.
>
> When Nixon heard this he called Alexander Haig, Fred Buzhardt, and Leonard Garment into the Oval Office for a meeting which Haig later described as "very painful and anguishing." All agreed they had little choice. Charles Alan Wright--who was scheduled to argue the "Stennis plan" before Judge John Sirica at noon--was quickly summoned. The White House asked for and received a two-hour postponement in the hearing.
>
> At two, the President's Texas lawyer strode up the center aisle of the U.S. district court like Gary Cooper in <u>High Noon</u>. At the opposite table sat no fewer than eleven lawyers from Archibald Cox's staff, refusing to quit, prepared to do battle. Judge Sirica entered and read his original order calling for surrender of the tapes. Then, putting down his papers, he looked sternly over his glasses and asked Wright, "Are counsel prepared at this time to file the response of the President to the modified order of the court?"
>
> Wright rose in the hushed courtroom. "I am not prepared at this time to file a response," he said. "I am, however, authorized to say that the President of the United States would comply in all respects with the order of August 29 as modified by the order of the court of appeals."
>
> Pausing to let his message sink in, Wright continued, "It will require some time, as your honor realizes, to put these materials together, to do the indexing and itemizing as the court of appeals calls for."
>
> Judge Sirica, who had entered court that day prepared to cite the President for contempt, was clearly stunned. He broke in, "As I understand your statement, that will be delivered to this court?"
>
> "To the court," Wright said, "<u>in camera</u>."
>
> Then--to underline what had just happened--Wright declared, "This President does not defy the law."
>
> --From <u>Nightmare</u>, by J. Anthony Lukas, pp. 442-443.

And these tapes were to cause Nixon more trouble. On October 30, 1973, Buzhardt informed Judge Sirica that two of the subpoenaed recordings had never been made. On November 21, Buzhardt revealed that one tape had an 18-minute erasure. (Haig attributed the gap to a "sinister force.") These revelations were devastating.

Second, the House leadership decided to press on with an impeachment inquiry, despite the President's promise to comply with the Special Prosecutor's subpoena. (84 Congressmen had introduced or co-sponsored impeachment resolutions.)

Third, the Special Prosecution Force was able to continue its investigations almost unimpeded (to the amazement of the investigators themselves). Over the weekend, Jim Doyle held a press conference emphasizing that the prosecutor's staff was still working and intended to go forward. When reporters pointed out that the White House had announced the Force's abolition, Doyle replied that he hadn't received any documentation of that fact. People could only be fired after certain bureaucratic proceedures were carried out.

Acting Attorney General Bork, meanwhile, had been quite shaken by the virulence of the public reaction to Cox's firing. He had also filled himself in on the background of the controversy. He decided that the investigation had to go on.

On October 23 (the Tuesday following the "massacre") he signed an order abolishing the Special Prosecution Force and shifting its personnel to the Criminal Division of the Justice Department, as Nixon had ordered him to do. However, he also visited the Force's offices, and asked the staff not to quit. On Wednesday, he told reporters that the investigators would be free to take the President to court to obtain evidence.

On Friday, six days after the firings, Nixon pledged to appoint another Special Prosecutor. Bork appointed Leon Jaworski, a Texas lawyer, and former president of the American Bar Association. On November 2, Bork released an order re-establishing the Special Prosecution Force under the same charter that had been in effect prior to Cox's firing.

The Senate Judiciary Committee was not satisfied, and began to push for legislation to establish a court-appointed prosecutor who would be independent of the executive branch. Partly in response, Bork issued an amendment to the Special Prosecutor's charter:

> In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given:
>
> 1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action.

Perhaps, more important than these regulations, Nixon knew that dismissal of another Special Prosecutor would provoke a massive public outcry.

APPENDIX A

Special Prosecutor's Charter

DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

THE SPECIAL PROSECUTOR

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

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters *which he consents to have* assigned to him by the Attorney General.

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

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

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

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

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

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

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

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

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

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. *The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities.* The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part.

