

NOMINATION OF WILLIAM B. SAXBE TO BE ATTORNEY GENERAL

WEDNESDAY, DECEMBER 12, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, McClellan, Hart, Kennedy, Byrd, Tunney, Hruska, Fong, Cook, and Gurney.

Also present: Peter M. Stockett, Francis C. Rosenberger, Thomas D. Hart, and Hite McLean, of the committee staff.

The CHAIRMAN. The committee will come to order.

Senator Saxbe, identify yourself for the record.

Senator SAXBE. Senator Eastland, members of the committee, I am here as a nominee for the Office of Attorney General and with me is my colleague, Senator Robert Taft.

The CHAIRMAN. Excuse me, Bob. Have you got a statement?

TESTIMONY OF ROBERT TAFT, JR., U.S. SENATOR FROM OHIO

Senator TAFT. Thank you, Mr. Chairman, members of the committee.

It would be presumptuous for me to make any formal statement on this occasion, but it is a great pleasure for me to be here before the committee and to have the honor and privilege of being here on the occasion of the nomination of my colleague, Bill Saxbe, for the position of Attorney General. I have known Bill as a good friend and a coworker for many years, a colleague in the Senate, and a fellow member of the bar. I have the highest opinion of his character and of his abilities, and I am here today to urge the committee to confirm Bill Saxbe as an excellent candidate and magnificently qualified, I think, by his vast experience as speaker of the house in Ohio, and as attorney general of Ohio, not once but twice, for quite a number of years, and as an outstanding legislator here in Washington, and I think as an outstanding American.

Mr. Chairman, I am going to leave Mr. Saxbe here to his testimony and I explain that I also have another distinguished colleague whom I have to present to the Foreign Relations Committee. This seems to be "nominations morning."

Thank you.

[Senator Hruska subsequently submitted the following statement for the record:]

STATEMENT OF SENATOR ROMAN L. HRUSKA

Mr. Chairman, I have no questions but would like to make a brief statement of commendation and support for Senator Saxbe's nomination to be Attorney General.

In nominating Senator Saxbe, President Nixon has abided by the longstanding tradition of selecting an individual with a seasoned, varied and wide experience in the law. Senator Saxbe has also developed a broad background in administration and legislation on both the state and federal levels. As an active member of the Ohio bar, as a member of the Ohio State Legislature, as Attorney General of Ohio, and as a United States Senator, William Saxbe has distinguished himself. This background of knowledge and participation in the law will serve him well in discharging his duties as Attorney General.

Over the last five years, Senator Saxbe has become well-known to his colleagues. His reputation for ability and integrity can be simply described as first-rate. Thus, rather than seeking answers to specific questions, it might be well for us to draw on our experience with him and our observations of him. He has proved himself to be knowledgeable, diligent, dedicated, and patriotic. He has faith and loyalty to his country.

We can therefore look forward to a steady, intelligent pursuit and discharge of the duties of the United States Attorney General upon confirmation of this colleague.

We wish him well.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman.

I want to join in congratulating you, Senator Saxbe, in gaining the confidence of the President and receiving the nomination to the position of Attorney General. And I want to extend a warm word of welcome to you here before this committee. I know many of us on this committee have had the opportunity to work with you in a variety of legislative matters in the past, and have benefited from this experience. I think all of the members of this committee have recognized the effectiveness with which you have represented your viewpoint and the people of Ohio in the United States Senate. I particularly enjoyed the opportunity of working with you on health matters. This has been an area of particular interest to you, and I have enjoyed that association and working relationship.

I think you will understand, perhaps better than most, this committee's heavy responsibility, particularly in these crucial times, to thoroughly examine several matters of special interest to this committee. I hope that the assurances that you will give to this committee and to the American people will reassure them that the President's nominee will be a person who is committed to a sense of justice and fairness and will work tirelessly in restoring this sense to the American people. So, I hope that you will be patient with us as we review some of these areas with you this morning, and I think that we have, as I am sure you would agree, a heavy burden in a number of these areas to explore in significant detail your views on a variety of questions.

One area that I have had the opportunity of talking with you about is the Kent State investigation. I have questioned every nominee for the position of Attorney General since the time of the tragedy. I have questioned both Mr. Mitchell and Mr. Kleindienst, as well as Mr. Richardson, about the Justice Department's interest in this particular matter. Through Mr. Richardson and Mr. Pottinger, this investi-

gation was reopened and just last evening, Mr. Pottinger stated that a grand jury probe will begin next Tuesday. You, as a Senator from Ohio, took an interest in this tragedy and made statements about it and I would like to have your view as to whether you intend to be involved in future decisions and determinations that will be made by the Justice Department in this particular investigation?

**TESTIMONY OF WILLIAM B. SAXBE, U.S. SENATOR FROM OHIO,
NOMINEE TO BE ATTORNEY GENERAL**

Senator SAXBE. Senator Kennedy, the investigation that is going on at the present time, as you say, is going to impanel a grand jury. I was informed of this last night. I have not talked to Mr. Pottinger. In fact, I have never met Mr. Pottinger, even though he is from Ohio, and I welcome this. In fact, when he announced some 2 weeks ago that he hoped to have a decision on whether they were going to call a grand jury sometime in the middle of December, I welcomed it and I hoped that they would.

If, however, they have, as a result of this grand jury, further proceedings, it is my intention to remove myself from any participation. I do not say recuse. I know there is such a word and I looked it up. Recuse indicates that you withdraw yourself because of prejudice. I do not believe that I have any prejudice in this matter, and I feel I could be completely objective in it because the tragic series of events that brought about Kent State and other incidents in other places, was a sad chapter in American history. However, because I am from Ohio, because I spent many years with the Ohio National Guard, because I am intimately acquainted, although I never served with or under any of these officers, and I do believe that it would be reasonable to remove myself from any decision as to the proceedings, and I am quite willing to do this. And I mean that in the complete sense of the word and complete fairness. In other words, there will be no equivocation on my part if any decision is to be made, other than the Department will make.

Senator KENNEDY. Can you tell us who that might be? Would that be Mr. Pottinger or the Deputy Attorney General?

Senator SAXBE. I would presume that it would be the deputy whom I have not yet selected. I just do not think that you could turn it over to the individual bureau chiefs because they are going to come, not only wanting direction, they are going to come wanting advice. And I will also instruct the deputy to discuss this with you if the time should arrive, because I think that would be completely fair. I do not think there is anybody in this country that wants to get to the bottom of this more than I do. I also wanted to proceed with dispatch. I think the dragging of it out is an injustice to the people involved and also to the people of the country to lead them to believe that there was, or is, a conspiracy, unless there is evidence forthcoming of such a conspiracy and that, of course, I hope that is what he is going to find out.

Senator KENNEDY. Well, I appreciate your response to that. I think that it is an admirable position, and I welcome it.

One of the important aspects of your job as Attorney General, at least until the Congress acts on the Special Prosecutor legislation, is

for the supervision of the Watergate investigation and related offenses. With respect to that responsibility, have you made any judgments yourself on the possible guilt or innocence of the President, or other high administration officials?

Senator SAXBE. No. Prior to being named as the nominee, I could make a lot of observations, and did. But I think that when I come into the office of Attorney General, I have to come in, not with a presumption or with a belief in either guilt or innocence; I have to work with the facts that are presented to me, and it is my intention to work completely in harmony with the Special Prosecutor. I have read the charter, understand it, under which he operates. It is extremely broad and comprehensive, and in some ways has even more authority than the Attorney General. And I am also aware of the consensus needed before he can be dismissed, and I thoroughly agree with these and I feel myself bound by both the charter and the consensus agreement. I again hope that it proceeds with dispatch because the people of the entire world are watching it.

Senator KENNEDY. You made some statements or comments about certain conclusions that you drew after your meeting with the President. Is your statement now before the committee that you are completely open with regard to both the investigation and as to the guilt or innocence of any of the administration people including the President himself?

Senator SAXBE. Well, of course, the ones that have already been convicted that are involved in the affair, there is no question on that. As to our system of laws, there is a presumption of innocence until proven otherwise, and I do assume that position.

Senator KENNEDY. Is that the presumption that you were referring to when you responded to questions after your meeting at the White House?

Senator SAXBE. Yes; that presumption of innocence.

Senator KENNEDY. Did you talk with the President about either the Segretti case, the financing of his campaign or the Ellsberg break-in?

Senator SAXBE. Not in great deal; no, I did not. He assured me in broad terms, and I might say that even though we talked some 2 hours, we did not have the time to go into the various details, nor was I equipped with specific knowledge and charges to go into it. He assured me he was in no way involved and welcomed a complete probe. You have got to recall that this was a time that Jaworski was being considered. In fact, I had never heard of Jaworski until the same day, when later in that day I was called back to meet Mr. Jaworski. And he stated that he did not know Mr. Jaworski, but he was recommended as a qualified, industrious, and capable lawyer who would vigorously investigate. He said he welcomed this because he was in no way involved before the fact or after the fact.

Senator KENNEDY. Well, would you say then that you had not really prejudged the case with regard to the President in regard to his participation or implication in any of the Watergate matters? Is this an open question, or would you say you have reached some conclusion?

Senator SAXBE. I have not reached a conclusion and I certainly have no intention of reaching a conclusion while this investigation is pending.

Senator KENNEDY. You also stated that you were satisfied that the President acted honorably in the matters that have arisen since Watergate. Was your statement that day based on that conversation?

Senator SAXBE. Based on his statement.

Senator KENNEDY. On his statement to you? Not upon any detailed examination of some of the principal incidents of the Watergate case, in particular?

Senator SAXBE. No.

Senator KENNEDY. You can understand, I think, Mr. Saxbe, how important it is to have a response to these questions. I would imagine that if Mr. Jaworski and his staff felt that there was a prejudgment on your part or that you had some preconceived view, this may very well have an impact in terms of the Special Prosecutor's actions.

Senator SAXBE. I understand.

Senator KENNEDY. If you have not prejudged the matter and you are open with regard to it, I think that is important for the Special Prosecutor to understand.

Senator SAXBE. I agree.

Senator KENNEDY. In regard to the Special Prosecutor's charter, members of this committee felt that the President stood behind the charter that was initially established under Mr. Cox and Mr. Richardson. I will not review in detail the various statements that he made and others have made which led us to that conclusion. We have had in more recent times the expressions by Mr. Bork that there has been alterations in that charter on two particular points:

(1) Requirement of a consensus of congressional leaders for the dismissal of the Special Prosecutor; and

(2) Requirement of a consensus of congressional leaders in limiting the independence of the Special Prosecutor.

Could you tell us what is your understanding of what consensus really means in terms of the dismissal of the Special Prosecutor? How would you interpret "consensus"? Obviously, if you are going to get to that particular point, your counsel or advice I think would be terribly important.

Senator SAXBE. My interpretation is by "consensus" you mean six or more votes out of eight—six, seven or eight votes. A simple majority is not enough. If it meant a simple majority, they would have said a majority. Therefore, I presume that, and I would consider it to be binding on me, that it would have to be six, seven or eight votes.

Senator KENNEDY. That would agree to the firing of the Special Prosecutor?

Senator SAXBE. Yes, sir.

Senator KENNEDY. Can you tell us what you consider to be justifiable reasons for the firing of a special prosecutor? In our initial charter, we used gross impropriety as a standard. Could you tell us what conditions you believe would be justifiable in the firing of a special prosecutor?

Senator SAXBE. Gross impropriety would mean conduct that would unfavorably reflect upon the country or the judicial system of the country, and by that I mean irresponsible activities that would shock not only the bar but the citizenry of the world. The other reason I would think of would be failure to proceed. In other words, if activity

was stopped for any reason. I think that would be grounds and that is about the extent of it.

Senator KENNEDY. Therefore it is your understanding, that requesting information or raising the issue of Executive privilege, and pursuing that within the courts of law, or conducting the various investigations to the limit which the Special Prosecutor feels is fair and reasonable, would not be the basis for such a dismissal?

Senator SAXBE No. And I would go even further, that I personally pledge to him any assistance that is reasonable and we can furnish from the Department.

Senator KENNEDY. Could you tell me whether you were consulted by Mr. Bork when this consensus provision was developed? Were you a part of these discussions, or was that matter settled when you were approached by the White House to be Attorney General?

Senator SAXBE. It was settled before I came on board. However, the discussion of what consensus meant, I was there in General Haig's office when that came up.

Senator KENNEDY. Is General Haig's view of consensus the same as your own?

Senator SAXBE. Yes, sir.

Senator KENNEDY. So General Haig's view is that it should be six or seven out of the eight congressional leaders?

Senator SAXBE. Six, seven, or eight.

Senator KENNEDY. Well, the President has been using nine names, but I think the addition works up to only eight?

Senator SAXBE. I would say more than six.

Senator KENNEDY. More than six.

Senator SAXBE. Six or more.

Senator KENNEDY. Are you aware that the question of consensus was also applied to the President's limiting the jurisdiction of the Special Prosecutor? As you probably know from the newspapers and reading through the record, this committee reviewed in very considerable detail with both Mr. Richardson and Mr. Cox, the various jurisdictional questions that had been raised by the White House, before they left their jobs. During the course of these examinations, Mr. Cox expressed the view that he felt there were pressures being exerted from the White House to limit his independence. I think it would be fair to say that he never felt that Mr. Richardson was applying undue or improper pressure, but that Mr. Cox concluded that some pressures were being exerted.

In the initial charter which was drafted here, we left the matter of jurisdiction up to the Special Prosecutor. Mr. Bork, in response to an inquiry by me, indicated that jurisdiction could be limited: "I have amended the charter to make clear that the consensus provision applies to removal and to limits on jurisdiction."

I felt strongly that this was an additional limitation to the jurisdiction guarantee which we had agreed upon. Do you feel that it was necessary to have the consensus of this congressional group apply to jurisdictional questions, or should we leave jurisdictional questions in the hands of the Special Prosecutor?

Senator SAXBE. I do not know what the thinking was on that. It seems to me that it would be entirely reasonable, however, that the

leadership in Congress could have an attitude. I can only think of it in connection with national security or something like that, however. I do not think it is a limiting factor. I would think that any dismissal would bring with it a whole host of other things, as well as impropriety in the name of impropriety that would affect the jurisdiction. Once you would say there is impropriety, gross impropriety, your reasoning could be that you felt that he was endangering national security, something like that. Now, that is just a curbstone opinion that I give you here today.

Senator KENNEDY. I think that some of the matters that were raised in these jurisdictional questions were whether the investigations into San Clemente fell within the jurisdiction of Mr. Cox or whether the Hughes loan fell within the jurisdiction of Mr. Cox. As you are probably familiar, Mr. Richardson submitted to this committee a rather detailed memorandum which outlined the areas of jurisdiction between the Department and the Special Prosecutor. Why, then, should there be an additional requirement that jurisdictional matters be left up to the leaders of Congress when prior to this letter, which Mr. Bork sent to me on November 20, jurisdiction was left up to the Department of Justice and the Special Prosecutor?

Senator SAXBE. I cannot give you any better reason than I have.

Senator KENNEDY. Don't you feel that you could work out the jurisdictional matters between yourself and Mr. Jaworski?

Senator SAXBE. I do.

Senator KENNEDY. Is it really necessary to bring the leaders of the Congress into this matter?

Senator SAXBE. I do not think so, but again, I do not know the motivation for that letter. It seems to me that the Special Prosecutor has a much broader power in this area than even the Attorney General because of that special charter. And I really think that Mr. Jaworski will come to me only when he needs specific assistance which I will be happy to give him.

Senator KENNEDY. Well, on this point, could we possibly examine this particular detail after this hearing to see if this could be worked out?

Senator SAXBE. Yes, sir.

Senator KENNEDY. In fairness to you, I did not have a chance to mention that I was going to bring this matter up. But I think you have been responsive. I would like to see if we could review it so that these matters of jurisdiction could be decided by you and the Special Prosecutor, without the necessity of involving the congressional leaders.

Senator SAXBE. That would be my intention.

Senator KENNEDY. What matters do you expect that Mr. Jaworski would bring to your attention, and what matters do you feel that you would bring to his attention?

Senator SAXBE. Well, again I refer to the charter, that the powers are so broad that they are going to be able to operate entirely on their own. He has the authority to instigate actions in the courts. He certainly can proceed in almost any area of investigation that he wants to. I really do not contemplate having a great deal of contact with Mr. Jaworski.

Senator KENNEDY. During the time Mr. Richardson was Attorney General, he indicated that he wanted to be kept generally aware of the

scope of the investigation, but he felt that beyond that the Special Prosecutor ought to move in his own direction.

Senator SAXBE. I agree.

Senator KENNEDY. What is going to be your reaction if you are called to the White House on some of these jurisdictional matters?

