

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

Statement by Archibald Cox, Special  
Watergate Prosecutor, June 12, 1973

I have decided not to appeal Judge Sirica's order.

I judged it important to present to both the Senate Select Committee and the U.S. District Court the considerations stated in my letter of June 4 and our legal memorandum. The Committee decided to continue taking public testimony. Judge Sirica has now ruled that the Court has no power to intervene.

Both points have now been fairly heard. I regret the outcome but to press the legal argument further would risk unduly delaying proceedings and divert attention from our essential tasks. As I wrote Senator Ervin on June 4, 1973, the Senate Select Committee and the Watergate Special Prosecution Force have the same goals: "to get at the truth whatever it may be, to have the truth brought out in public fairly and responsibly, and to restore public confidence in the integrity and capacity of our governmental institutions. I have the additional duty of prosecuting the wrongdoers." There is ample room for cooperation in pursuit of these goals, even though the focus is not identical. I am anxious to do my part in achieving such cooperation. I am sure that the Senate Select Committee shares this desire and would welcome my taking up with the Chairman or Counsel from time to time any particular adjustments in its schedule of hearings or other arrangements that might seem necessary in order to minimize any possible danger to holding fair trials.

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Authority EO 12958  
By CH NARA Date 4/25/02

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

June 4, 1973

Honorable Sam J. Ervin  
Chairman  
Select Committee on Presidential  
Campaign Activities  
United States Senate  
Washington, D. C.

Dear Senator Ervin:

I am writing you as Chairman of the Select Committee on Presidential Campaign Activities to urge the national importance of at least temporarily suspending public hearings. The continuation of hearings at this time would create grave danger that the full facts about the Watergate case and related matters will never come to light, and that many of those who are guilty of serious wrongdoing will never be brought to justice.

I am not suggesting that the hearings now be called off. I am urging that the Special Prosecutor be given time to assess this enormously complex case and to advise the Select Committee about the consequences of the appearance of particular witnesses at televised hearings.

I

Today, we all face a new situation -- which requires new thought. When the Select Committee began its hearings, the Executive Branch had not undertaken an exhaustive investigation with adequate resources. Now a Special Prosecutor has been given full authority, the assurance of adequate resources, and absolute independence in investigating and prosecuting not only the Watergate affair but also all other offenses during the 1972 Campaign and all allegations against the President, members of the White House staff, and Presidential appointees. I have pledged myself to pursue every avenue of investigation wherever it leads.

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By CJ NARA Date 4/10/02

The creation of a Special Prosecutor was largely the work of the Senate, including the Select Committee. The Select Committee and I have the same goals: to get at the truth whatever it may be, to have the truth brought out in public fairly and responsibly, and to restore public confidence in the integrity and capacity of our governmental institutions. I have the additional duty of prosecuting the wrongdoers.

## II

My reasons for believing that a suspension of the hearings will promote our mutual goals fall into four groups:

1. Immediate public hearings will impede investigation. They make it impossible to get at the truth from bottom to top.

(a) Witnesses often come forward with testimony because of fear of heavy prison sentences. Additional publicity through televised hearings will relieve this fear by increasing the chance that pre-trial publicity will forestall successful prosecution, and this will, in turn, reduce the chance of getting truthful testimony. The pressure on witnesses to tell the truth would also be diminished by the other impediments to successful prosecution (discussed below) that may result from immediate continuation of hearings.

(b) Premature disclosure of testimony and other leads in the possession of investigators aids anyone disposed to fabricate explanations, and it increases the difficulty of getting truthful information from potential witnesses.

(c) Witnesses torn between conscience, on the one hand, and awe of office or loyalty to superiors, on the other, are likely to be more willing to give information to the Special Prosecutor than to make full disclosure in front of television cameras.

(d) I have been assured of access to all documents, files and other papers in the Executive Branch. This assurance, plus the determination to publicize any withholding, gives my office great power to develop evidence of this character.

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2. Public hearings prior to the further development of the investigation will increase the risk that major guilty parties will go unpunished. Quite possibly, all would go free.

Each of the points made above supports this proposition. There are two additional, important considerations: (1) the danger that pre-trial publicity will prevent fair trials from ever being held; (2) the risk that the Committee's granting immunity to major potential defendants will bar successful prosecution. Prosecution of a Senate witness may be impossible if he testifies under use immunity before a record can be made by the Special Prosecutor demonstrating that the case was developed without leads from the immunized testimony.

There is much more to this question than whether one or two people go to jail. Confidence in our institutions is at stake. We must find a way both to expose the truth and to punish the wrongdoers. Failure to convict persons in high office shown guilty of crime -- even as a consequence of Senate hearings -- could well shatter public confidence in our governmental institutions, particularly confidence in our system of justice. At a time when the Nation's concern about crime has focused attention on our system of justice, it would be discriminatory and therefore demoralizing for the powerful to go scot-free while ordinary citizens are sentenced to prison.