STAFF AND RESOURCE SUPPORT

1. Selection of staff

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

2. Budget

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

3. Designation and responsibility

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

CONTINUED RESPONSIBILITIES OF ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

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

(continued)

Appendix (Continued)

APPLICABLE DEPARTMENTAL POLICIES

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

PUBLIC REPORTS

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

DURATION OF ASSIGNMENT

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

APPENDIX B

Draft of Richardson's Proposal

THE THIRD PERSON

The cornerstone of the proposal is reliance on an individual ("the Reporter") who can be counted upon to provide a complete and accurate report of all the material portions of the tapes. Given such reliance on this individual, he must be a person of wide experience, strong character, and firmly established reputation for veracity. He must, moreover, be a person who would be recognized as putting his responsibility to the truthfulness of his report above any other considerations.

PROCEDURE

The Reporter would be furnished with a raw transcript of the tapes from which had been omitted only continuous portions of substantial duration which clearly and in their entirety were unrelated to the Watergate case or related matters. With this transcript in hand, the Reporter would listen to the entire tapes, including the omitted portions. Having replayed the tapes or portions thereof as often as necessary to satisfy him as to their content and meaning, the Reporter would prepare a report which differed from a direct and complete transcript of the tapes only in the following respects:

(a) The conversation would be converted into the third person;

(b) Any continuous portion not relating to Watergate matters at all would be omitted but any such portion would be identified in brackets by general subject (e.g., "[impoundment of appropriations]").

(c) Any reference to national defense or foreign relations matters whose disclosure would, in the judgment of the Reporter, do real harm and which was not otherwise omitted as part of a continuous portion would be omitted, but the report would preserve the sense of any such reference insofar as it had any conceivable relevance or relationship to Watergate matters and identify the subject by a bracketed reference (e.g., "[SALT]").

(d) The Reporter would paraphrase language whose literal disclosure would in his judgment be seriously embarrassing to the President but would take pains to make sure that the paraphrase did not alter the sense, including the flavor or emphasis, of the original;

(e) At any point where, despite repeated replaying and adjustments of volume, the Reporter could not make out what was being said, the Reporter would so state (e.g., "[Unintelligible]").

The Reporter would preface his report with a certification under oath attesting to his faithful observance of the procedure set forth above.

COURT APPROVAL

Court approval of the proposed procedure would be sought at two stages: (a) in general terms when or soon after the Reporter began his task, but without identifying him by name, and (b) when the report was delivered to the Court with the Reporter's certificate. At the second stage, the Special Prosecutor and counsel for the President would at that time join in urging the Court to accept the report as a full and accurate record of the material portions of the tapes for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access.

OTHER TAPES AND DOCUMENTS

The proposed arrangement would undertake to cover only the tapes heretofore subpoenaed by the Watergate Grand Jury at the request of the Special Prosecutor. Any request by the Special Prosecutor for a similar report covering other tapes as well as any request by the Special Prosecutor for memorandum or other documents believed by the Special Prosecutor to deal with the same conversations covered by the proposed report would be the subject of subsequent negotiation between the Special Prosecutor and counsel for the President.

ASSURANCE AGAINST TAMPERING

Submission of the report to the Court would be accompanied by such affidavits with respect to the care and custody of the reports as would help to assure that the tapes listened to by the Reporter had not at any time been altered or curtailed.

APPENDIX C

Richardson's Resignation Notes

SUMMARY OF REASONS WHY I MUST RESIGN—ELR Oct. 19, 1973

1. It was a condition of my confirmation that I appoint a Special Prosecutor, and I reserved the right to fire him only in the case of some egregiously unreasonable action.

2. While Cox has rejected a proposal I consider reasonable, his rejection of it cannot be regarded as being as far beyond the pale as would justify my own exercise of my reserved power to fire him. He is, after all, being asked to accept a proposition that would give him significantly less than he has won in 2 court decisions. Besides, I really believe that in all my dealings with him he has been honest and fair.