Senator SAXBE. Well, my attitude will be to resist anything which would detract from the power of the charter.

Senator KENNEDY. Who should the White House contact on a jurisdictional matter? Should they call you and then you call Mr. Jaworski; or should they call Jaworski, or should they not call either one of you?

Senator SAXBE. Well, I would certainly not want to put up any barriers to the President ever calling the Attorney General for any reasons. But I certainly, on the other hand, am familiar with the charter and the will of Congress in this matter. It is certainly well demonstrated in that charter as to the strength of it and, as I say, I would resist any change in the charter. If there is a question of the construction, I would be happy to be available to either one, but I think I understand it.

Senator KENNEDY. If you were called to the White House on jurisdictional matters, would you feel that there was any reason why you could not keep this committee informed of that?

Senator SAXBE. No.

Senator KENNEDY. Well, would you?

Senator SAXBE. I certainly would feel that I had an obligation to the Congress, who put the charter together, to keep them informed if there was any evasion or misunderstanding.

Senator KENNEDY. Well, just on the question of jurisdiction, could you keep us informed as to what matters were raised with you? I don't mean the substance of these matters but the fact that there was a dispute?

Senator SAXBE. Yes.

Now, I think you understand that the question of volunteering information is something that you never understand what would be the nature of that. In other words, what would be an insignificant point to me, you might consider to be of great importance. And I certainly would not want to be pulled up short 3 months later and say, Why didn't you tell us this? If I think it is of significant importance, I will.

Senator KENNEDY. Well, if there was any matter affecting the jurisdiction of the Special Prosecutor—

Senator SAXBE. Or tampering with the charter.

Senator KENNEDY. Wouldn't that be a matter on these jurisdictional issues or questions, which would be important to this committee?

Senator SAXBE. I understand, and that would be reasonable.

Senator KENNEDY. If you could inform us as to these situations, I think it would be very helpful.

Senator SAXBE. I do not think that is unreasonable, and I would do it.

Senator KENNEDY. On the question of the Special Prosecutor's staff, do you feel that you would have any power to either hire or fire any of the Special Prosecutor's staff?

Senator SAXBE. No.

Senator KENNEDY. Do you think that ought to be a decision made solely by the Special Prosecutor?

Senator SAXBE. I do.

Senator KENNEDY. Should he be given complete authority and flexibility?

Senator SAXBE. Yes, and that is specific in the charter.

Senator KENNEDY. If the President should claim executive privilege as to certain documents or information, in your opinion should the Special Prosecutor have the sole discretion of deciding whether to challenge that claim in court?

Senator SAXBE. I think he does at the present time and he can go to court at any time to determine that. And I think that is where it belongs, in the court, to determine what is privileged or what has been waived.

Senator KENNEDY. Do you think he ought to have the sole authority to make a decision whether that matter should be raised in the court?

Senator SAXBE. Yes, I do.

Senator KENNEDY. So, he would not have to bring these issues to your attention?

Senator SAXBE. No. In fact, I would volunteer to help him in any situation where he felt that he needed help. I think this is specific.

Senator KENNEDY. I am sure you have been asked, Senator, about your Hong Kong speech. I think there has been a good deal written about it. I think it is appropriate, at least in terms of the record that is being made by this committee, to have an opportunity for you to respond. I have read your reactions to it and your press releases on it but I think we ought to have your views here in order to have a complete record.

Senator SAXBE. Well, the only thing I can say is that as a Senator I had the privilege of expressing my opinions rather freely, something which is not going to be so easy as Attorney General in a quasi-judicial position.

Senator KENNEDY. You have a reputation for candor and speaking right from the heart.

Senator SAXBE. Well, I do, and I hope I can continue this within the limits of propriety. This was at a breakfast meeting in Hong Kong, casual, and I might add in a rather light vein. My statements in Hong Kong were based on the fact that I think that if the majority of the people in a room know that the room is bugged they are not going to say any incriminating things. I think that this is understandable and I have maintained that the tapes would produce nothing because everyone in there knew that the room, that any conversation, was being taped. All of the principals, at least, knew it and those are the ones that were concerned about it. And I have just felt this way and I expressed it at that time. Other statements, again many facetious but with a grain of truth in all of them, were based upon my reading of what was going on. The statement that the tapes could be destroyed; I did say that they could be destroyed if they had incriminating testimony because they are in the hands of the people that made that tape. But I certainly did not indicate that any illegal act should be performed, nor did I advocate it nor would I.

Senator KENNEDY. The transcript that was printed in the newspaper said:

I personally wish I had never heard of the tapes. Unless they are incriminating I think you should give them up. If they are incriminating, they should be destroyed, and I am sure they will, but I think he is right in saying the President cannot be 'horsed around' in the courts. I believe the President is exactly right when he says he can be impeached, but he cannot be 'horsed around' in the courts, which is what he is saying.

Senator SAXBE. We attempted to get that tape to verify what was in it and he did not have it, and he said he wrote this from memory. What I said was that they could be destroyed.

Senator KENNEDY. By who?

Senator SAXBE. By whoever had possession of them.

Senator KENNEDY. In other words, whoever had them physically had the power to destroy them?

Senator SAXBE. Yes.

Senator KENNEDY. Did you mean whoever had them physically had the right to destroy them?

Senator SAXBE. No; they had the power to destroy them. What I was talking about is that it is not customary for people to bug themselves and say incriminating things. And if they do, then it never sees the light of day.

Senator KENNEDY. Whoever did destroy them would obviously violate the canon of ethics as well as obstruct justice, would they not?

Senator SAXBE. After it became evidence, after it became an issue. If a tape is being made of the proceedings here this morning, and someone wants to destroy it, there is no illegal act, it only becomes illegal when that piece of tape becomes evidence and becomes part of a legal proceeding. And the tape idea, I think, was a bad one from the very beginning.

Senator KENNEDY. Of course, at the time of your Hong Kong speech, there had been a request for the tapes, so it would have been obstruction of justice at that time.

Senator SAXBE. Now my supposition went back to the day they were made. If you are running a tape and you say something that you do not want to on that tape, you just back off that same day, that same minute.

Senator KENNEDY. I think certainly you are correct in that obvious interpretation. I think the Watergate committee had actually requested these tapes, so at the time of your statement the destruction of the tapes would fall within the obstruction of justice statute, if it had been requested by a congressional committee or a court. Wouldn't that be obstruction of justice?

Senator SAXBE. After it had become an issue; yes.

Senator KENNEDY. Could you tell us what your present understanding is as to whether Presidential documents will be provided to the Special Prosecutor?

Senator SAXBE. My understanding is that any necessary information will be provided.

Senator KENNEDY. Who is to make that decision about whether it is necessary or not?

Senator SAXBE. I would guess the Special Prosecutor.

Senator KENNEDY. It was reported yesterday that U.S. Attorney Harold Titus stated that his office was subjected to "the most trying

and compelling pressures" during the yearlong investigation of the Watergate scandal. He stated that his probe was conducted despite "unique and harrowing obstacles of a magnitude probably never before confronted in the annals of the administration of criminal justice in this country." He declined to state, though, who had applied pressures.

This is perhaps an obstruction of justice. Would you have the FBI look into that? Did you see that report?

Senator SAXBE. No; I am not familiar with it.

Senator KENNEDY. Well, if he made those statements——

Senator SAXBE. Who is Mr. Titus?

Senator KENNEDY. Pardon?

Senator SAXBE. Who is Mr. Titus?

Senator KENNEDY. He is the U.S. attorney in Washington.

Senator SAXBE. And he was involved——

Senator KENNEDY. In the Watergate investigation. He was the U.S. attorney that was involved in the initial hearings, and those are strong statements if accurately reported. But let us assume that they are an accurate reflection and that he did make those statements. Would you feel obligated to investigate those charges?

Senator SAXBE. I would think this would come within the Special Prosecutor, and I would hope that he would investigate them. From the standpoint of just any pressure on a U.S. attorney, I would certainly want to know it and to protect the U.S. attorney.

Senator KENNEDY. Mr. Chairman, the committee has been very generous with its time. I am going to go into other areas. I will be glad to abide by whatever procedure you desire.

The CHAIRMAN. Go ahead.

Senator KENNEDY. Thank you.

In the area of wiretapping, Mr. Saxbe, could you state what your views are with regard to wiretapping?

Senator SAXBE. Well, wiretapping is important to me on the basis of an invasion of an individual's rights. However, it is a tool that I do not think law enforcement can abandon and, therefore, if it is going to be used, it has to be used with great care. It is my understanding that there has been a steady decline in the last 10 years in the number of wiretappings that are in existence. I do not have a number but I am assured that this general statement is correct.

The way that I would propose, and the way the President has directed the sitting Attorney General to operate, is that no one could authorize an application to the court but the Attorney General, and only on two grounds: (1) On national security, and (2) based on stated charges that could and would be proved by wiretapping. In other words, wiretapping only for the purpose of leading to prosecution. And I think if we are going to preserve wiretapping as a tool for law enforcement, this is a fair requirement in its use.

Congress has it within its power to outlaw wiretapping. It has not seen fit to do so. Therefore, to use it circumspectly and as a tool against a crime, is something that I would intend to do.

Senator KENNEDY. What is your view in the area of warrantless wiretapping and electronic surveillance? The Administrative Practice and Procedure Subcommittee which I chair, Senator Ervin's sub-

committee, and the Foreign Relations Subcommittee on Surveillance, have agreed to undertake an investigation and to hold joint hearings to deal with some of the national security questions in this area, and we are working together in the development of legislation. Senator Mathias and I are introducing legislation dealing with warrantless wiretapping and electronic surveillance. We made requests for information in this area from the Justice Department about 2 months ago. I know there have been a series of upheavals there and a number of other matters which are taking their attention. But I would appreciate the opportunity of working with you and the Department in this area, to see if we cannot obtain this information and enlist your cooperation in the hearings which we are planning for the early part of next year. Our concern, as I mentioned, is primarily with warrantless aspects as well as the electronic devices, and we hope that we can work with you in this particular area.

Senator SAXBE. I will be happy to.

Senator KENNEDY. Over the years, I have been extremely interested in the Federal protection of Indian natural resources, and the Lands Division of the Justice Department plays a central role in this area. There is a situation in New Mexico concerning Pueblo water rights where the Justice Department is representing not only the Indians but also the various agencies of the Federal Government. So you have the Justice Department on competing sides of the same issue. There have been many of us who have urged a special, separate section within the Department to handle the prosecution of cases involving Indian rights—hunting and fishing, as well as boundaries and water—so that there could be both in appearance, as well as in reality, an avoidance of conflicts of interest. I would like to raise this matter with you again sometime in the future, and hope that you would give some attention to it.

Senator SAXBE. All right. Thank you.

Senator KENNEDY. Could we go into your position—and I think you have expressed it at other times—with regard to gun control, primarily handguns, and most particularly in the area of the Saturday night special. We have had, since I have been here, three Attorneys General that have taken strong positions with regard to this issue, and we have been able, through this committee, under Senator Bayh's direction, to pass Saturday night special legislation. Could you give us what view you might have about the Saturday night specials which really have no use except for the killing of human beings?

Senator SAXBE. Well, I have views that differ from Senator Kennedy on this. I have been a gun collector, a marksman, a shooter all of my life, and a hunter, and naturally, I am influenced by this background and the knowledge of guns. I live in the District. When I came, there was a registration law, a very stiff registration law, which requires the registration of guns in the District. I hoped that this would be vigorously prosecuted. It is not. There are no cases brought under it. It is disturbing to me to pass a law and then to find that it is not being enforced in the courts here in the District.

I personally believe that the Saturday night special is an abomination. It is of no value for anything but shooting somebody and preferably a friend because you cannot get close enough to anybody else. I

have no great objection to legislation, but I question the ability to enforce it if you have to go on the basis of what they have been able to do where it is already outlawed here in the District of Columbia.

I have registered my guns which I keep in my home because I do shoot clay targets and, on occasion, go hunting. But the person who has the Saturday night special here does not register it and uses it to commit crimes.

I have supported every bill that has come along to increase the penalty; and in the Senate, at least, the bills have been successful to step up this penalty. I voted for Senator Mansfield's bill. I voted for several of the other bills which I thought should make a felony out of any carrying of a Saturday night special or any other kind of a weapon. And certainly having an unregistered weapon in the District should come under this, but it is not enforced.

Part of my attitude is based on the fact that even though I am not a mechanic or particularly adept with my hands, I can make a gun in half a day out of readily available material. I wish there was some way that we could control violence, and it is going to be my attempt to do this in the Attorney General's Office, but I do not believe that the hoped for effects of outlawing guns could come about.

Now, I want to say that I would vigorously enforce any law that this Congress passes on guns. I have no inhibitions about that. I will do it to the full extent of my office, and I certainly am not going to intervene in any deliberations here on gun activity. But I think I do have to be fair in giving my own background in this area.

Senator KENNEDY. Thank you very much, Senator Saxbe.

Senator McCLELLAN. Mr. Chairman, I have to go to the floor in a few minutes to handle a supplemental appropriation bill. I do not care to ask the nominee any questions, but I would like to just make a very brief statement for the record.

The CHAIRMAN. Proceed.

Senator McCLELLAN. Mr. Chairman, I am fully satisfied that this nominee possesses the requisite professional qualifications to most credibly perform the duties of the high office of the Attorney General of the United States. And his stature of character and personal integrity is such as to strongly commend him as being worthy of the trust and the honor which this nomination confers.

I have entertained some doubts about his eligibility because of the constitutional issue involved, and I still have some doubts. But, the Congress, insofar as it can do so, has undertaken to remove that doubt. If the change in salary law recently enacted is valid, then there is no reason now why this nominee should not be confirmed. Therefore, I shall gladly vote for his confirmation. I am confident that he will carry out his duties fairly, impartially, and vigorously. I am proud to support his nomination.

I have never had any reluctance whatsoever to give him my endorsement for this position, except from a constitutional technicality that did give me some concern.

Senator SAXBE. Thank you, Senator McClellan.

Senator McCLELLAN. Thank you very much for yielding.

The CHAIRMAN. Senator Byrd?

Senator BYRD. Thank you, Mr. Chairman.

Mr. Saxbe, I wish first to congratulate you on the choice of the President in nominating you for this important office. Second, I want to say for the record that I, too, see no problem insofar as your professional qualifications are concerned. I see no problem insofar as you, personally, are concerned with respect to your integrity and character, and moral fitness, so far as I know.

I have had some concern, however, with regard to the constitutional inhibition involved in paragraph 2, clause 6, article I of the Constitution. My efforts with respect to opposing the so-called Attorney General pay bill on the floor were not meant to have any personal thrust whatsoever. The Congress has now spoken in regard to that bill. In my own mind, nevertheless, I am not at all sure that the Congress has the power to remove that constitutional disqualification. But that will have to be decided by the court eventually I assume.

I suppose I could vote for your confirmation, even though I strenuously opposed the pay bill on constitutional grounds. At this point, I want to at least feel that I am still reviewing that aspect. I still feel as strongly as ever that there is a constitutional inhibition and that it cannot be removed by legislation. But the amendment which I offered on the floor paves the way for an expedited hearing if anyone should seek a court decision.

I am desirous of asking questions in one area today, that being the area involving the Special Prosecutor. I have asked the chairman to request that Mr. Jaworski come to the hearing room. I think it is imperative that the committee get your assurance of a strong commitment to Mr. Jaworski, and I think it is important to Mr. Jaworski that he not only be able to read that commitment in the record, but that he also be present when that commitment is made.

I doubt that I can adequately explain to you how uncomfortable I am in asking questions of you. I like you, personally, and I respect you as my peer, and I certainly do not relish the prospect of interrogating a colleague. But I also feel that I have a duty as a member of this committee, and as a Member of the Senate, to satisfy in my own mind, and certainly to establish for the record, if I possibly can, precisely what your position will be insofar as your support of the Special Prosecutor is concerned, what your commitment is, whether or not you will seek to protect him from pressures emanating in the White House, and how far you will go in supporting his actions as they are envisioned in the Charter.

With that prefatory statement, Mr. Chairman, I am ready now to begin my questioning.

The CHAIRMAN. Mr. Jaworski is in the room.

Senator SAXBE. Could I interject at this time that I certainly understand the Senator's attitude and, in fact, I welcome it because I, too, am interested in getting it exactly straight and I think, with Senator Kennedy's questions, we helped to work out some of it. And it is my intention to vigorously support not only Mr. Jaworski but everybody else connected with the Attorney General's office in regard to not only crimes and misdemeanors in the White House but in every other part of this country without any reservation, and it is a covenant that I have made with myself on this thing, that the chips were going to have to fall where they may, regardless of who is involved, whether

they are friends, acquaintances, or recommended by somebody. I am sure there will be and I was the Attorney General in a State of 11 million people for a long time and you get everybody coming in with their hat in their hand, and I am determined to meet this squarely, not on just the White House thing but on all matters. And I am very anxious and willing that it be spelled out in any way you think best.