3. Both the Senate Committee and the Special Prosecutor should preserve, for the present, freedom to bring out at one time and in a comprehensive presentation all the facts concerning the President of the United States.

Allegations have been made concerning the implication of the President of the United States. It seems unlikely that all the facts are known and all the available evidence has been assembled. There is grave danger of confusion if bits and pieces emerge from day to day or week to week. This method of disclosure also makes it more difficult to develop additional information.

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I do not now know what facts will develop or the best place, time or procedure for a comprehensive presentation. Perhaps it is before the Select Committee. Quite possibly it will turn out that no such presentation can be made, and that the Senate should later resume its hearings as planned. My only point is that, for the present, this option should be preserved.

4. We should also remember that innocent persons can be questioned and exonerated within the confines of grand jury secrecy while even the most careful public hearing may injure the innocent.

### III

I must emphasize that I am not requesting -- and have never requested -- the Select Committee immediately to call off all hearings. My only request is that the Committee -- having forced a broad, vigorous and independent investigation -- now enable the Special Prosecutor to pursue his responsibilities unimpeded until an appropriate time for reviewing the situation together and deciding in cooperation how next to proceed.

It is very difficult to specify the exact amount of time needed before discussing the problem again with the Select Committee. Three months seems reasonable, but I would be grateful for any significant period. The more time I can have, the more accurately I can later advise the Select Committee on the likely effect of resumption of the hearings upon the full development of information and the best way to assure the possibility of fair trials. I would expect, of course, to keep the Select Committee advised of the general progress of our work.

I realize that this is a very trying request to put to the Select Committee because granting it might give rise to unwarranted charges that the Committee was delayed or diverted in bringing out the truth. It is an even more difficult request for me to make because there will be false charges that I am attempting to cover up the truth.

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Only the conviction that the above points have critical importance induces me to write this letter -- and to hope that upon full consideration the Select Committee will grant my request.

If you think it useful, I would value the opportunity to explore these points with the Select Committee in Executive Session in more detail.

Sincerely,

*Archibald Cox*

ARCHIBALD COX  
Special Prosecutor

Copy to Senator Edward J. Gurney  
Senator Howard H. Baker, Jr.  
Senator Herman E. Talmadge  
Senator Daniel Inouye  
Senator Joseph M. Montoya  
Senator Lowell P. Weicker, Jr.

→ Copy also to members of Senate Judiciary Committee

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By CJ NARA Date 4/10/02

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may raise particular problems with respect to subsequent prosecution. We would be glad **June 6, 1973** to discuss this point and ways of meeting the difficulty with you, the Committee, or your staff as you think best.

Honorable Sam J. Ervin  
 Chairman in warm regards.  
 Select Committee on Presidential  
 Campaign Activities  
 United States Senate  
 Washington, D. C.

Sincerely,

Dear Senator Ervin:

ARCHIBALD COX

Thank you for your letter of **June 5, 1973**.

I understand that the Senate Select Committee on Presidential Campaign Activities plans to proceed with public hearings despite the considerations presented in my letter of June 4, 1973. I respect that decision, even though I do not agree with it, and I have no intention of being obstructive or causing unnecessary delay. On the contrary, I wish to cooperate with the Committee in every way consistent with the integrity of the investigation put in my charge and the subsequent conduct of fair trials.

I do feel obligated to fully and candidly respond to the request of the United States District Court for advice with respect to its legal powers and responsibilities with respect to the applications for immunity for John Dean and Jeb Magruder. We are presently preparing a memorandum on these points. A copy will be supplied to Mr. Dash as soon as it is prepared.

I hope that the Select Committee will find it possible at least to plan its hearings in the manner most consistent with bringing guilty persons to justice. For example, calling John Dean at the early date you mention

may raise particular problems with respect to subsequent prosecution. We would be glad to discuss this point and ways of meeting the difficulty with you, the Committee, or its staff as you think best.

Chairman  
Select With warm regards. Identical  
Campaign Activities  
United States Senate  
Washington, D. C.

Sincerely,

Dear Senator Wriston:

Thank you for your letter ARCHIBALD COX  
Special Prosecutor

I understand that the Senate Select Committee on Presidential Campaign Activities plans to proceed with public hearings despite the considerations presented in my letter of June 4, 1970. I respect that decision, even though I do not agree with it, and I have no intention of being obstructive or causing unnecessary delay. On the contrary, I wish to cooperate with the Committee in every way consistent with the integrity of the investigation put in my charge and the subsequent ACox of fair trials.

Chron.

I am obligated to fully and candidly respond to the request of the United States District Court for the District of Columbia in its recent orders and responsibilities with respect to the application for immunity for John Dean and Jeb Magruder. We are presently preparing a memorandum on these points. A copy will be supplied to you as soon as it is prepared.

I hope that the Select Committee will find it possible at least to hold its hearings in the manner most consistent with bringing guilty persons to justice. For example, holding hearings at the earliest date you mention