3. I believe that so far as I personally am concerned, there is need for an independent prosecutor:

(a) because of my part in this Administration from its beginning;

(b) because since Cox's appointment I have been serving as a middleman between Cox and counsel for the President, and this role has impaired the independence I might otherwise have;

(c) I don't think that I could effectively deal with Buzhardt *et al* in Cox's place with the independence that a prosecutor should have;

(d) I am in fact loyal to the President, and I am by temperament a team player, and these were the reasons originally why a Special Prosecutor was perceived to be necessary. I cannot now change spots completely enough to be perceived to be—or feel that I am—as independent as I should be. Indeed, these are the reasons why I announced even before my confirmation hearings began that I would appoint a Special Prosecutor. Nobody forced me into it. I was fully convinced it should be done.

4. The Agnew situation does not prove my independence—on the contrary, many people feel that the President's interests were served by the part I played in bringing about the Vice President's resignation.

5. As for Senate acquiescence—even if obtained—this isn't good enough; they were right the first time—and in any case (as noted above) I announced that I would name a Special Prosecutor before the hearing began and when the President's own possible involvement in Watergate or the coverup was not a dominant consideration in this decision. So far as my own position is concerned, the situation has not significantly changed.

6. I do not believe the President's attitude toward Cox's role is fundamentally valid: many problems and headaches could have been avoided by cooperating with him more and fighting him less. However that may have been, this feeling on my part makes it all the harder for me to justify his firing.

7. In short: since I appointed Cox on the understanding that I would fire him only for "extraordinary improprieties" on his part, and since I cannot find him guilty of any such improprieties, I cannot stay if he goes.

APPENDIX D

Cox Letter to Wright, Oct. 19

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

October 19, 1973

Charles Alan Wright, Esquire
The White House
Washington, D.C.

Dear Charlie:

Thank you for your letter confirming our telephone conversation last evening.

Your second paragraph referring to my comments 1, 2, 6, and 9 requires a little fleshing out although the meaning is clear in the light of our telephone conversation. You stated that there was no use in continuing conversations in an effort to reach a reasonable out-of-court accommodation unless I would agree categorically to four points.

Point one was that the tapes must be submitted to only one man operating in secrecy, and the President has already selected the only person in the country who would be acceptable to him.

Point two was that the person named to provide an edited transcript of the tapes could not be named Special Master under a court order.

Point three was that no portion of the tapes would be provided under any circumstances. This means that even if the edited transcript contained evidence of criminality important in convicting wrong-doers and even if the court were to rule that only the relevant portion of the original tapes would be admitted in evidence, still the portion would be withheld. It is also clear that, under your Point 3, the tapes would be withheld even if it meant dismissal of prosecutions against former Government officials who have betrayed the public trust.

Point four was that I must categorically agree not to subpoena any other White House tape, paper, or document. This would mean that my ability to secure evidence bearing

upon criminal wrongdoing by high White House officials would be left to the discretion of White House counsel. Judging from the difficulties we have had in the past receiving documents, memoranda, and other papers, we would have little hope of getting evidence in the future.

These points should be borne in mind in considering whether the proposal put before me is "very reasonable."

I have a strong desire to avoid any form of confrontation, but I could not conscientiously agree to your stipulations without unfaithfulness to the pledges which I gave the Senate prior to my appointment. It is enough to point out that the fourth stipulation would require me to forego further legal challenge to claims of executive privilege. I categorically assured the Senate Judiciary Committee that I would challenge such claims so far as the law permitted. The Attorney General was confirmed on the strength of that assurance. I cannot break my promise now.

Sincerely,

ARCHIBALD COX
Special Prosecutor

APPENDIX E

Wright Letter to Cox, Oct. 19

THE WHITE HOUSE

WASHINGTON

October 19, 1973

Dear Archie:

This is in response to your letter of this date. It is my conclusion from that letter that further discussions between us seeking to resolve this matter by compromise would be futile, and that we will be forced to take the actions that the President deems appropriate in these circumstances. I do wish to clear up two points, however.

On what is referred to in your letter today as point three, that no portion of the tapes would be provided under any circumstances, the proposal of the Attorney General was simply silent. That would have been an issue for future negotiation when and if the occasion arose. Your comments of the 18th, however, would have required an advance commitment from us that we cannot make on an issue that we think would never arise.