Now, to the disability which the Senate removed, I understand the Senator's position. I know that he is a student of the law, but I also point out that there is a difference of opinion on this. This week, yesterday or the day before, I received a letter completely volunteered from Arthur J. Goldberg, exchanging pleasantries and he says in the second paragraph:

I have delayed somewhat in sending this letter because I was awaiting your confirmation by the Senate. I have no doubt it will be forthcoming. But, I regret it has been delayed because of what I regard to be a most inconsequential constitutional question.

And so there is a difference of opinion by men learned in the law.

Now I have had the attitude all the way through this that if I was destined to be Attorney General that things would work out, and if I am not, it is just as well.

Senator BYRD. Well, I think you are destined to become Attorney General, Mr. Saxbe. But so far as I am concerned, I am not the slightest persuaded by Mr. Goldberg, although I respect his knowledge of constitutional law. But, with the statement that you have made, I think that you have prepared yourself to answer the questions which I shall ask, and I trust that you will indulge my questions and show your usual candor and patience. And if you can come through with firm answers to my questions, I believe you will have satisfied a good many Members of the Senate in this area.

Now, Mr. Chairman, would I be asking too much——

The CHAIRMAN. Let us have order please.

Senator BYRD [continuing]. Would I be asking too much to request that Mr. Jaworski come forward and take a seat at the table?

The CHAIRMAN. Mr. Jaworski, sit at the table, please, sir.

Senator BYRD. Mr. Chairman, I am embarrassed, really, to ask whether or not both witnesses should be sworn? Would there be any objection?

Mr. JAWORSKI. None whatsoever on my part, Senator.

The CHAIRMAN. Stand up, please.

Do you both swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Senator SAXBE. I do.

Mr. JAWORSKI. I do.

**TESTIMONY OF WILLIAM B. SAXBE, U.S. SENATOR FROM OHIO,
NOMINEE TO BE ATTORNEY GENERAL, AND OF LEON JAWORSKI,
SPECIAL PROSECUTOR**

Senator BYRD. Mr. Jaworski, permit me to say to you, by way of explanation, I asked the chairman to inquire, only within the hour, if you could present yourself here today. May I say, incidentally,

that I looked upon your appointment 6 weeks ago with great suspicion. I felt that if the Executive could employ you, it could fire you—which it can—and I felt that your employment by the executive branch meant the executive branch would again be investigating itself. Yet, I have been pleasantly surprised during the 6 weeks that have passed, and I have watched with admiration the courage and independence that you have displayed. I have been reassured also by the fact that the Special Prosecutor's force has remained intact under your guidance, and I have also heard, with satisfaction, some of the things that reportedly have been said by the Prosecutor's force regarding your supportiveness in their continuing efforts. I especially want to congratulate the young lady who interrogated Rose Mary Woods the other day in court. And I am encouraged greatly by your public statements that you will secure, you will seek to secure, through the judicial process, any evidence that you feel is necessary for the effective and fair and objective prosecution of any crimes that may have been committed by anyone.

Having said that, I think it only remains for me to say that I want you to continue to pursue your duties as you have set out thus far upon your course. You have a reputation that is as important to you as our own reputation is to any of us who are sitting in the legislative branch. It is also very important, in my estimation, that you have the complete support of the Attorney General and that you positively know you have the support of the Attorney General in your effort, which will require continuing courage. It is for these reasons that I have asked the chairman—and appreciate very much his acquiescence to my request—that you appear before the committee at this time. I was not here when you were before the committee previously—on previous occasions—and I apologize to you for the request which came to you today without warning.

Mr. JAWORSKI. Not at all, Senator. I am glad you asked me to come.

Senator BYRD. I would like first to read Justice Brandeis' dissent in the *Olmstead* case on the use of wiretap evidence in a prosecution under the Prohibition Act:

Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in administration of the criminal law the need justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine, this court should resolutely set its face.

I think, Mr. Saxbe, and Mr. Jaworski, that this attitude must be the cornerstone of the investigation of the Watergate case and all of the related aspects. And to this end, the facts, and all of the facts, ought to be brought to light and must be brought to light to insure the American people that their Government is a Government of law and not a Government of men. And that those who operate outside the law, no matter how high a station in life or in government they may possess, must be answerable to the law.

Senator Kennedy has referred to the Charter which was hammered out by Mr. Richardson in his appearance before this committee, with the advice and assistance of the committee. I think it is important that that Charter be read paragraph-by-paragraph at this time, because we are about to confirm an Attorney General of the United States at a most critical time in our country's history. I wish that he were not a Senator. My task would be much easier. But I have faith in Bill Saxbe, that he recognizes the problem that I have and the problems that other Members of this committee and in the Senate have, in approaching this matter. I most surely think we will be held to account if we were to deal with Mr. Saxbe more tenderly than we would deal with any other nominee, any other person who might have appeared before this committee as a nominee for the office of Attorney General.

Mr. Robert H. Bork, Acting Attorney General, reinstated the Office of Special Prosecutor and reinstated in the Federal Register in November, the Charter which had been outlined in the course of the hearings on the nomination of Mr. Richardson, but with certain amendments to that Charter.

[The amended guidelines for the Special Prosecutor, dated November 2, 1973, as published in the Federal Register of November 7, 1973, follow:]

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

[Order 551-73]

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part O of Chapter I of Title 20, Code of Federal Regulations, is amended as follows:

1. Section 0.1(a) which lists the organization units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of Criminal Justice."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

SUBPART G-1—OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

Sec.

0.37 General functions.

0.38 Special functions.

AUTHORITY: 28 U.S.C. 509, 510, and 5 U.S.C.

SUBPART G-1—OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

§0.37 General functions

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix below which is incorporated and made a part hereof.

§0.38 Specific functions

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities.

Dated: November 2, 1973.

ROBERT H. BORK,
Acting Attorney General.

APPENDIX—DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor. There is 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. 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, 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.

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.

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.

[A further amendment to the guidelines for the Special Prosecutor, dated November 19, 1973, as published in the Federal Register of November 28, 1973, follows:]

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart G-1—Office of Watergate Special Prosecution Force

[Order No. 554-73]

AMENDING THE REGULATIONS ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, the last sentence of the fourth paragraph of the Appendix to Subpart G-1 is amended to read as follows:

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.

Date: November 19, 1973.

ROBERT H. BORK,
Acting Attorney General.

Senator BYRD. I shall begin with "Subpart G-1: Office of Watergate Special Prosecution Force":

GENERAL FUNCTIONS

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix which is incorporated and made a part hereof.

SPECIFIC FUNCTIONS

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this sub-part:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States Attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

Do you see these as among your functions, Mr. Jaworski?

Mr. JAWORSKI. Indeed I do, Senator.

Senator BYRD. Do you have any question, Mr. Saxbe, with respect to that paragraph and its imposition on Mr. Jaworski of his responsibilities as Special Prosecutor?

Senator SAXBE. No.

Senator BYRD. Do you agree that he has the authority to conduct any kind of legal proceedings, civil or criminal, including grand jury proceedings, which U.S. attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings?

Senator SAXBE. I think that is very pointed.

Senator BYRD. And you agree with that?

Senator SAXBE. Yes.

Senator BYRD. Paragraph (b) of "Specific functions":

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority.

Mr. Jaworski, do you see that as your duty and responsibility?

Mr. JAWORSKI. I do, Senator Byrd.

Senator BYRD. And you will pursue to the best of your ability the requirement of that paragraph?

Mr. JAWORSKI. I have undertaken to do so, sir, and I will continue to.

Senator BYRD. Now, Mr. Saxbe, will you support Mr. Jaworski in his sworn duty to carry out the revisions of that paragraph?

Senator SAXBE. I will.

Senator BYRD. Paragraph (c) of Specific Functions:

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005, relating to the immunity of witnesses in congressional proceedings.

How about that paragraph, Mr. Jaworski?

Mr. JAWORSKI. Yes, sir. I certainly intend to continue to follow its mandate as I have done so up to the present time, and will certainly do so in the future.

Senator BYRD. Now, do you share Mr. Jaworski's position, Mr. Saxbe?

Senator SAXBE. I do.

Senator BYRD. Continuing:

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities.

Dated: November 2, 1973.

Signed: Robert H. Bork, Acting Attorney General.

Now, I shall begin to quote the guidelines that were developed in May of this year, to which allusion has already been made.

APPENDIX—DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor.—There is 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.

Mr. Saxbe, do you have any reservations whatsoever in stating before this committee today your full support of the letter and the full intent of that paragraph, insofar as the duties imposed upon Mr. Jaworski are concerned, by that paragraph?

Senator SAXBE. I do not.

Senator BYRD. The paragraph states that:

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—

Do you have any reservations with regard to the words "full authority" Mr. Saxbe?

Senator SAXBE. I do not.

Senator BYRD. Do you understand, Mr. Jaworski, that you do have full authority?

Mr. JAWORSKI. I do, Senator Byrd, and we have undertaken to exercise it.

Senator BYRD. Now, to go to the second clause and tying it in with the lead sentence of the paragraph:

The Special Prosecutor shall have full authority for investigating and prosecuting . . . all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility—

Do you have any reservations in regard to that clause, Mr. Saxbe?

Senator SAXBE. I do not.

Senator BYRD. You have no question but that Mr. Jaworski will have full authority to investigate and prosecute all offenses arising

out of the 1972 Presidential election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility? You have no reservations, no problem with that?

Senator SAXBE. No problem.

Senator BYRD. How about you Mr. Jaworski, will you continue to pursue your duties as imposed upon you by that phraseology with the full knowledge that Mr. Saxbe has assured you of his full support?

Mr. JAWORSKI. I will continue to do so, Senator Byrd.

Senator BYRD. Now, Mr. Saxbe, I proceed with the third question, again linking up the phraseology in the later clause with the leadoff words:

The Special Prosecutor shall have full authority for investigating and prosecuting . . . allegations involving the President—

Do you have any compunctions here, Mr. Saxbe, about giving Mr. Jaworski your absolute full, complete, and total support if in his judgment there are allegations involving the President and his duty requires that he investigate and prosecute those allegations?

Senator SAXBE. I do not.

Senator BYRD. Mr. Jaworski, is it your intent to fulfill your duty set forth in that paragraph?

Mr. JAWORSKI. It is, sir.

Senator BYRD. To the best of your ability?

Mr. JAWORSKI. It is, sir.

Senator BYRD. In other words, you will follow the evidence wherever it goes and if it goes to the oval office and to the President, himself, you will pursue it with all of your vigor?

Mr. JAWORSKI. That is my obligation and I intend to fulfill it; yes, sir.

Senator BYRD. Quoting again:

The Special Prosecutor shall have full authority for investigating and prosecuting . . . allegations involving . . . members of the White House Staff, or Presidential appointees—

Will you pursue that with full vigor, Mr. Jaworski, and without fear or favor?

Mr. JAWORSKI. Senator Byrd, we have been pursuing that without any exception and we intend to continue to do so.

Senator BYRD. Mr. Saxbe, is your intent to fully support Mr. Jaworski in his fulfilling of his duties under this clause?

Senator SAXBE. It is.

Senator BYRD. And you will not attempt in any way to interfere with his efforts in regard to the investigation and prosecution along any of these lines?

Senator SAXBE. No. It has been my intention at all times that Mr. Jaworski shall operate completely independent, and the only time that I will see him is when he wants something from me.

Senator BYRD. The Special Prosecutor shall have full authority for investigating and prosecuting all of the foregoing that I have referred to

and any other matters which he consents to have assigned to him by the Attorney General.

Does this give you any problem, Mr. Saxbe? Will you support Mr. Jaworski in this?

Senator SAXBE. It gives me no problem.

Senator BYRD. In carrying out his responsibilities under this clause?

Mr. JAWORSKI. May I say, Senator Byrd, that we have accepted some matters that were assigned to us, it might be said, by the Acting Attorney General. At least a request was made that we undertake them, and it was an area of the ITT investigation that left some question as to whether it was really within our jurisdiction or not. It was discussed between Mr. Bork and me, and we have assumed full authority for it.

Senator BYRD. Do you understand the word "consent" to mean that you have flexibility to consent or not to consent to the assigning to you by the Attorney General of "any other matters"?

Mr. JAWORSKI. I think it does imply that, of course. But I will say to you, Senator Byrd, that in any instance where we feel that the subject matter falls within the ambit of what our responsibilities are, we are not going to hesitate to accept jurisdiction, as was true in the ITT matter, for example.

Senator BYRD. Very well. Now:

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;

Do you recognize, Mr. Saxbe, that the Special Prosecutor has full authority in this regard?

Senator SAXBE. Yes. I consider it as a great advantage to going into the office over there, that this does fall this way, because it would give me the opportunity to pull together the necessary things for the management of the Justice Department without requiring a tremendous amount of time that would be spent in this area.

Senator BYRD. You have no question, though, that with respect to the above matters that were included in the leadoff paragraph, that the Special Prosecutor has full authority to conduct such proceedings?

Senator SAXBE. No, and I welcome it.

Senator BYRD. Do you recognize your full authority, also, Mr. Jaworski?

Mr. JAWORSKI. I do. Yes, sir.

Senator BYRD. And you intend to carry it out?

Mr. JAWORSKI. Yes, sir. It is coincidental, but this morning I asked Judge Sirica for the impaneling of another grand jury. There are so many matters that we have presented, that we feel the need of it, and I am sure that he will appoint a grand jury this morning.

Senator BYRD. OK. Proceeding to the next clause in the bill of particulars:

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

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

Do you recognize that you have that full authority, Mr. Jaworski?

Mr. JAWORSKI. Yes, sir, Senator Byrd. I think I can say—in fact, there is no reason why it should not be stated publicly, certainly to this committee—that I will have a representative from my office in the White House going through files. This will all be done under very

careful scrutiny. But there are a number of files that need examination, and a number of documents we are interested in and those files are being made available to us, and we intend to search for each document which we believe is in existence and which we feel we should have.

[The committee subsequently received the following letter from Mr. Jaworski:]

SPECIAL WATERGATE PROSECUTION FORCE,
U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., December 19, 1973.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In testifying before the Committee with then Attorney General-designate Senator Saxbe on December 12, 1973, I inadvertently indicated that at that time a representative from my office was searching White House files for evidence relevant to our investigations. (Transcript p. 52) In fact, although the procedures for the search had been agreed upon prior to my testimony, the search did not begin until later because of the need of obtaining security clearance for Mr. Breyer.

I noticed this error when correcting the transcript forwarded to me by the Committee. I have corrected the transcript to clarify the situation as it existed at the time of my testimony. Since this change is in part substantive, I thought it proper to bring it to your attention.

Sincerely,

LEON JAWORSKI,
Special Prosecutor,

Senator BYRD. Mr. Saxbe, you have no intention to attempt to interfere with the full authority of the Special Prosecutor in this regard?

Senator SAXBE. I do not.

Senator BYRD. Continuing:

In particular, the Special Prosecutor shall have full authority . . . for:
Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Do you recognize your full authority, Mr. Jaworski, and do you assure this committee, based upon your honor and your good name, that you will fulfill, to the very best of your ability, the thrust of that paragraph?

Mr. JAWORSKI. I do, sir.

Senator BYRD. Mr. Saxbe, would you have any intention now or in the future to attempt in any way to interpose yourself, your office, or your command, or to intervene in any way, between the carrying out by Mr. Jaworski, or any Special Prosecutor, of his obligations under that paragraph, and I will read it again:

In particular, the Special Prosecutor shall have full authority . . . for:
Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Senator SAXBE. No, I have no reservation on that.

Senator BYRD. And you would not attempt to interfere with the responsibility of the Special Prosecutor as stated clearly in that paragraph?

Senator SAXBE. That is correct.

Senator BYRD.

In particular, the Special Prosecutor shall have full authority . . . for:
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;

Do you have any compunctions, Mr. Jaworski, in carrying out your responsibility under that paragraph?

Mr. JAWORSKI. I have none, Senator.

Senator BYRD. Senator Saxbe?

Senator SAXBE. No, sir.

Senator BYRD. You have no compunction and you will support Mr. Jaworski in his efforts?

Senator BYRD. I will.

In particular, the Special Prosecutor shall have full authority . . . for:
Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Mr. Jaworski, do you have any compunctions or any inhibitions against doing this to the full letter and intent of the paragraph and to the extent of your full vigor and ability?

Mr. JAWORSKI. I intend to do so, yes, sir.

Senator BYRD. Senator Saxbe, do you assure this committee that you will in no way attempt to interfere with Mr. Jaworski in the carrying out of that requirement that I have just read?