In what you list as point four you describe my position as being that you "must categorically agree not to subpoena any other White House tape, paper, or document." When I indicated that the ninth of your comments of the 18th was unacceptable, I had in mind only what I referred to in my letter as "private Presidential papers and meetings," a category that I regard as much, much smaller than the great mass of White House documents with which the President has not personally been involved.

I note these points only in the interest of historical accuracy, in the unhappy event that our correspondence should see the light of day. As I read your comments of the 18th and your letter of the 19th, the differences between us remain so great that no purpose would be served by further discussion of what I continue to think was a "very reasonable" -- indeed an unprecedently generous -- proposal that the Attorney General put to you in an effort, in the national interest, to resolve our disputes by mutual agreement at a time when the country would be particularly well served by such agreement.

Sincerely,

Charlie

Charles Alan Wright

APPENDIX F

White House Statement, Oct. 19

Availability of Information From Presidential Tapes

Statement by the President Announcing Procedures. October 19, 1973

For a number of months, there has been a strain imposed on the American people by the aftermath of Watergate, and the inquiries into and court suits arising out of that incident. Increasing apprehension over the possibility of a constitutional confrontation in the tapes cases has become especially damaging.

Our Government, like our Nation, must remain strong and effective. What matters most, in this critical hour, is our ability to act--and to act in a way that enables us to control events, not to be paralyzed and overwhelmed by them. At home, the Watergate issue has taken on over-

tones of a partisan political contest. Concurrently, there are those in the international community who may be tempted by our Watergate-related difficulties at home to mislead America's unity and resolve in meeting the challenges we confront abroad.

I have concluded that it is necessary to take decisive actions that will avoid any possibility of a constitutional crisis and that will lay the groundwork upon which we can assure unity of purpose at home and end the temptation abroad to test our resolve.

It is with this awareness that I have considered the decision of the Court of Appeals for the District of Columbia. I am confident that the dissenting opinions, which are in accord with what until now has always been regarded as the law, would be sustained upon review by the Supreme Court. I have concluded, however, that it is not in the national interest to leave this matter unresolved for the period that might be required for a review by the highest court.

Throughout this week, the Attorney General, Elliot Richardson, at my instance, has been holding discussions with Special Prosecutor Archibald Cox, looking to the possibility of a compromise that would avoid the necessity of Supreme Court review. With the greatest reluctance, I have concluded that in this one instance I must permit a breach in the confidentiality that is so necessary to the conduct of the Presidency. Accordingly, the Attorney General made what he regarded as a reasonable proposal for compromise, and one that goes beyond what any President in history has offered. It was a proposal that would comply with the spirit of the decision of the Court of Appeals. It would have allowed justice to proceed undiverted, while maintaining the principle of an independent executive branch. It would have given the Special Prosecutor the information he claims he needs for use in the grand jury. It would also have resolved any lingering thought that the President himself might have been involved in a Watergate coverup.

The proposal was that, as quickly as the materials could be prepared, there would be submitted to Judge Sirica, through a statement prepared by me personally from the subpoenaed tapes, a full disclosure of everything contained in those tapes that has any bearing on Watergate. The authenticity of this summary would be assured by giving unlimited access to the tapes to a very distinguished man, highly respected by all elements in American life for his integrity, his fairness, and his patriotism, so that that man could satisfy himself that the statement prepared by me did indeed include fairly and accurately anything on the tapes that might be regarded as related to Watergate. In return, so that the constitutional tensions of Watergate would not be continued, it would be understood that there would be no further attempt by the Special Prosecutor to subpoena still more tapes or other Presidential papers of a similar nature.

I am pleased to be able to say that Chairman Sam Ervin and Vice Chairman Howard Baker of the Senate Select Committee have agreed to this procedure and that at their request, and mine, Senator John Stennis has consented to listen to every requested tape and verify that the statement I am preparing is full and accurate. Some may ask why, if I am willing to let Senator Stennis hear the tapes for this purpose, I am not willing merely to submit them to the court for inspection in private. I do so out of no lack of respect for Judge Sirica, in whose discretion and integrity I have the utmost confidence, but because to allow the tapes to be heard by one judge would create a precedent that would be available to 400 district judges. Further, it would create a precedent that Presidents are required to submit to judicial demands that purport to override Presidential determinations on requirements for confidentiality.

To my regret, the Special Prosecutor rejected this proposal. Nevertheless, it is my judgment that in the present circumstances and existing international environment, it is in the overriding national interest that a constitutional confrontation on this issue be avoided. I have, therefore, instructed White House counsel not to seek Supreme Court review from the decision of the Court of Appeals. At the same time, I will voluntarily make available to Judge Sirica—and also to the Senate Select Committee—a statement of the Watergate-related portions of the tapes, prepared and authenticated in the fashion I have described.

I want to repeat that I have taken this step with the greatest reluctance, only to bring the issue of Watergate tapes to an end and to assure our full attention to more pressing business affecting the very security of the nation. Accordingly, though I have not wished to intrude upon the independence of the Special Prosecutor, I have felt it necessary to direct him, as an employee of the executive branch, to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I believe that with the statement that will be provided to the court any legitimate need of the Special Prosecutor is fully satisfied and that he can proceed to obtain indictments against those who may have committed any crimes. And I believe that by these actions I have taken today America will be spared the anguish of further indecision and litigation about tapes.

Our constitutional history reflects not only the language and inferences of that great document, but also the choices of clash and accommodation made by responsible leaders at critical moments. Under the Constitution it is the duty of the President to see that the laws of the Nation are faithfully executed. My actions today are in accordance with that duty, and in that spirit of accommodation.

APPENDIX G

The Quotation from the Iliad

The passage is from Sarpedon's address to Glaukos. . . . In a New York Times Book Review column on January 20, 1974, John Leonard, the editor, quoted an "anonymous letter" pointing out that my version of this passage departs from the accepted translations. "If," observed Leonard's correspondent, "Richardson had cared to be faithful to Homer he would have said, 'either we shall give honor to another, or another to us.' Changing "another to "one another" makes Homer the author of the subtlest anti-Nixon comment of the season." Unfortunately, I cannot claim either the competence in Greek (though I did once study it) or the "scholastic temprament" by which he accounts for my "revisionism." I merely rendered the quotation as I remembered it.

--Elliot Richardson, The Creative Balance, New York: Holt, Rinehart and Winston, 1976, p. 46 ftn.

The following are two translations of the passage in which the quotation appears.

Even so the spirit
Of godlike Sarpedon made him feel eager to charge
Full speed at the wall and break his way through the battlements.
Hence he spoke thus to Glaucus, son of Hippolochus:
"Glaucus, why is it that we above all are honored
With royal seats, choice cuts, and ever-full cups
In Lycia, and gazed on by all as though we were gods?
And why do we hold and enjoy that huge estate
On the banks of Xanthus, those acres of excellent orchard
And fertile wheat-bearing fields? Surely it best
Becomes us to fight mid the foremost and throw ourselves
In the blaze of battle, that many a bronze-breasted Lycian
May say:
" 'Surely the lords of Lycia are no
Inglorious men, our Kings, who feast on fat sheep
And drink the choice mellow wine. But they are truly
Powerful warriors, men who always fight
Up front with the foremost champions of Lycia.'
"Ah,
My friend, if we had only to turn from this battle
To make ourselves deathless and ageless forever, neither
Would I myself fight mid the foremost, nor would I urge you
To take part in the man-enhancing struggle. But now,
Since countless fates of inescapable death surround us
Here and always, let us go forward and fight,
That we may give glory to someone, or win it ourselves."

Ennis Rees, trans., The Iliad of Homer, New York: Random House, 1963, p. 24 .