Senator SAXBE. I have no reservation.

Senator BYRD.

In particular, the Special Prosecutor shall have full authority . . . for:
Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within its jurisdiction (whether initiated before or after his assumption of duties), including all appeals;

Are there any questions, Mr. Jaworski, with respect to that paragraph? Do you intend to pursue that paragraph and the requirements of it to the best of your ability, to your complete ability, and without reservation?

Mr. JAWORSKI. I intend to, yes, sir.

Senator BYRD. Mr. Saxbe, will you support Mr. Jaworski in his carrying out of his responsibility under that paragraph without reservation?

Senator SAXBE. I will.

Senator BYRD.

In particular, the Special Prosecutor shall have full authority . . . for:
Coordinating and directing the activities of all Department of Justice personnel including United States Attorneys;

Mr. Jaworski, what is your interpretation of that paragraph?

Mr. JAWORSKI. Well, it has not been frequently exercised but, in fact, if we want it, if our office—

Senator BYRD. Mr. Chairman, may we have better order in the hearing room?

Senator HART [presiding]. Those who are guests will please attempt to avoid distractions. And I think it would help, Senator Byrd, if our witnesses would speak into those microphones.

Senator BYRD. Thank you, Mr. Chairman.

Mr. JAWORSKI. Thank you, Senator. We do have the jurisdiction to ask U.S. attorneys to withhold action and for the jurisdiction over that particular matter to be placed and left in our hands. And in instances where the U.S. attorney proceeds with the prosecution, as is true, for instance, in the New York Vesco case, the U.S. attorney really is acting subject to our direction, if we choose to exercise it. And in

that particular case that I just mentioned, the Vesco case, we are keeping up with developments very closely and should it become necessary for us to take a particular, or participate in some respects, take particular action, and perhaps even give some specific direction, we would do so. We would have the authority, Senator Byrd, under that provision.

Senator BYRD. Well, I will repeat it again :

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

referring to the leadoff paragraph, the all-encompassing generalized phraseology,

full authority with respect to the above matters for :

Coordinating and directing the activities of all Department of Justice personnel, including the United States attorneys ;

Does this give you any problem, Mr. Saxbe, this paragraph ?

Senator SAXBE. There is none.

Senator BYRD. You do not question the authority of Mr. Jaworski in this area ?

Senator SAXBE. No. It is my understanding in the whole approach to this section of law that these rules, that every effort will be made by the Justice Department to cooperate with the Special Prosecutor and that would mean the several thousand attorneys over there that might be able to contribute something could, if necessary, be called upon.

Senator BYRD. In particular, and this is the last of the bill of particulars:

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

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.

Do you understand, Mr. Jaworski, in agreeing to this area of the guidelines, that it is intended for you to have full authority to deal with and appear before congressional committees having jurisdiction over any aspect of this whole matter ?

Mr. JAWORSKI. Yes, sir.

Senator BYRD. You have no——

Mr. JAWORSKI. I have no qualms about it.

Senator BYRD. No qualms about coming before the appropriate committees or asking to come before the appropriate committees in order to fulfill the requirements of this paragraph ?

Mr. JAWORSKI. None at all and I would do so.

Senator BYRD. Mr. Saxbe, would you intend in any way to inhibit Mr. Jaworski from doing so ?

Senator SAXBE. I would not.

Senator BYRD. "In exercising this authority" meaning all of the foregoing 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.

Mr. Saxbe, how do you interpret the word "consistent" as it is used in this context ? And may I read it again. I know you are fully con-

versant with this paragraph, but for the convenience of the record, let me read it again:

"In exercising this authority" all of the foregoing, the bill of particulars, "the Special Prosecutor will have the greatest degree" not great degree but 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."

Senator SAXBE. I think this means exactly what it says, that "consistent" is a word of art and means that if something is not in violation of the statutory provisions of the Attorney General's office, that it is vested with the Special Prosecutor. These go on, as you know, to several volumes of the United States Code, the duties and obligations of the Department of Justice, and it is used only for a purpose of pulling them together so that they do not have to all be restated.

Senator BYRD. What do you see as your statutory accountability as Attorney General, Mr. Saxbe? What do you see as your "statutory accountability" with which the Special Prosecutor's independence would have to be consistent?

Senator SAXBE. The statute, and as I say there are several volumes, sets out that the Attorney General shall do this, the office of Attorney General shall prosecute, the office of the Attorney General shall bring this action, shall bring that action. Those are directions and limitations on the Attorney General and the Special Prosecutor could do nothing that exceeded those limits or authorization.

Senator BYRD. In response to the same question—in essence, the same questions from me—Mr. Richardson said this:

Let me just say for myself, Senator Byrd, that I know very well what this language means and the language reflects the understanding I have with Mr. Cox. I would not demand information under any foreseeable circumstances because I would be aware that I had already made clear that this was not the reserved right that I intended to maintain. The phrase "statutory accountability" is designed to fulfill a narrower function, primarily to avoid the necessity for an amendment of the law and make it possible through the exercise of the statutory role of the Attorney General to make the delegations of authority that are set forth here.

I might summarize the elements of statutory accountability, and I see them under five headings.

Now these are the five headings as were enumerated by Mr. Richardson:

The first is the appointment of the Special Prosecutor himself. The second is the delegation to him of the full authority set forth in these guidelines. The third is the provision to him of any backup of his authority that the Attorney General in the exercise of his own statutory functions can provide. The fourth is the provision of administrative and staff support; and the fifth and last is the reserve power of removal which is expressed here as subject only to extraordinary impropriety on the part of the Special Prosecutor.

[Pages 149–150 of the printed hearings on the confirmation of Elliot Richardson to be Attorney General.]

This is the interpretation that was made by Mr. Richardson of the phrase "statutory accountability." Would you subscribe to Mr. Richardson's definition of that phrase?

Senator SAXBE. Yes, but I take a much broader view. I think the statutory authority extends to a great many things that existed long

before the Special Prosecutor was established. And the Special Prosecutor is bound by those just as the Attorney General is bound. But, I see nothing inconsistent with what he said.

Senator BYRD. Well, taking your broader definition, Mr. Saxbe, do you see anything in the statute that would be inconsistent with the requirements that are placed on Mr. Jaworski by the guidelines?

Senator SAXBE. No; I do not see anything inconsistent. I think there are certain limitations, for instance, on wiretaps. I do not think that Mr. Jaworski could authorize wiretaps.

Senator BYRD. But the guidelines do not give him the authority to authorize wiretaps.

Senator SAXBE. No. That is what I am talking about and such an authority would be inconsistent.

Senator BYRD. Well, but no such authority is in the guidelines. Do you see any inconsistency between the authority and the responsibility placed upon Mr. Jaworski by the guidelines—

Senator SAXBE. No.

Senator BYRD. And the statutes for which you have statutory accountability?

Senator SAXBE. No; I do not. As I say, there are volumes on this but I do not see, and I am sure that Mr. Jaworski is just as aware of this as I am, and has and will continue to operate within that statutory authority and limitations.

Senator BYRD.

The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions.

Do you subscribe to that?

Senator SAXBE. I do.

Senator BYRD. That is a mandate by the guidelines. Do you subscribe to that—that you will not countermand or interfere with the Special Prosecutor's decisions or actions?

Senator SAXBE. That is correct.

Senator BYRD. Do you subscribe to that?

Senator SAXBE. My understanding is he will operate completely independent, and the only time that he will have contact with me is when he wants something that I can provide him.

Senator BYRD. And you will not countermand or interfere with the Special Prosecutor's decisions or actions?

Senator SAXBE. That is correct.

Senator BYRD. You say, "That is correct." That means you will not?

Senator SAXBE. I will not.

Senator BYRD.

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.

Do you understand what your responsibility is and what your authority is under that guideline, Mr. Jaworski?

Mr. JAWORSKI. I do, sir.

Senator BYRD. And do you intend to live up to the guideline and see that it is applied in this regard?

Mr. JAWORSKI. I do.

Senator BYRD. Mr. Saxbe, you are satisfied, are you, that this is the requirement?

Senator SAXBE. I am not only satisfied, I am well pleased.

Senator BYRD. And you have no intention whatsoever, in any manner, shape, or form, of attempting to require the Special Prosecutor to inform or consult with you about the conduct of his duties and responsibilities except when he determines that he should consult you?

Senator SAXBE. That is correct. The last thing I want is to become involved in this investigation. Frankly there is much to be done in the Justice Department and it cannot be done if the Attorney General is involved in this deep investigation.

Senator BYRD. The guidelines, as amended in November by Mr. Bork, proceed as follows:

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 of the Special Prosecutor or to limit the independence that he is hereby given, 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.

Mr. Jaworski, this area of the guidelines is new. It was not in the guidelines that were agreed upon between this committee and Mr. Richardson. And to this extent, I think the amendment is a limitation on those guidelines. This paragraph was later further amended. On November 28, it was further amended by adding the additional words and punctuation:

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.

Now I am concerned about this phraseology. It definitely is a limiting factor, in my judgment. It was not in the original charter that was agreed to among Mr. Richardson, Mr. Cox, and this committee. It was not even in the first amended version that appeared in the Federal Register on November 7, 1973, and it can only have the effect of eroding and limiting the jurisdiction of the Special Prosecutor. It is an erosion of your earlier authority, pure and simple, in my opinion.

What do you understand, Mr. Jaworski, to have been the "assurances given by the President to the Attorney General that the President will not exercise his constitutional power to affect the discharge of the Special Prosecutor or to limit the independence that he is hereby given"?

Mr. JAWORSKI. When the language you last read was called to my attention, I talked with Mr. Bork, the Acting Attorney General, about it and told him that I wondered what was meant by that language, that there was a feeling on the part of some that it might—well, as you have expressed it, Senator Byrd—be construed as limiting our jurisdiction. And he told me that the use of the word "jurisdictional" was very unfortunate, that he really did not intend to use it in the sense in which it appears in that language, and what he really meant was independence instead of jurisdiction. He promptly wrote me a

letter to that effect and the letter, I think, was publicized, it is my recollection. I know that he, in this letter, said that he wanted to reassure me that it was not intended at all to constitute any sort of limitation on the exercise of my authority as heretofore stated.

Senator BYRD. So Mr. Bork was saying to you he had intended the word "independence" rather than the word "jurisdiction"?

Mr. JAWORSKI. Yes, sir.

Senator BYRD. Do they both not mean the same thing, depending on who wishes to interpret them? If I wanted to limit your jurisdiction, I would just as soon limit your independence. As a matter of fact, if I were to limit your independence, I would probably be placing a greater limitation on you than I would by limiting your jurisdiction.

Mr. JAWORSKI. What he meant to say, and I am reporting to you what he did say over the telephone, when I received the letter—unfortunately, I do not have a copy of it with me, but I understand that it was reproduced in the Federal Register—when I received the letter, it made it very clear that there was no intent of any kind to either interfere with independence or jurisdiction.

Senator BYRD. That letter did not appear in the Federal Register.

Mr. JAWORSKI. It did not? I am sorry, then. I thought that it would.

Senator BYRD. Then you think it should so appear?

Mr. JAWORSKI. I think it would be well to; yes, sir. It is a letter that I certainly attached some significance to.

Senator BYRD. Do you see any reason why that letter could not be inserted in the Federal Register?

Mr. JAWORSKI. I do not, although I am not an authority on that. But I do not see any reason why it should not be. Certainly, when it makes reference—

Senator BYRD. Would you submit the letter to this committee for its inclusion in the hearing?

Mr. JAWORSKI. Indeed so.

Senator BYRD. What do you think is meant by "assurances given by the President"?

Mr. JAWORSKI. Senator Byrd, I previously undertook to tell this committee in detail what happened, and I am pleased to have the opportunity to tell you about it, because you were not present at the time. But what occurred is at the time I was seeking all of the independence that I could think of. I had the assurance given me by General Haig, and I will tell you in a moment—

Senator BYRD. Would you speak a little louder, Mr. Jaworski?

Mr. JAWORSKI. Yes. And I will state in a moment the course of events as they occurred. But when General Haig and I came to an understanding, as far as I was concerned, an understanding that he was to present to the President and the President was to approve it or reject it, it included, as agreed upon, my unrestrained right to resort to judicial process.

Senator BYRD. Is this in writing?

Mr. JAWORSKI. No, sir. It has been, I think, publicly stated by the President since then in one of his conferences or public statements.

Senator BYRD. What has he stated?

Mr. JAWORSKI. That I would have the right to file suit.

Senator BYRD. The President has said that?

Mr. JAWORSKI. Yes. It is my understanding that it was said. In fact, I think I may have heard it. I did not hear that entire conference, but it was stated in that. And, in addition, there was set up, as you know, this—

Senator BYRD. Well, this phraseology, refers to assurances given by the President to the Attorney General.

Mr. JAWORSKI. That is correct.

Senator BYRD. Now what—

Mr. JAWORSKI. And I am trying to detail, or have undertaken to detail, the assurances that were given to me before I accepted the assignment, Senator.

Senator BYRD. The assurances given to you by whom?

Mr. JAWORSKI. Given to me by General Haig after reviewing them with the President and coming back and saying the President had agreed to them. Now, after that, the matter was again reviewed in the presence of Senator Saxbe and Mr. Bork, not only what I had detailed with respect to the right to resort to judicial process, but also the right to come to the congressional committee that you are aware of, in the event that an impasse should occur between the President and me and Mr. Saxbe. Senator Saxbe at that time assured me that should he become Attorney General, he would abide by that, and Mr. Bork agreed to it, too.

Senator BYRD. Would you supply for the record the assurances which you were given by Mr. Bork, Mr. Haig, and by Mr. Saxbe?

Mr. JAWORSKI. I will do so, yes, sir.

Senator BYRD. Did you have the understanding that, in receiving these assurances from General Haig and Mr. Bork, they were assurances that had been given by the President?

Mr. JAWORSKI. That was my understanding. And now, how Mr. Bork received that information, I am not aware of, but I recall that Senator Saxbe mentioned that he had talked with the President. And, as I mentioned, Senator Saxbe agreed to this. But I will, as you have asked, I will supply in writing these assurances for the committee so that they can be made a part of the record.

Senator BYRD. Very well.

[Subsequently Mr. Jaworski supplied the following material for the record:]

OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C., November 21, 1973.

LEON JAWORSKI, Esq.,
Special Prosecutor,
Watergate Special Prosecution Force,
Washington, D.C.

DEAR MR. JAWORSKI: You have informed me that the amendment to your charter of November 19, 1973 has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973 was intended to be, and is, a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Com-

mittees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Sincerely,

ROBERT H. BORK,
Acting Attorney General.

WATERGATE SPECIAL PROSECUTION FORCE,
U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., December 19, 1973.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In the course of my testimony before the Senate Judiciary Committee, Senator Byrd requested me to furnish the Committee a written summary of my understanding of the arrangement made with the President through General Haig (and confirmed by Acting Attorney General Robert H. Bork and Attorney General-nominee, William B. Saxbe) regarding the independence I was to have in serving as Watergate Special Prosecutor. I agreed to do so and the statement below is made in compliance with my promise.

It was expressly confirmed that I was to proceed in the discharge of my responsibilities with complete independence, including the right to sue the President, if necessary, and that if an impasse occurred between us, the President would not discharge me or take any action that interfered with my independence without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and obtaining a consensus view that accorded with his proposed action.

Sincerely yours,

LEON JAWORSKI,
Special Prosecutor.

Senator BYRD. Mr. Chairman, it is my understanding that there is a desire to recess the committee now over until 2:30.

Senator HART. As Chairman Eastland left it was his suggestion, and I think that given the time we have held these witnesses to this moment it would make sense to recess now until 2:30.

Senator BYRD. I agree, Mr. Chairman.

Senator COOK. Mr. Chairman?

Senator HART. Senator Cook?

Senator COOK. Mr. Chairman, I wonder if I might be able to make a short statement—

Senator HART. But we can excuse the witnesses.

Senator COOK. If I might make a statement right at 2:30? I do have a conference committee this afternoon and I wonder if I might do so, so that I can leave?

Senator BYRD. And I understand that following Senator Cook, I shall continue with my questions?

Senator HART. Yes.

[Whereupon, at 12:35 p.m., the hearing was recessed to reconvene at 2:30 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. Let's have order, please.

TESTIMONY OF HON. MARLOW W. COOK, U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator COOK. Mr. Chairman, I would like to thank the Senator from West Virginia for giving me the opportunity to make a short statement for the record. I am due at a conference committee in the Capitol and I will proceed.

Mr. Chairman, I find it very difficult to be formal with Bill Saxbe, I have to confess. Bill and Dolly Saxbe are the finest and closest friends that Nancy Cook and I have gained since we came to Washington in 1969. We have as families been together on many, many occasions.