APPENDIX (Continued)

Sarpedon, with equal disregard of the consequences, had resolved to gain a lodgement on the rampart, and shouted to his comrade Glaucus, son of Hippolochus: 'Cousin, why do the Lycians pay us semi-divine honours? Why do we get the most honourable seats at banquets, the finest cuts of meat, the fullest goblets, and great estates of orchard and wheat-land beside our River Xanthus? Surely it is because we lead their forces to war? Let us show ourselves worthy of such generous confidence! I want to hear the troops exclaim: "Our princes feast on fat mutton and sweet wine, but they are great champions, always in the thick of the fighting . . ." Dear Glaucus, if only this battle were over, and we could become Immortals—never growing old! I would no longer need to risk my life, or ask you to risk yours. But ten thousand unavoidable hazards menace us. Up with you! We must either win glory by dealing death, or fall ourselves and yield the glory to our victors!'

Robert Graves, trans. The Anger of Achilles: Homer's Iliad, Garden City, New York: Doubleday and Co., 1959, p. 213

Notes

Quotations that lack notes were obtained from interviews conducted for this study with Archibald Cox, James Doyle, Philip Heymann, Elliot Richardson, J.T. Smith, and Jonathan Moore.

Published sources include:

Doyle, James, Not Above the Law. New York: William Morrow and Company, 1977. As Cox's press officer, Doyle had first-hand knowledge of the operations of the Watergate Special Prosecution Force. He also conducted interviews with other participants; some are identified, some are not.

Latham, Aaron, "Seven Days in October," New York Magazine, April 29, 1974, pp. 41-58. Written while Nixon was still in office, the article is a broadside at the White House's "duplicity." For the most part, it is based on interviews with Richardson, Cox, and their staffers, and reflects their views.

Lukas, J. Anthony, Nightmare, New York: Viking Press, 1976. Comprehensive study of the "underside of the Nixon years," drawing on sources from all of the parties involved in the massacre. Some are identified by name, some are not.

Richardson, Elliot L., The Creative Balance, New York: Holt, Rinehart and Winston, 1976. Obviously, this is Richardson's own account.

White, Theodore H., Breach of Faith, New York: Atheneum, 1975. White interviewed Haig, Richardson, and others.

Woodward, Bob, and Bernstein, Carl, The Final Days, New York: Simon and Schuster, 1976. The authors claim to have confirmed every detail of their book with at least two sources, even thought this is clearly impossible in some cases. No sources are identified, although Haig's side of the story seems predominant.

U.S. Congress, House, Committee on the Judiciary. "Statement of Information" [on impeachment], May-June, 1974. Vol. IX. Exhaustive compilation of documentary evidence.

U.S. Congress, Senate, Committee on the Judiciary, "Special Prosecutor," Hearings, 93rd Congress, 1st session, October 29-November 20, 1973.

1. New York Times, October 12, 1973
2. Special Prosecutor Hearings, Richardson Testimony, p.295
3. Woodward and Bernstein, p. 61, confirmed by Jonathan Moore
4. Elliot Richardson, affidavit submitted to House Judiciary Committee Impeachment investigation
5. Ibid.
6. Doyle, p.125, ftn.
7. Richardson Testimony, Special Prosecutor Hearings, p.317
8. Richardson, The Creative Balance, p.38

9. White, p. 253
10. Doyle, pp. 120-122
11. White, p. 254
11a. Doyle, p.125
12. Lukas, p. 424
13. Ibid., p. 420
14. Ibid., p. 384
15. Statement of Information, p.17
16. Woodward and Bernstein, p. 38-39
17. Ibid., p. 36
18. Lukas, p. 429
19. The New York Times, Ocober 14, 1973, Section IV, p.4.
20. Bickel, Alexander, "The Tapes, Cox Nixon, " The New Republic, September 23, 1973, p.13.
21. White, p. 259
22. Latham, p. 42
23. White, p. 260
24. Latham, p.42
25. Ibid., p.42
26. Ibid.
27. Woodward and Bernstein, p. 62
28. Doyle, pp. 142-143
29. Latham, p.42
30. Ibid.
31. Doyle, p. 143
32. Lukas, p. 425
33. Latham, p. 42
34. Richardson Testimony, Special Prosecutor Hearings, Vol. II, p. 401
35. New York Times, October 21, 1973, p. 57; Senator Stennis News Conference
36. Lukas, p. 425
37. Latham, p. 44
38. Ibid.
39. Richardson Testimony, Special Prosecutor Hearings, p. 316
40. Cox testimony, Ibid., p. 116
41. Doyle, pp. 145-147
42. Ibid, pp. 147-148
43. New York Times, October 21, 1963, p.57
44. Lukas, p. 426
45. Latham, p. 46
46. Cox testimony, Special Prosecutor Hearings, p. 104
47. Doyle, p. 149
48. Lukas, p. 47
49. Cox testimony, Special Prosecutor Hearings, p.11
50. Latham p.45
51. Ibid.
52. Doyle, pp. 150-151
53. Ibid. pp. 151-152
54. Latham, p.45
55. Ibid.
56. Lukas, p. 427
57. Latham, p. 45
58. Ibid.
59. Ibid.
60. New York Times, October 18, 1973, p. 47
61. Doyle, p. 156
62. Lukas, p. 428