Other than Bill's ability to be a used car salesman and his unfortunate attitude toward the Ohio River and the Commonwealth of Kentucky, I find him one of the most honest and one of the most refreshing men in the United States today. He is blunt. He is completely frank. He has a mind that is quick to analyze and is sometimes instantaneous to reply.

I feel he has assumed this job and the responsibility of it, if it is the desire of the Senate to confirm him, because of his deep commitment to the law and to his profession. I know that he feels that the profession has been deeply hurt by past disclosures of activities. I feel that it is his commitment to restore integrity to a profession that he has an uncompromising love for, and a dedication to, that he finds himself in this position today, Mr. Chairman. He spoke and made his decision to leave the U.S. Senate and go back to Ohio and practice law. The President asked him to assume the responsibility, and he has accepted that challenge as any man would.

Mr. Chairman, this individual shall miss him and the Senate shall miss him in his present role. However, the country will find him a welcome and honest and forthright Attorney General.

Mr. Chairman, they will find him a man who under no circumstances will ever cut and run.

I want to congratulate him for this appointment and I look forward to working with him in the position that he shall assume.

Senator SAXBE. Thank you very much.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Byrd.

Senator BYRD. Thank you, Mr. Chairman.

Senator COOK. Would the Senator from West Virginia yield for one moment?

Senator BYRD. Yes.

Senator COOK. I have a statement that I would like to submit for the record that was given to me by the Senator from Hawaii and I ask that it be made a part of this proceeding.

The CHAIRMAN. It will be made a part of the record.
[The statement referred to follows:]

STATEMENT OF SENATOR HIRAM L. FONG ON NOMINATION OF SENATOR WILLIAM B. SAXBE TO BE ATTORNEY GENERAL OF THE UNITED STATES

I congratulate you on your nomination to be Attorney General.

Having managed the bill which drastically reduced the salary of the Attorney General from \$60,000 to \$35,000 a year and having argued on the Senate floor the constitutionality of such action so that your nomination could be sent to the Senate by the President, I am more than satisfied that your appointment and assumption of the Office of Attorney General, at this time, is constitutional.

You will assume your office with the emolument identical to what it was when you began your term of office as Senator. There is precedent for such action in the nomination and confirmation of Senator Morrill in 1876 to be Secretary of the Treasury and in the nomination and confirmation in 1909 of Senator Knox to be Secretary of State. In these instances, the emolument was increased during the respective senatorial terms, then reduced to what it had been and thereafter, they were nominated and confirmed to cabinet offices and served as such.

After having served with you in the Senate for the past 5 years, I am confident you have the temperament, the ability, the experience, and the integrity to be an effective and outstanding Attorney General.

I wish you great success and Godspeed in your new undertaking.

TESTIMONY OF HON. WILLIAM B. SAXBE, U.S. SENATOR FROM
THE STATE OF OHIO, NOMINEE TO BE ATTORNEY GENERAL, AND
OF LEON JAWORSKI, SPECIAL PROSECUTOR—Resumed

Senator BYRD. Mr. Jaworski, earlier, prior to the recess, we discussed the phrase that I read into the record that was extracted from Mr. Richardson's statement, the phrase "statutory accountability."

Are you satisfied with Senator Saxbe's responses to my questions as to his interpretation of that phrase?

Mr. JAWORSKI. Yes, sir.

I feel as he does that there are certain things that our office would not have the right to do. There are certain guidelines that we must observe, just as the members of the Attorney General's Department and the Justice Department must observe. Obviously I would want to observe those.

He cited an example which I think is probably a good one. I can think of one or two others. Certainly we would undertake and abide by those. I do not think that impinges on anything I spoke of.

Senator BYRD. You see no inconsistency with what Senator Saxbe said as against the mandate and guidelines?

Mr. JAWORSKI. I do not, sir.

Senator BYRD. You also indicated that you would supply for the record a letter addressed to you from Robert H. Bork, Acting Attorney General, with respect to the amendment of the guidelines.

You have supplied me with that letter. I will read it into the record.

NOVEMBER 21, 1973.

LEON JAWORSKI, Esq.,
Special Prosecutor, Watergate Special Prosecution Force, Washington, D.C.

DEAR MR. JAWORSKY: You have informed me that the amendment to your charter of November 19, 1973 has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973 was intended to be, and is, a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the Majority and Minority leaders and chairman and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Signed ROBERT H. BORK,
Acting Attorney General.

Does this letter fully satisfy you as to your independence and as to the "assurances given by the President" that he "will not exercise his Constitutional powers" either to discharge you or limit your independence without first consulting the Majority and Minority leaders, and others?

Mr. JAWORSKI. Senator Byrd, this is in line with what I sought. I will be entirely candid and say to you that I sought the maximum of what I could think of at the time, and if I could have thought of some other safeguards, I would have asked for them.

I think the matters that you have covered today have been clarifying, and certainly it nails down some matters that someone might have had some doubt about or might have questioned.

I personally have proceeded—I hope I have not been naive—I personally proceeded on the theory that I had complete independence. I will say that I have certainly exercised it in several respects, and no one has undertaken to call my hand. If it should come to pass that someone should and I thought that I was right, I would come to consult the committee that has been set up for such purposes.

Senator BYRD. Say that again.

Mr. JAWORSKI. If anyone should disagree with me as to what I am doing, particularly the President, if he should disagree and I felt that I was within my responsibility, carrying out the functions of my office, I would not hesitate to come to the committee that has been set up and report to them for the purpose of their knowing exactly what the situation was so that the impasse could be resolved, if possible.

Senator BYRD. Would you also not hesitate, as Professor Cox did not hesitate, to call a press conference and make known to the people of this Nation the fact that you were being asked—if you were being asked—to do what, in your conscience, you could not do?

Mr. JAWORSKI. I would make it known. This does not relate to my right to go to court. I would do that without even calling a press conference or going anywhere. I think if I conclude that it is necessary for me to resort to the judicial process, I have been assured that I will have that avenue open to me. I intend to exercise that regardless of what disagreement may arise.

Senator BYRD. If later, if the word is conveyed to you through the Attorney General or otherwise that you no longer have that assurance, will you still pursue the judicial process of securing evidence from the White House with regard to any individual or group of individuals?

Mr. JAWORSKI. I would not hesitate at all. I would indeed sir.

Senator HART. Would the Senator from West Virginia permit me one question?

Senator BYRD. Yes.

Senator HART. Do I understand, Mr. Jaworski, that if disagreement developed between you and anyone, including the President, with respect to, for example, your jurisdiction to pursue an inquiry or otherwise, while you might come and consult the congressional leadership committee provided for in the regulations, even if that congressional leadership committee by a consensus disagreed with you, you would not feel that would bar you from pursuing the question in court?

Mr. JAWORSKI. If it related to a question in court, Senator Hart, I would proceed without coming to the committee. I would feel that I had that right to resort to the judicial process. If it related to some matter, some area that does not relate to my going to court, then I would come to the committee if an effort were made either to hamper me or if I received instructions, directions not to proceed in that course.

Senator HART. Thank you, Senator.

Senator BYRD. Thank you.

If you feel, Mr. Jaworski, that your jurisdiction is being limited or that you are being asked to limit your jurisdiction as set forth under the guidelines, would you feel free to come before that ad hoc committee which is mentioned in the guidelines, as well as before this committee to make your case? You would have no inhibitions about going public with such a problem if it should arise?

Mr. JAWORSKI. None whatever.

Senator BYRD. Do you, in view of the clarifying letter of November 21, 1973, written by Mr. Bork, feel any uneasiness or any insecurity whatsoever regarding the authority that has been outlined in the guidelines and wherein your duty lies?

Mr. JAWORSKI. No, sir, I do not.

Senator BYRD. Then the amendment of the guideline which was first published in the Federal Register on November 7, and the subsequent amendment of the amendment, which was published on November 28, cause you no problem? It gives you no concern? It leaves you no area of uncertainty, with the letter from Mr. Bork as a clarification thereof?

Mr. JAWORSKI. Yes, sir, they do not. I feel that way about it. I should perhaps add that when I talked to Mr. Bork about the matter, he responded immediately that he did not intend for the wording to be as it was. He said that he would write a clarifying letter immediately. In other words, I did not have to argue the matter. He offered to do it.

Senator BYRD. Paragraph 1 under "Staff and Resource Support" is "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 the United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

Thus far, have all personnel under the Department of Justice, including the U.S. Attorneys, cooperated to the fullest extent possible with you, Mr. Jaworski?

Mr. JAWORSKI. I have had no difficulty whatsoever.

Senator BYRD. Do you understand that you have full authority, and has it been made clear to you that you do have full authority, and has that full authority been questioned at any time with respect to the organization, selection and hiring of your staff of attorneys, investigators, and supporting personnel on a full or part time basis and in such numbers and with such qualifications as you so reasonably require?

Mr. JAWORSKI. It has not been questioned, Senator Byrd. I have exercised my free thinking and prerogatives with respect to it.

Senator BYRD. Mr. Saxbe, will the Special Prosecutor have the full authority granted in that paragraph?

Senator SAXBE. He will.

Senator BYRD. 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.

Mr. Jaworski, would you have any hesitation about submitting budget requests for funds, positions, and other assistance, which you deem to be necessary in the carrying out of your responsibilities under the guidelines?

Mr. JAWORSKI. I would have no reticence about requesting it. I have not had to do it so far because this was attended to before I arrived, Senator Byrd. I will certainly do so in the future as the need arises.

Senator BYRD. Senator Saxbe, as far as you are concerned, would any requests from Mr. Jaworski have the highest priority?

Senator SAXBE. Yes.

Senator BYRD. Designation and responsibility:

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

Does that meet with your concurrence, Mr. Saxbe, that the personnel acting as the staff and assistants to the Special Prosecutor shall be responsible only to the Special Prosecutor?

Senator SAXBE. I agree.

Senator BYRD. 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 the duties currently assigned to him.

Does that paragraph give you any problem, Mr. Jaworski?

Mr. JAWORSKI. No problem, sir.

Senator BYRD. Public reports:

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

Mr. Jaworski, do you feel uninhibited and, as a matter of fact, do you feel it is a duty of yours, from time to time, to make public such statements or reports as you deem appropriate?

Mr. JAWORSKI. I do.

I might say, Chairman Eastland asked for a report which I was in the process of drafting. Then there were some occurrences that changed what I would have reported because of some additional developments. I think the letter is going out, but I will report from time to time, and of course, answer any inquiries that this committee or any other appropriate congressional committee may have.

Senator BYRD. Would you have any reluctance from time to time to make public such statements or reports as you yourself deem appropriate?

Mr. JAWORSKI. I certainly will not. You would be the first to recognize that there are many things about which I cannot talk, and have been refraining from.

Senator BYRD. But would you, in terms of the phraseology of this paragraph, from time to time make public such statements or reports as you deem appropriate?

Mr. JAWORSKI. I would, sir.

Senator BYRD. Would you be inclined to interfere in any way, Mr. Saxbe, with the Special Prosecutor in this regard?

Senator SAXBE. I would not.

Senator BYRD. 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 a time mutually agreed upon by the Attorney General and himself.

Mr. Jaworski, is it your intention to carry out these responsibilities with the full support of the Department of Justice until such time as in your judgment you have completed them?

Mr. JAWORSKI. It is, sir.

Senator BYRD. Mr. Saxbe, will the Department of Justice under your leadership supply Mr. Jaworski with the fullest support mentioned in this paragraph?

Senator SAXBE. Yes.

Senator BYRD. Mr. Chairman, I ask unanimous consent to insert in the record—I have already read it into the record—or keep in the committee files the letter to Mr. Jaworski from Mr. Bork dated November 21, 1973.

The CHAIRMAN. Is it already in the record?

Senator BYRD. To my knowledge it is not.

The CHAIRMAN. It will be admitted into the record.

[The letter referred to is printed at pages 34-35.]

Senator BYRD. In Civil Action No. 1954-73, U.S. District Court for the District of Columbia, Ralph Nader, Senator Frank E. Moss, Representative Bella Abzug, and Representative Jerome R. Waldie, Plain-

tiffs, *versus* Robert H. Bork, Attorney General of the United States, Defendant, Judge Cassell rendered a decision declaring on the part of the court that Archibald Cox, appointed Watergate Special Prosecutor pursuant to 28 CFR § 0.37 (1973), was illegally discharged from that office.

How do you view that decision, Mr. Saxbe?

Senator SAXBE. I think that the decision of the court was in error.

Senator BYRD. You think it was in error?

Senator SAXBE. Yes.

Senator BYRD. On what basis?

Senator SAXBE. The powers and the authorities of the original charter did not have any provision which prevented the Attorney General from discharging the Special Counsel. I understand there were various agreements that such would not happen, but I think that the existence of the amended charter is evidence that there was wanting such protection in the original charter, and this case will be appealed and we will have to await the outcome of it.

Senator BYRD. The court said, I quote, "the firing of Archibald Cox in the absence of a finding of extraordinary impropriety was in clear violation of existing Justice Department regulation having the force of a law and was therefore illegal."

Do you feel that there was a finding of extraordinary impropriety on the part of Mr. Cox's actions which would justify the firing?

Senator SAXBE. Obviously there was, whether it is in the record or not I do not know.

Senator BYRD. You have no facts to back that statement up, that there was extraordinary impropriety?

Senator SAXBE. No, sir.

Senator BYRD. You have no facts.

Is it merely an opinion of yours that Mr. Cox was guilty of some extraordinary impropriety?

Senator SAXBE. I think you can only go on the strength of the fact that the Attorney General or Acting Attorney General had the authority on his own determination to fire Mr. Cox. I think he acted on his own determination.

Senator BYRD. Was he not precluded, however, from firing Mr. Cox except for an "extraordinary impropriety"?

Senator SAXBE. I think that was in the charter. He had to find an impropriety, and I think he did. But—

Senator BYRD. The Attorney General did not find that impropriety. The Attorney General resigned. His Assistant resigned. Mr. Bork did not find the extraordinary impropriety. He only carried out the order of the President.

How do you arrive at the conclusion that the Attorney General found an extraordinary impropriety?

Senator SAXBE. You have to base it on the fact that he did proceed to fire him, and that he had the power to do it.

Senator BYRD. But only at the order of the President.

Senator SAXBE. We are talking about what is at issue in the case and what is going to be argued in the Court of Appeals and probably the Supreme Court.

Senator BYRD. The general impression is—I think I can give the public perception pretty accurately—that Mr. Cox was fired because he refused to agree that he would not continue to pursue, through the judicial process, the securing of evidence that was under the control of the White House.

Before this committee, both Mr. Cox and Attorney General Richardson had stated under oath that such evidence would be pursued through the judicial process. Mr. Cox was carrying out his responsibility as he had sworn to carry it out.

Would you consider this to be an extraordinary impropriety?

Senator SAXBE. Whether I consider it that or not is not the issue. It is whether Mr. Bork considered it. That is the whole issue of the case.

Senator BYRD. But there is no indication that Mr. Bork considered it such, or that the firing was done according to his wishes. The indication was, in the public press, that he did not want to do this and that he had considered not doing it. He only carried out the will of the President, as expressed in the President's order to fire.

Senator SAXBE. I have not read the brief in the case. I can only reassert that from the action of Mr. Bork, he based it on the powers which he believed he had.

Senator BYRD. Let us come to this question.

Suppose the President orders you to fire Mr. Jaworski because Mr. Jaworski pursues, through the judicial process, the securing of evidence which is in the control of the White House?

Do you intend to carry out such an order from the President?

Senator SAXBE. I would not attempt to fire Mr. Jaworski, nor would I resign.

Senator BYRD. Suppose you were told to either fire Mr. Jaworski or you were going to get fired, what would your answer be?

Senator SAXBE. The President has the right to fire me any time he wants to for any reason. That is based in the Stanton case.

Senator BYRD. You are stating before this committee, under oath, that you would not fire Mr. Jaworski on the orders of the President, such orders being based solely on the actions by Mr. Jaworski to pursue through the judicial process the securing of evidence from the White House?

Senator SAXBE. Not only that, but I am bound by the consensus agreement in addition to that.

Senator BYRD. Suppose the consensus of the various parties mentioned in the guidelines was to the effect the Special Prosecutor should be removed from his duties, but in your own judgment he was not guilty of any extraordinary improprieties, and that he was doing only what he said before this committee that he would do, and he was trying, through the judicial process, to get evidence—that evidence, in the hypothetical case, being in the possession of someone at the White House.

Would you fire him?

Senator SAXBE. You are going on the assumption that six of the eight would volunteer their advice to me. It says that you have to seek it. Obviously, if I do not think he should be fired I would not seek it. If they volunteer that he should be fired I would not pay any attention to them.

Senator BYRD. There is a coordinating conjunction here, the word "and":

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 the Chairman and ranking Minority Members of the Judiciary Committees of the Senate and the House of Representatives *and* ascertaining that their consensus is in accord with his proposed action.

Suppose the President consults the majority and minority leaders and chairmen and ranking minority members of the Judiciary Committees of the Senate and the House of Representatives and ascertains that their consensus is in accord with his proposed action, but it has not been shown convincingly to you that the Special Prosecutor is guilty of extraordinary improprieties on his part?

It seems to me you cannot do it with one. You have to do it with both of the requirements set forth.

Senator SAXBE. As a practicing attorney, I always ask my witnesses not to answer hypothetical questions.

Senator BYRD. But your witness was not nominated to be Attorney General.

Senator SAXBE. Yes. But you have to make an assumption that the President came to me and said, I want to fire this man. You take it to the eight delegated people. Now, if I felt at that time that he should not be fired I would so express it, and I would probably have been fired before he ever got to Congress.

Senator BYRD. The guideline does not say that the President will ask you to go to these people.

Senator SAXBE. I understand that.

Senator BYRD. The guidelines state "without the President's first consulting the majority and minority leaders."

Why should he not be required to consult them?

These are the guidelines that have been written.

Senator SAXBE. Because this was the way it was written.

Senator BYRD. They were not written at your behest. They have been written with the support and acquiescence of the administration. They establish a responsibility on the part of the President to consult these people himself.

Senator SAXBE. Yes.

Senator BYRD. Why would you not say, Mr. President, according to the guidelines, it is up to you to consult the committee?

Senator SAXBE. Well, as I say, I doubt if I would even be there at that time if I felt strongly that he was getting a bad deal.

Senator BYRD. Why would you not be there?

Senator SAXBE. He would fire me, which he has the authority to do for no reason at all. I do not have any of the protections that Mr. Jaworski has.

Senator BYRD. Suppose he did not fire you?

Senator SAXBE. Sir?

Senator BYRD. Suppose he did not fire you?

Senator SAXBE. I would express my attitude that he should not be fired.

Senator BYRD. The President did not fire Richardson. Richardson resigned.

Senator SAXBE. I have no intention of resigning.

Senator BYRD. That may be the very thing the White House would like most, for you to stay on the job, but to see that you carry out the President's orders to fire Jaworski.

Senator SAXBE. That is your supposition.

Senator BYRD. That is not a supposition.

Senator SAXBE. I have no answer to that.

Senator BYRD. Would you resign rather than carry out an order that you did not believe was ethical or just or fair?

Senator SAXBE. Was not ethical, just, or fair?

Senator BYRD. Yes.

Senator SAXBE. No; I do not think that I should take this job with the idea that I am going to flounce out of there the first time that things do not go the way I think they should go, or somebody wants me to leave. The President has the authority to fire me at any time.

Senator BYRD. There is no question about that.

Senator SAXBE. Therefore, if things go badly I would expect that he would do just that. But—

Senator BYRD. You have not answered my question.

Senator SAXBE. All right.

Senator BYRD. Would you resign rather than carry out an order that, in your judgment, was not fair, was not ethical, and was not just?

Senator SAXBE. No; I would not carry out the order, either.

Senator BYRD. You would make the President fire you?

Senator SAXBE. Absolutely.

Senator BYRD. Despite all the protections given to the Special Prosecutor by the guidelines in the Federal Register, is it not true that all of these could be swept away by a revocation of the order in the Register, or by amendments to the order defeating the purpose of the original guidelines, Mr. Jaworski?

Mr. JAWORSKI. I had not thought of it in those terms. I assume if somebody wanted to do so he could. He would have to go further. He would also have to violate an understanding and an agreement that I had. But I assume it could be done.

Senator BYRD. How do you feel about that, Mr. Saxbe?

Senator SAXBE. If they removed everything in there, I would stand by my word of what I have said here today.

Senator BYRD. Who would have to revoke or amend the order?

Would the Attorney General have to do that, or could someone else revoke or amend these guidelines?

Senator SAXBE. I do not believe that anyone but the Attorney General could do it.

Senator BYRD. In your judgment, could anybody else do it, Mr. Jaworski?

Mr. JAWORSKI. No, sir.

Senator BYRD. If the President or one of his top aides asked you to revoke the guidelines, what would you do, Mr. Saxbe?

Senator SAXBE. I would say I was bound by my word not to.

Senator BYRD. If the President or one of his top aides asked you to amend the guidelines, what would you do?

Senator SAXBE. The only way I would amend the guidelines is by agreement with Mr. Jaworski and by consultation with the committee that put them together.

Senator BYRD. Mr. Jaworski, have you ever been asked to promise to resign if you feel that the executive branch is attempting to manipulate the Special Prosecutor for the protection of individuals in the executive branch?

Would you resign if you thought that the executive branch was attempting to manipulate you or to circumvent or restrict or limit your jurisdiction for the protection of individuals in the executive branch?

Mr. JAWORSKI. Senator Byrd, if that came to pass I would first come to the congressional committee and state my views to them. If I felt that I was acting within my authority and that it was really my responsibility to go forward, and I felt strongly about it and the congressional committee would not back me up, I would resign.

Senator BYRD. What congressional committee?

Mr. JAWORSKI. I had in mind the committee that was set up for the purpose of taking my grievances in the event an impasse is reached between the President and me.

Senator BYRD. Would you also include the Judiciary Committees of both Houses?

If not, why not?

Mr. JAWORSKI. I think that is a good question, Senator.

Senator BYRD. Would that not give you some additional comfort, reassurance, and backing?

Mr. JAWORSKI. It would give me a lot of comfort. It certainly would, if I came before this committee and told them what the problem was and the committee felt I was right. Of course, it would answer the problem. I would just stand by without resigning.

Senator BYRD. Does this committee have your assurance that you will do that in the event such a contingency arises?

Mr. JAWORSKI. I am prepared to assure you that I will. Very frankly, I have not gone into this before, except perhaps by inference, but I would have no hesitation to come and lay the matter before this committee as well.

Senator BYRD. Earlier today, Mr. Saxbe, you stated "I do not contemplate having much contact with Mr. Jaworski."

Mr. Richardson started out in a similar manner in the case of Mr. Cox. Mr. Richardson found later that he was by necessity being put into a position of either refusing to carry messages to Mr. Cox, or, on the other hand, to carry those messages to Mr. Cox, or to field them himself and insulate Mr. Cox from those pressures.

I think one may assume that you also may be confronted with a similar situation, so that it would be very difficult for you to not have much contact with Mr. Jaworski. I am sure that is your full and clear intention today, just as it was with Mr. Richardson.

If you serve merely as a conduit to Mr. Jaworski, and each time someone at the White House calls and says, this fellow is going too far, he does not have the authority to do this, or he is exceeding his jurisdiction, why do you not talk to him? What can you do about it, et cetera? The first thing you know, you may find yourself being a constant conduit to Mr. Jaworski, and he in turn will find himself

being subjected to the water treatment, drop by drop, drop by drop, until the constant pressure becomes unbearable.

If that develops, how do you see your position?

Are you going to be a mere conduit, so the pressures will not build up on you, but will instead be transferred through you to Mr. Jaworski?

Or are you going to attempt to protect him and insulate him from undue pressures from the White House, thus creating pressures on yourself?

Senator SAXBE. I would resist any inclination to do this, and I am a pretty good resistor.

Senator BYRD. That is not clear enough. You say you would resist any inclination to do this.

What do you mean?

Senator SAXBE. By being a conduit.

Senator BYRD. You would attempt to insulate Mr. Jaworski as best you could from undue pressures from the White House?

Senator SAXBE. That is what I consider to be part of my obligation with the charter.

Senator BYRD. What would you do about such de facto pressure on Mr. Jaworski, Mr. Saxbe, other than resist it?

What do you mean by resisting?

Would you tell those people down there to go to Sheol? Or would you say, "I do not think he is exceeding his authority, and unless you prove to me that he is not exceeding his authority, I am not going to interfere"?

Senator SAXBE. The President in his discussion with me and the others that I talked to down there made no reservation as to his authority and his power to proceed, and I am going in with that understanding. Therefore, I would not hesitate for a minute to say, this is something that I am not going to talk to him about. This is within his area.

Frankly, I do not think that it is going to occur.

Senator BYRD. Mr. Saxbe, I have served under five Presidents. I find it to be exceedingly excruciating to say "No" to a President, whether he is of one's own party or not. It is extremely difficult to say "No," especially to a President of your own party. I have had to do it, and I have done it. I think that you have the intestinal fortitude to do it, likewise.

Can you assure this committee that you would not hesitate to say "No" to the President if he attempts to change the rules and signals and guidelines from what they were when you took the job?

Senator SAXBE. I certainly have no reservation in making that statement. Again, I do not think that it is going to arise. I do not think that the President would have nominated me to be Attorney General if he thought that I was going to be a conduit, or he thought that I was going to be a person to be a go-between between the Special Prosecutor.

Senator BYRD. I would assume that he had the same confidence in Elliot Richardson. He nominated Mr. Richardson. I am sure that Mr. Richardson did not contemplate that that would arise which did arise. We do have to contemplate that it may arise again, certainly in

the light of past experience that should be a lamp unto our feet. We have to ask questions today because we have to anticipate that they may again occur. It is the duty of this committee, as best it can, to get your responses to what we hope will remain hypothetical questions, and will never become actualities.

Mr. Jaworski, are you satisfied?

I realize that this is uncomfortable for you. It is uncomfortable for Mr. Saxbe. It is uncomfortable for me. It is difficult, I know, for you to indicate that you are not completely satisfied with the answers that Mr. Saxbe has given. You will have no better forum, however, in which to do that, and you may never again have such a forum.

Are you satisfied with the responses of Mr. Saxbe to my questions with regard to the authorities that you will have in carrying out your responsibilities as manifested in the guidelines?

Mr. JAWORSKI. Yes; I think they have been given clearly in spelling out situations that could arise. I wish I were prepared to tell you about some of the authority I have exercised in recent weeks. That I cannot talk about. I can say to you that if I felt that I were in any danger, any jeopardy with regard to exercising independence, I think perhaps I might have faced that situation of jeopardy in some of the things that I have done recently.

Senator BYRD. So far, Mr. Jaworski, you have acted as a man who wears no man's collar but his own—you apparently are not a yes man for any President. I think that it has been extremely important—in view of the fact that it has been the judgment of the leadership of the Senate to hold in abeyance at least for the time being, to defer any action on legislation to invest the authority for the appointment of the Special Prosecutor in the court—that these questions be asked.

I think it is more than ever incumbent upon this committee to get as ironclad a commitment as we possibly can from Mr. Saxbe to back you up, and to get from you also, as the Special Prosecutor, an ironclad commitment to continue to pursue your responsibility without fear or favor, to go to the courts if necessary to resolve any question of executive privilege, and to secure through the courts if necessary any evidence that is under the jurisdiction and control of the White House, or anyone in the White House, or elsewhere for that matter.

Does the committee have that commitment from you?

Mr. JAWORSKI. It does.

Senator BYRD. Does the committee have that commitment from you, Mr. Saxbe?

Senator SAXBE. Yes. I have no reservation. I think Mr. Jaworski is not only a competent and a thoroughly decent man. I will fight for his right to proceed as he sees fit.

Senator BYRD. Mr. Ziegler in the press has recently denounced the Special Prosecutor's force.

Is it your intention, Mr. Saxbe, not to be swayed by denouncements of the Special Prosecutor's force, if they should occur in the future, through announcements from the White House in the person of Mr. Ziegler or Mr. Warren or anybody else?

Senator SAXBE. Mr. Ziegler has a right to complain about any personnel in the Government, and I cannot deny him that right. Certainly we will keep our own counsel.

Senator BYRD. Mr. Jaworski, is it your intention to retain the Special Prosecutor's force intact as you inherited it unless an individual on that force gives clear cause for dismissal, and that such clear cause would not include the conscientious pursuit of his duty?

Mr. JAWORSKI. I certainly intend to follow that course.

I might say that I defended one of the men who has been serving, and I think serving capably, against an attack that you make reference to. I did it in no uncertain terms.

If misconduct at any time should be subject to criticism, I would be the first to accept it. I do not believe that criticism is justifiable at this time, and I went on record as saying so.

Senator BYRD. There are some people who feel that, after the first of the year, the ardor for enactment of legislation to provide a Special Prosecutor by the court would cool amid the lowering temperatures of January, and that we may begin to see members of the Special Prosecutor's force making reservations to leave town on whatever airlines may then remain available.

Can you assure those of us who want to see the Special Prosecutor's force stay on the job as long as it is dedicated to its duties, and as long as it is doing a good job, that you will stand behind those men as long as you think they are doing their duty, even if it costs you your own job?

Mr. JAWORSKI. I certainly would. I will go a step further. I do not think I would be worthy of the time that you have sacrificed today in going into this subject as you have if I should stoop to the practice of staying with somebody for a certain period of time, then dropping them just because I might think there is some heat. That has not been my life, sir.

Senator BYRD. Mr. Saxbe, in summary, as I think I have interpreted your responses and your statements before this committee, you have pledged to this committee and to the American people—who are the final arbiters, the final judge, and the ultimate court—that you will have no part in exerting indirect or direct pressure on the Special Prosecutor, that you will not allow a narrowing of his jurisdiction or authority, that you will protect his independence and insulation from pressures from the executive branch and from the legislative branch, and that you, to the very best of your ability, will make public such attempts, rather than see his investigation impaired?

Senator SAXBE. I will do anything within my power not to see the investigation impaired. I reserve the right to complain if I do not think it is moving fast enough, which I do not anticipate.

Senator BYRD. I think that completes my questions. I apologize to the committee and to you, Mr. Saxbe, and to you, Mr. Jaworski, and to those in the hearing room for what may have appeared to be a monotonous and boring repetition of a long litany of particulars set forth in the guidelines. I think, however, that the committee would have been remiss if it had not done this. I think it would have been remiss not to have called you up here, Mr. Jaworski, in the presence of Mr. Saxbe. I think that this ought to give you extra insurance and some additional satisfaction, comfort, security, and assurance, and a feeling that there are people on the Hill that want to see you do the right thing, and that these people are in both parties, and are mem-

bers of both parties. Thus far, you have conducted yourself commendably, beyond what many of us ever expected, but not beyond what ought to be expected. And it is the confidence and the desire of this committee that you will continue to do your duty without fear or favor. I felt that this would help to strengthen your hand, and, at the same time, I thought it would help to strengthen Mr. Saxbe's hand, because he has a record here to stand by and stand upon and to live up to. He has his own commitment here in writing and under oath, and if I were in his stead, I would feel that this was a strengthening factor. It was not done with any intention of putting my colleague on the spot—not that I could put him on the spot. It has not been done with the intention of embarrassing or demeaning him in any way. It is only with the intention that, in the final analysis, it will strengthen the hands of both of you, and that there will now be a clearer understanding on the part of both as to what this committee expects, and that a public understanding will have been established on the record for all to read.

Mr. Saxbe, as a member of this committee, unless there is something that develops yet that I do not foresee at this moment, I will vote to report your nomination favorably to the Senate. I do not think that it is incumbent upon this committee to determine a constitutional question. It is, however, incumbent upon this committee to determine your personal and professional qualifications, and where you stand, as far as I am concerned, on the issues that I have attempted to pinpoint as clearly as I possibly could. Your answers to my questions have been 98 percent reassuring. That is about as good as most people can make. It does not leave much room for improvement, and I will say that you made an A plus. But when it comes to voting on the floor I have stated a constitutional principle that I think I have to stand by. I will not vote against you on the floor. I do not think I could state that constitutional principle as I did on the floor and then reverse myself and vote for you. But I will vote for you in committee, and I will do everything I can—barring some unforeseen developments subsequent to this moment—to expedite action on your nomination in the Senate, where, on the confirmation, I will vote present.

[Senator Byrd subsequently submitted the following letter for the record.]

DECEMBER 13, 1973.

HON. WILLIAM B. SAXBE,
U.S. Senate,
Washington, D.C.

DEAR BILL: I have reflected much upon my statement yesterday during the hearing that I would vote "Present" on your confirmation to be Attorney General, and I think I would be remiss in my duty not to vote either "for" or "against". For me simply to vote "present" would be the easy way out, and, after reviewing my position last evening and again this morning, I feel that I must vote against your confirmation, and I shall do so solely on what I consider to be valid constitutional grounds. Having strongly opposed the pay bill a few days ago on such grounds, and not being of the opinion that Congress has the power to remove the impediment (Art. 1, Sec. 6, Clause 2), I do not see how I can conscientiously take any other course.