63. Ibid.
64. Woodward and Bernstein, p.64
65. Lukas, p. 429
66. Ibid.
67. Latham, p. 46
68. Lukas, p. 429
69. Woodward and Bernstein, p. 64
70. Latham, pp. 46-47
71. Doyle, p. 161
72. Ibid.
73. Cox testimony, Special Prosecutor Hearings, p. 104
74. Latham. p. 47
75. Ibid.
76. Lukas, p. 453
77. Latham, pp. 48-49
78. Richardson, The Creative Balance, p. 42
79. Woodward and Bernstein, p. 66
80. Ibid.
81. Lukas, p. 433
82. Woodward and Bernstein, p. 66
83. Lukas, p. 432
84. [Quotation deleted]
85. Woodward and Bernstein, p. 66
86. Lukas, p. 434
87. Latham, p. 52
88. Ibid.
89. Lukas, p. 433
90. Doyle, pp. 168-169
91. Ibid. p. 434
92. Latham, p.52
93. Senate Select Committee on Presidential Campaign Activities, Final Report, p. 1081
94. Latham, pp. 52-53
95. Lukas, p. 434
96. Latham, p. 53
97. Woodward and Bernstein, p. 67
98. Richardson, The Creative Balance, pp. 42-43
99. Doyle, p. 171
100. Ibid. pp. 170-171
101. Ibid. p. 171
102. Latham, p. 53
103. Doyle, p. 174
104. Ibid.
105. New York Times, October 21, 1963, p.57, Senator Stennis news conference
106. Woodward and Bernstein, pp. 67-68
107. Latham, pp. 53-54
108. Ibid., p. 54
109. Richardson, The Creative Balance, p. 43, Richardson's telephone log.
110. Lukas, p. 435
111. Latham, p. 54
112. Woodward and Bernstein, p. 68
113. Latham, p. 54
114. Doyle, p. 171
115. Ibid, p. 176
116. Woodward and Bernstein, p. 69
117. White, p. 263

118. Boyle, pp. 178-179
119. Latham, p. 55
120. Lukas, p. 435
121. Latham, p. 155
122. Doyle, pp. 177-178
123. Ibid, 178
124. Ibid, pp. 179-180
125. Latham, p. 55
126. White, p. 265
127. Doyle, p. 189
128. Lukas, p. 436
129. Woodward and Bernstein, p. 69
130. Doyle, p. 186
131. Latham, p. 55
132. Ibid.
133. Doyle, p. 188
134. Latham, p. 55
135. Ibid.
136. Doyle, pp. 188-189
137. Latham, p. 56
138. Lukas, p. 437
139. Woodward and Bernstein, p. 70; White, p. 266
140. Woodward and Bernstein, p. 69
141. White, pp. 255-267
142. Latham, p. 56
143. White, p. 267
144. Latham, p. 56
145. Latham, pp. 56-57
146. Bork Testimony, Special Prosecutor Hearings, p. 467
147. Doyle, p. 192
148. Ibid, p. 193
149. Doyle, p. 221
150. Latham, p. 57
151. Ibid.
152. Doyle, p. 194.
153. Doyle, p. 198
154. Lukas, p. 441.
155. Latham, p. 58.
156. New York Times, October 21, 1973, p. 60.