Having said this, I want to say again that I do not believe the Judiciary Committee shares the burden of being guided by the Constitutional disqualification to the degree that is carried by the full Senate which, under the Constitution,

must advise and consent. This may appear to be specious reasoning on my part, or reasoning for the sake of convenience, but I believe it is sound. The Judiciary Committee meets its responsibility, I think, when it finds you to be professionally qualified by training and experience, and personally qualified from the standpoint of integrity, character, and moral fitness. I, therefore, shall, as a member of the Committee vote to favorably report your nomination to the Senate, and, as part of the leadership, I shall do everything I can to expedite final Senate action on your confirmation. Although I shall vote "no" on the confirmation, I shall not speak against confirmation, and, just as I did not ask any Senator to vote with me against the pay bill, I shall not seek to influence—not that I could do so—any Senator to vote as I will on the confirmation.

The vote on your confirmation will not only be overwhelming; it will also be gratifying to you. As for my own vote, I am truly sorry. Yet, it should be a source of well-deserved satisfaction to you, Bill, to know that my vote (and the handful of others, if there are any) will be on the basis only of a Constitutional viewpoint, nothing more—and, even on this ground, there are many eminent Constitutional authorities who would say that the impediment has effectively been removed.

I say again that your answers to my questions at the hearing were as satisfactory as I could expect, and that is saying more than a little. My questions were meant to be pointed, and necessarily so, and I think your responses to my questions were without equivocation. For this I congratulate you.

In closing, may I say that I respect and like you personally, and I have tremendous admiration for your wife "Dolly". I hope that both you and she will be happy in your new assignment.

With warmest personal regards, I remain

Respectfully yours,

ROBERT C. BYRD,
U.S. Senator.

Senator SAXBE. I thank you.

Mr. JAWORSKI. I thank you too, sir.

Senator BYRD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Hart.

Senator HART. Senator Saxbe, welcome and congratulations.

I am grateful to Senator Byrd for pursuing the detailed line of inquiry. It has been enormously helpful. But I am one member of the committee that still has not been able to get a hand hold yet on what really this amendment to the guidelines adds up to.

Senator BYRD. Would you allow one interpolation?

Senator HART. Yes.

Senator BYRD. It allows an erosion of the original guidelines. That was my interpretation of it earlier.

Senator HART. That is not Mr. Jaworski's interpretation, and it is not Senator Saxbe's.

Let me read this letter. I am guilty of what Senator Byrd said he might have been guilty of, namely repetition. I am worse than that, I am clearly repeating the ground he went over. It is because I do not get it.

Senator BYRD. If I could interpolate further for the record, I am not satisfied, but Mr. Jaworski seems to be satisfied. He is the man under the gun.

Senator HART. He is the man who is standing on the slippery rock, if this is in fact a slippery rock, and so are we the committee and the Congress.

So, with that apology for repetition, for a few minutes let me see if we can develop a better understanding which will explain why Mr. Jaworski thinks this helps.

The committee developed these guidelines with Mr. Richardson and Professor Cox. Then I remember asking Mr. Bork if there was any truth to the suggestion that modification of the jurisdiction areas in the guidelines could be obtained by consultation with this later established congressional leadership, and Professor Bork said, yes, it could. At that same time, in the range of a few days, Mr. Jaworski said that that had not been his understanding.

Then, as a result of that exchange, a letter written by Senator Kennedy to Professor Bork asking for clarification. Then on November 21 came the letter from Professor Bork to Mr. Jaworski. I apologize, but I am going to read it again.

You have informed me that the amendment to your charter of November 19, 1973, has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973, was intended to be and is a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the majority and minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

Now any reading of that paragraph, it would seem to me, is, stated affirmatively, that the President can, if he wants to, limit the independence of the Special Prosecutor with the concurrence of a majority of that leadership committee.

The letter goes on :

When that assurance was worked into the charter, the draftsman inadvertently used the form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter, and not merely to the subject of discharge.

As I read that letter, it means that the President, if he wants to, can get the consensus agreement of the leadership committee to limit your independence under the charter, as well as to dismiss you. For the life of me, I cannot see how that adds up to a plus for the protection of the Prosecutor.

Then he winds up by a real curve ball kind of comment :

There is, in my judgment, no possibility whatever that the topic of discharge or the limitation of independence will ever be of more than hypothetical interest.

Why put it in ?

Well, hypothetical or real, present or future, I just cannot escape at this moment the conclusion that this addition to your charter is an explicit reservation to the President of a right, subject only to the agreement of a consensus of the leadership—and we do not know what consensus means either—to trim back your independence, to trim back your jurisdiction. How is that a safeguard ?

Mr. JAWORSKI. Senator Hart, I have to say to you, in the manner in which this arose, I am personally convinced that it was not intended to in any wise limit either my independence or the jurisdiction. What happened was, without my knowing that there was anything else to be drafted, there was this amendment drafted. When calls came in from the members of the press wanting to know what my reaction to it

was I had not even seen it. Then when it came to my attention I immediately called Mr. Bork and asked him what the purpose of it was, and I told him that it had been suggested that perhaps it limited my independence. And he said he was very much upset. He said that he certainly did not intend to do this by any means, that this had not been the purpose of it, that he had signed something that he had not gone into. He said that somebody else had drafted it, and because of the other pressing matters, he had not had an opportunity to go into it as he expected to, that he would immediately get out a clarifying letter to make certain that my independence was not in any way impaired by virtue of that amendment. He sent this letter.

As I said to Senator Byrd, it may be that I have been a little naive. I did not think so. I felt comfortable about it, I read the letter. I proceeded on the basis that I had the same independence that I felt that I had from the beginning, and I assure you, sir, that I certainly exerted a tremendous amount of independence, and I intend to continue to do it, and that this amendment that has been filed is not going to deter me one iota from what I believe are my responsibilities. I have not, perhaps, given it the word for word construction and interpretation that you have, but it just did not concern me, to be frank with you. I just went right ahead, because I felt I knew what the agreement was and I intend to do it.

I may be coming to you and begging to you for help.

Senator HART. But you will not be begging me, you will be coming to the Chairman, to Senator Hruska, and to Senator Scott; those are the only three on this committee who are on that leadership committee.

Mr. JAWORSKI. I also told Senator Byrd that I will come to this committee.

Senator HART. But under the regulations we are only observers like other taxpayers. Only six or eight are the voters. It is pretty close to a dead heat when you look that list over.

Now, off the subject except as a practical footnote, I can understand how, in the pressure of the activities of the Department, Professor Bork could sign and have published the regulations and guidelines and then discover that there was this misunderstanding. But I do not understand how he can then say I will write you a letter and clarify it and the letter, in less formal language, repeats the reservation to the President on limiting jurisdiction and independence, provided that the eight congressional leaders approve.

I look at Senator Byrd and ask, almost as a prayerful petition, have I made clear why it seems a dilution of the independence of the Special Prosecutor?

Senator BYRD. Yes; you have. I think it was an erosion of the guidelines. Moreover, Mr. Bork's letter goes only to the amendment of the amendment. He is not addressing himself, in my judgment, to the original amendment of the guidelines. I am not satisfied with it at all. I think it is a slippery slope. My only comfort derives from the fact that Mr. Jaworski seems confident and he has indicated he will pursue his duties as he sees them, I would take it, as though the amendments were not there.

Mr. JAWORSKI. That is right. I will say this too. I assume I should say this. I would rather let Professor Bork speak for himself, and I

think he would be willing to tell this committee that he really would have liked to have just erased the amendment completely. But that he chose instead, because of the looks of it, the appearance of it, he chose instead to write the letter. I am not sure that he would not be willing at the request of this committee to go ahead and just wipe out completely the amendment.

Senator BYRD. Senator Hart, we have a roll call.

May I ask a question in brief?

Senator HART. Yes.

Senator BYRD. I was not present when Professor Bork appeared before this committee. Was he asked questions about these guidelines? Were you there at that time?

Senator HART. Yes. The amendment had not then been printed.

Senator BYRD. I think Mr. Bork should be brought back to this committee and subjected to questions before Mr. Saxbe's nomination is confirmed.

Senator HART. The amendment to the guideline had not then been printed, but we had heard reports that the congressional consultation would include trimming back jurisdiction, and Mr. Bork confirmed at that time that this was his understanding, although Mr. Jaworski said it was not his.

We will return on the completion of the vote.

The CHAIRMAN. The committee will be in recess.

[A brief recess was taken.]

Senator HART. The committee will be in order.

Before turning to four questions which I wish to ask, let me ask one question on behalf of Senator Byrd. Because of his obligations on the floor, he is not able to return.

You will recall, Mr. Jaworski, that Senator Byrd and you discussed the possible situation where pressures were brought to bear on you, efforts were made to persuade you that for reasons of jurisdiction or otherwise that you ought not to take a particular action, and the questioning went something like this if I recall it.

Would you feel that you could go to the congressional leadership group and there state your position?

Answer. Yes.

Question. If the congressional leadership group, notwithstanding your plea, disagreed with you, what would you do?

Your response was that you would resign.

Senator Byrd wanted to make clear that under those conditions he would hope very much that your voice would not be lost if the issue under debate, the issue on which there was disagreement, would permit you, notwithstanding the adverse action of the leadership group, to go to court, that you would go to court, that you would exhaust all the remedies, including that.

My question is, would you?

Mr. JAWORSKI. Yes, sir. I intended to make that clear, and I think at one point I did have an opportunity to do so. That is, if it related to a matter where I thought the judicial process was involved, I would not even go to this committee. I would go on my own to exercise the right of judicial process. It was in areas other than that where a disagreement might arise. Of course, I realize that I am not infallible, and I could be wrong.

If it came to a matter that I believed as a matter of conscience that I could not accept the determination of the committee and it related not to a matter of judicial process—I am going to exercise that if I think I should—if it came down to a feeling that I could not conscientiously go forward, I would resign.

Senator HART. Thank you.

Mr. JAWORSKI. Thank you, Senator.

Senator HART. I think that will satisfy Senator Byrd.

We had an exchange for quite a few minutes, the three of us, over the meaning and the purpose of the amendment to the guidelines and the letter of clarification from Professor Bork to you.

Senator Byrd and I realize that really neither of you should be pushed further on that because neither of you is the author of the document.

We went to Senator Eastland and he has said that he will ask that tomorrow morning at 10:30 Professor Bork appear and make an explanation of the purpose and perhaps clarify what we might anticipate in the future on that.

With that explanation I shall not pursue that subject.

Senator Saxbe, adopting by way of apology the explanation that others have voiced in addressing questions to you which appear unfriendly, let me get on with this, and I do it in the belief that in fairness to yourself an explanation on the record is of value.

There was a publicized incident during the period when you were serving as attorney general of Ohio, your purchase in 1969 of stock in the Valley Corp. From newspaper reports, as I understand it, the corporation deals largely in pinball and slot machines. In many States, these are prohibited by law, and Federal law prohibits interstate shipment.

At the time that you purchased the stock, the newspapers advise, the devices that the company dealt in were prohibited by Ohio, and later the company and some of its officers were indicted in Federal court. A major portion of the company's stock was owned by a person in another State identified by Federal agencies as having ties to organized crime. Another major stockholder was from Cleveland. Some questions have been raised in the Ohio press about this person with regard to the exact nature of his business enterprise. I make reference only to the reports. I have no information regarding the person beyond that. As I understand it, at the time that the first stories broke dealing with your ownership of the stock, you sold the stock in the corporation, although defending its purchase.

I think it would be good for the public record and for you to give us your comments and your own views with regard to this matter.

Senator SAXBE. Yes, sir.

I was here in the Senate at the time that I bought this stock.

Senator HART. My reading of the press was wrong.

Senator SAXBE. It was in 1969. I was elected in 1968. I bought it on the recommendation of a friend and broker who said it was a good investment. I bought \$6,000 worth of stock. It was a good investment. The stock today is worth about \$70,000. However, I knew nothing about the company. When the story appeared that there were underworld characters involved in it, I sold the stock.

I do not think I lost money, but if there was any profit it was maybe \$100 or \$200, something like that. That is the end of it.

Senator HART. At the time of the purchase you were not aware that it dealt in materials—

Senator SAXBE. I knew what they dealt in. I still do, but their business, there has never been any conviction. There has never been involvement. Since that time, there was a case someplace in the South, not on the basis of the illegality of the machine; rather it was that it had been involved in certain inducements to get people to put them in. The case was thrown out.

The company is involved in an international operation. Since this has been raised I looked into it. They bring into the country about \$11 or \$12 million in profits that they make in the countries where these devices are legal. Their big market here, of course, is in Nevada where it is legal. I do not know any more about this than what I am telling you. To the best of my knowledge, they made an effort to divest themselves of this man—I do not remember his name—who was alleged to have underworld connections in New Jersey or someplace. They had a stock issue. They bought him out. I have no interest in it, and have not since that time. I did not profit by the investment. I just did not want to get mixed up in it. When they raised the issue I sold the stock.

Senator HART. The issue raised was really whether the purchase of the stock of a company dealing in materials not permitted under Ohio law was a sound decision? Is that the way it was?

Senator SAXBE. If they did not sell those materials in Ohio—

Senator HART. You are obeying Ohio law.

Senator SAXBE. I do not see how that is an issue. I am not here to defend the company or the business that they are in, I do not know that much about it. I had no further dealings with them, and that is the extent of it.

Senator HART. In any event, their activity was not illegal per se, but it was then as a result of the Ohio prohibition?

Senator SAXBE. It is a stock that is regularly traded over the counter. It is listed in the Washington Post and the New York Times and is an actively traded stock. If they are involved in illegal activities I am not aware of it. I was not aware of it then. I am not aware of it now.

Senator HART. As you know, some of us on this committee have been concerned about gun control, specifically we focus on the violence wrought by handguns. All of us are familiar with the arguments that are raised by opponents of gun control—I would prefer to repeat handgun control, because, like you, I sometimes get into the northern part of Michigan, and I am talking about handguns—the argument goes that guns do not kill people, that people kill people, that if you take handguns away from the law-abiding citizen, only the criminals will have them.

I am convinced that the law-abiding citizen would be safer if he did not have a handgun in the bureau drawer, I am absolutely convinced of that, even if the criminals continue to get them.

Now, the National Advisory Commission on Criminal Justice Standards and Goals, which was chaired by Governor Peterson, appointed by the LEAA and working under the auspices, I think it is fair to say, of the Department of Justice, recently agreed with that.

analysis of the handgun situation. Here is what their final report said:

Private possession of handguns should be prohibited for all persons other than law enforcement and military personnel. Manufacture and sale of handguns should be terminated. Existing handguns should be acquired by States. Handguns held by private citizens as collector items should be modified and rendered inoperable.

So far so good. But the Commission set the goal for this a decade away, January 1983, as the time that we should reach that point.

In addition, instead of supporting comprehensive Federal legislation, such as I have introduced, and on which the last time around I think we got seven votes, the Commission recommended that it be done piecemeal, on a State by State basis.

Yet we continue to read newspaper reports about the flow of illegal guns into New York City, where you have a very strict handgun control law, suggesting the inevitable failure of a piecemeal approach because of the problem of leakage from one State to another. To me, this seems a problem that requires a national solution.

After that speech, I have two questions.

Do you agree with the conclusion of the Peterson Commission that public safety and law and order would be vastly promoted if private handgun ownership is prohibited, the manufacture and sale of handguns to anybody but police and military is ended, and existing handguns acquired by the Government?

Senator SAXBE. No.

Senator HART. You can travel further north in Michigan than I can. [Laughter.]

Why?

Senator SAXBE. I wish that by passing a law and destroying every weapon of violence in the world that we could do away with violence. I do not think that we can. I do not think that there is any way that we can effectively deprive a man bent on doing mischief from a weapon that he can do it with, whether a butcher knife, a backyard ax, whatever it is.

I am also well aware that any individual with the simple knowledge of machinery can make a gun in half a day. And I have never been convinced that the law-abiding citizen should be discriminated against, certainly in a city like Washington. I have watched carefully the prosecution in Washington for violation of a rather strict gun law that extends not only to handguns but to long guns here in Washington. For some reason, they have never prosecuted people on these cases. I do not know why, but I think that it is typical of a realization that however much you wish that you could control violence by destroying a weapon, it has never been effective.

I know that there are people here in Washington that live in terror and keep vicious dogs and all kinds of things to protect them, including guns. Most of the law-abiding people register these guns. Everybody knows where they are. I am also well aware that most murders are not committed between strangers, but between people who know each other. We hear about the violence that occurs on the street corner, but there is a lot of domestic violence just as well. And I have never been convinced that strict gun legislation—and I am the first to agree with you that the handgun, especially the Saturday night special, is an abomination—but I remain unconvinced.

I will certainly not interject my attitudes into any of the Commissions that are now engaged, as the Peterson group is engaged, in making these determinations. Congress can pass this afternoon a gun bill if they are so inclined, and I assure you that I will vigorously enforce it, along with all the other laws.

Senator HART. I know you will.

I know it is unlikely that during the term to which you will be appointed you will be confronted with such a law, but it would speed up the day that we act rationally in this country if the Attorney General was a voice that sought to persuade us that there are 30 million of these guns, that for every 2 bad guys that are shot down there are 98 good people that are wounded or killed. The good people are your children, your neighbors, your spouse.

Senator SAXBE. There are more people killed by ice picks, axes, knives, than there are by guns.

Senator HART. That is against the law, too, but the figures do not support that.

I think all of us have to be patient, you in advancing your point of view and those of us who differ in advancing ours. I suspect that we are really the more guilty because we do not try to explain. Of course, most people are law abiding. If the Federal Government said, give up your handgun, most people would give it up and would turn it in. You would automatically reduce the reservoir from which the bad people get their guns, because they do not go to buy them. We would begin to buy up the source from which the bad people get the weapons.

The accident in the bedroom or the kitchen, the crime of passion, these would be substantially lowered. They would be eliminated except as they occur in the homes of non-law-abiding people. It is up to us to make that case.

Senator SAXBE. I understand, but if the Senator would indulge me for a minute, my attitude on guns is not something that I have adopted in the last week or the last month or the last year. I have grown up in a rural community where we lived with guns, the whole family learned to respect a gun. I have hunted. I have been a marksman. I have worked at it. I was president of the Ohio Trap Shooters Association for 5 years. I was vice president of the American Trap Shooters Association. For me to come here and indicate because I want to be Attorney General I am going to change a whole concept developed over 50 years, if I were you I would not vote for him.

Senator HART. I was going to say that that would lose you a vote from me.

But to me, to have these instruments of violence so easily available in a society like ours is inexcusable. Even in Ohio it is different than when you were a boy.

Senator SAXBE. Not a great deal. I assure you that if I thought that we could pass a law and remove every handgun in this country except those in the hands of law enforcement people I would certainly support it. I just do not believe that you can do it.

Senator HART. You cannot pass a law and anticipate that it will be respected and observed by everyone but that has not really been the test of whether you should try.

Since your nomination was announced you have commented about the Special Prosecutor issue, including the dispute between Professor

Cox and the President over the tapes and the subsequent dismissal of Professor Cox, and you suggested Professor Cox was going beyond the bounds of his charter on a general fishing expedition in regard to his request for additional tapes.

I should say I did not hear these words, but reading from the press account at the time, your words—and before we get to your words there is an opening paragraph—were :

Senator Saxbe supports Nixon's decision to deny Watergate Prosecutor's access to additional White House tapes.

"Just to have a carte blanche or fishing expedition to discredit the Presidency of the United States, not the man or the office, would be a serious mistake," the Ohio Republican said yesterday.

Now, can you give us examples of areas in which you think Cox acted improperly and sought material that he did not have a right to seek and was not a part of his duty under the set of guidelines?

Senator SAXBE. No; I cannot at this time. No.

Senator HART. What in God's name were you talking about the first time?

Senator SAXBE. I am sure that I had reason at the time. I had read the information. I was current on what was going on on a day-to-day basis. I felt at the time that if there was a question as to the President's responsibility, either before or after the fact of Watergate or any of the other affairs, that the proper method was impeachment. I repeatedly suggested that this was the proper method.

Since that time the President has made certain waivers as to his right that has destroyed a great part—not destroyed, they were not destroyed, he gave them up—of his immunity. He has also expressed complete freedom to have Mr. Jaworski examine any evidence that he believes necessary. In other words, any position that I had at that time has been abandoned by the President, and I respect this, and now as part of the operation I intend to back Mr. Jaworski to the full extent of my authority to proceed as directed.

Senator HART. The day that your nomination was announced, and you had a visit at the White House, you indicated that you thought the President had acted not only honorably with regard to the Watergate investigation generally, but specifically that he had gone as far as he reasonably could have and expected to go in making material available to Professor Cox.

Since then, in our hearings in this committee, Elliot Richardson, Mr. Jaworski, and in colloquy our colleague from North Carolina, Senator Ervin, who was involved in that so-called Stennis compromise, all said that they thought that Professor Cox had been correct in refusing the President's offer and insisting upon his right to go to court to obtain these materials—or at least to go to court to see if the compromise that was suggested satisfied the order of the court. More recently, Senator Stennis has indicated that contrary to the White House's very clear implication, Senator Stennis never agreed to participate in the compromise with any understanding that it would be a binding limitation on Professor Cox's ability to seek the actual evidence.

Now, as of then it would seem that you were in disagreement with these gentlemen.

Do you recall why you felt that the effort by the President to restrict the Special Prosecutor's ability to have the court decide what White House evidence should be available to the Watergate investigation was proper?

Senator SAXBE. I thought it was a reasonable suggestion to have, as I understood it, Senator Stennis to go over the tapes to glean out those parts which he thought were pertinent. Obviously, there was and still is part of the tapes that will not be disclosed. I do not think there is anybody that wants to disclose them. I think that they thought that they had an understanding. Obviously, there was no meeting of the minds. But I think it was a reasonable offer at that time, and it fell apart for reasons that I am not acquainted with.

Senator HART. Let us assume that you felt that it was a reasonable compromise proposal. Does it follow, therefore, that Professor Cox's action was unreasonable in rejecting it?

Senator SAXBE. No; I do not think so, it does not necessarily follow. It was presumed that he was a part of the agreement, I think. He obviously was not.

Senator HART. Professor Cox was fired for insisting on going forward in pursuit of that evidence. Two separate Federal courts found his position to be not only reasonable but constitutionally correct. Under those conditions, how could Professor Bork have found Cox's actions to be of extraordinary impropriety?

Senator SAXBE. That is the issue on appeal, I can make no other explanation, other than the fact that he did make such a finding.

Senator HART. That was several times suggested by you as the reason for Bork's action. But I was under the impression that Professor Bork took the position that he had revoked the ground rules, that he had rescinded the regulations by the action of dismissing Cox. The regulations prohibited him from dismissing Cox unless there was a gross impropriety. Bork, I think, did not claim that Cox, in following the two Federal Court orders, was acting with impropriety. Bork simply fired him and said I am free to fire him because, in a sense, my act of violating the regulations revokes the regulations. I do not think Bork claimed that he was taking action against Cox because of improper action on Cox's part.

I think that Bork was taking a position which makes us all uneasy about the regulations, that the Attorney General could revoke the regulations by firing the Special Prosecutor.

Do you believe that you, as Attorney General, would be able to terminate the regulations by dismissing Mr. Jaworski?

Senator SAXBE. This is something that has arisen in my mind because obviously a regulation printed in the Federal Register can be changed by another regulation printed in the Federal Register. This is what we are talking about. The only assurance that you have that that is not going to happen is my assurance that it is not going to happen, the agreement that I have with Mr. Jaworski that it is not going to happen that way. Now you are dealing with people, you are not dealing with words, and I feel strongly that there comes a time when that is all you have, really.

Senator HART. I think that you have put it very correctly.

I would anticipate that you would remember exactly what you told us?

Senator SAXBE. I fully intend to.

Senator HART. Senator Kennedy has asked me to ask you one question on his behalf. But I have finished my own.

Senator Scott?

Senator SCOTT. Mr. Chairman, I can be very brief. I support the nomination and confirmation of Senator Saxbe to be Attorney General. I have full and complete confidence in him. His words is as good as the gold in Fort Knox—probably under the Zurich system, better. I am certain that any assurances that he has given to this committee and to the Congress as regarding his conduct in his office and his relationships with Mr. Jaworski, will be scrupulously adhered to.

I see no need for me to ask any questions. My concern is simply that we proceed. Thank you.

Senator SAXBE. Thank you.

Senator HART. That stirs my memory. You and I have the assurance of our colleague, Senator Saxbe. When we were developing those guidelines some months ago we, in varying degrees of confidence, thought we had the commitment of the President of the United States that he was a party to those regulations.

It developed, I have forgotten the exact phraseology but Attorney General Richardson later explained that the President had not explicitly accepted and been committed to the guidelines. Is there some way—I am not suggesting that we have the President sit where Bill Saxbe is—but is there some way that this committee properly can obtain from the President his expression of acceptance of the guidelines?

We have learned that assuming this was not correct.

Senator SAXBE. I can only give my feeling. In discussion with him, and with discussion of members of his staff, he fully understands and agrees to it.

Senator HART. That would not take—given the White House staff—very long to commit it to paper and have it sent to Chairman Eastland for filing in this record. I hope I am not out of order by asking the nominee if he would seek to obtain that brief statement from the President in writing so we could have it in the record?

Senator SAXBE. I would not presume to demand such a thing from the President. I would suggest that if the committee wants to do that, they demand it.

Senator EASTLAND. I think that you are exactly right.

Senator HART. I would prefer a different method. I think, having learned once that assumptions do not go, that it is the obligation of the committee to ask for an explicit commitment and I do.

Now I have already indicated that we will question Mr. Bork about the amendment of the guidelines permitting the President to limit the guidelines on jurisdiction with the congressional group.

Senator Kennedy has asked me to ask you if you would agree that, upon taking office, you would remove that amendment as to limits on independence or jurisdiction? And, before you answer that, if we ask Mr. Bork to remove it before you are confirmed, would you agree also that you would not add that amendment back when you take office?

Senator SAXBE. AS I told you informally, before we started, I am convinced, talking to the Special Prosecutor, that this was put on

there because Mr. Bork thought it was a power desired by the special Committee of Review. And, really, I am going to be the Attorney General, if I am confirmed, not Mr. Bork.

If this committee, not the Committee of Review, but if this committee wants that off of there, that will be my first job to take it off of there. Because the only reason that it is on there is to give some special powers to the committee. If it is a source of confusion, we should take it off.

That leaves you solely the power to be consulted on the discharge of the Special Prosecutor. I would think that you would want it to remain in there because you have to be consulted on any change in his authority with it on there.

Senator HART. Without that amendment, the one that we are talking about omitting, what is your opinion as to the power that the President would have?

Senator SAXBE. I do not see any limit on the President's power. I mean I do not see any reason to think that he has any power to interfere with the orderly investigation by Mr. Jaworski.

I think that he does have the full power needed to get whatever kind of information or evidence that he needs to proceed now.

I would guess that physical difficulties is one thing that is, getting manpower, getting these kinds of things, I do not think that the President retains the power to deny these things.

Senator HART. Perhaps Mr. Jaworski can respond. Did the President, in your discussion with him, give you ironclad assurance that your jurisdiction and independence would not be interfered with?

Mr. JAWORSKI. Senator Hart, he did so through General Haig. I did not choose to talk to the President.

Senator HART. I correct my question. I recall your earlier testimony.

Mr. JAWORSKI. It was offered to me, but I wondered whether it was in the bounds of propriety; under the circumstances, I believe he had somewhat of the same reticence. But General Haig had assured that he had gone to talk to him and came back and gave me the express assurance that this freedom of action was there, and also the phase that relates to a congressional committee.

Senator HART. That assurance communicated to you through General Haig was prior to the issuance of the amendment to the regulation that gives rise to our question as to whether there had been a trimming back, perhaps unconsciously.

Mr. JAWORSKI. Yes; but I should add that Senator Saxbe, however—when I received this assurance from the President through General Haig, I reviewed it with Senator Saxbe—that he agreed to it. Also, he had also talked to the President. I was not privy to that conversation. There was no question in my mind as to what Senator Saxbe and I agreed on. It was the same thing that you have just reviewed, that I understood as the arrangement.

Senator HART. Before the issuance of that amendment to the regulation, you did have the guarantee of the President as an absolute, flat commitment with respect to your independence. Now, unless that amendment is eliminated, there seems to be a possibility that intrusion, either on independent or jurisdiction, might be reserved. That is the reason that we are talking to Mr. Bork.

Senator SAXBE. In direct answer to your question that I did not answer. First, I will be happy to remove it, and if Mr. Bork wants to remove it, it will stay removed.

Senator HART. Thank you.

Senator EASTLAND. Senator Tunney?

Senator TUNNEY. Thank you.

Mr. Saxbe, I feel, as do some others on this committee, a strange ambivalence with respect to your nomination. I have great respect for you personally. I think that you have the qualifications to lead as Attorney General. But on the other hand I am deeply concerned about the constitutional precedent.

As you know, I voted against the Attorney General's pay bill, not because I thought that you in any way are not qualified to be the Attorney General, but because I am concerned that the Constitution, in very plain language, makes it impossible for a person serving in the Congress to be appointed to the position of Attorney General if he has voted for a pay increase for that position during his current term.

As one who has stated, repeatedly, that I think the Constitution ought to be adhered to, particularly as it relates to questions of executive privilege and claims of national security, that there should be a strict limitation of the right of the President to prevent information from being made available to a prosecutor on the claims of executive privilege and of national security, for me to assume that the Founding Fathers of our Republic in drafting the Constitution really meant something different from what they said, would I think be taking a position that is quite inconsistent with the positions that I have taken earlier that there should be a strict reading of the Constitution insofar as it is applied to the Presidents of the United States and his claims of executive privilege and of national security.

I am concerned about the possibility of a cloud hanging over your head until such a time as there is a court test regarding the constitutionality of your appointment. I also think that at a time when we are all very deeply concerned about the rule of law, it might appear to some that we are willing to wink at the rule of law if we want an individual in a particular office despite what the Constitution said.

It is for those reasons that I have that reluctance. It is a moral consideration, I suppose, and an intellectual consideration as I interpret the Constitution, and has nothing whatsoever to do with you as a man. I think that you know that. I congratulate you on the fact that the President has the kind of confidence in you that he would nominate you to this high office.

Before asking my first question, I would just like to say to Mr. Jaworski that I have been extremely pleased by the job that you have done. I think that you have demonstrated very clearly your independence, your diligence, the fact that you intend to find the truth on matters that have been presented to you, and that you are willing to use the strength and courage that are needed to guarantee that your responsibilities are carried out. I feel that you have done an outstanding job and hope that you will be able to do the same in the future.

Mr. JAWORSKI. Thank you, Senator Tunney.

Senator TUNNEY. Senator Saxbe, I would like to ask you how wide you think the scope of the doctrine of executive privilege is.

Can executive privilege in your mind be used to cover up evidence of wrong doing by members of the executive branch?

Senator SAXBE. There is a body of law that is well determined. I think that it cannot. I do believe that there are certain areas of national security where he should, where he has an obligation to certainly ask that this privilege extend to it.

I do not think that it ever contemplated covering wrongdoing.

Senator TUNNEY. Do you feel that the doctrine of national security ought to be used at any time, under any circumstances, for the purposes of covering up?

Senator SAXBE. No.

Senator TUNNEY. In your mind, then, under no circumstances, would a claim of national security prevent Mr. Jaworski as Special Prosecutor from going to court to obtain criminal evidence, despite the fact that national security might be claimed by the President as grounds for not revealing that evidence?

Senator SAXBE. I do know this, at times of stress in this country, during the war and elsewhere, that there were things done in the name of this defense, in the name of security and in the name of danger of lives lost, and so on, that really—I know that in time of war many things are done of that nature.

I think that Mr. Jaworski in his position can be the sole judge of whether anything that comes up in this investigation is of such importance in national security that it cannot be disclosed, and I would not interject myself into that determination.

Senator TUNNEY. Would you advise the President of the United States regarding his rights on this matter?

Would you, for instance, advise the President that he would not have right to claim privilege on grounds of national security if, in his mind, he felt that the national security interest was such that he should not reveal the information to Mr. Jaworski?

Senator SAXBE. I think that he has waived his privilege in practically every instance by releasing tapes, by releasing information, and by other information that he supplied; and I think that he would have to take this up, or his representative, directly with Mr. Jaworski. That would be the final determination. If Mr. Jaworski were in doubt, he would have to take it directly up with the judge.

Senator TUNNEY. As I understand your answer, then, you would not feel that it was appropriate to advise the President in this area as it related to national security?

Senator SAXBE. I would advise him to discuss it with Mr. Jaworski if I were asked for advice. I think that the waiver that has been made, in so many instances now, that the line is fuzzy.

Senator TUNNEY. Mr. Jaworski, what would be your answer to that question?

Do you feel that under any circumstances, that national security ought to be used for purposes of keeping evidence away from you in a criminal investigation if you felt that that evidence was necessary in order either to prove or to disprove crime?

Mr. JAWORSKI. I would answer that, Senator Tunney, by saying that it should not be kept away from an examination and I have been assured that it would not be kept from me.

The reason that I say "from an examination" is that I can now perceive, perhaps, of a situation where some evidence should not be used. I am not confronted with that at the moment, because I have gone right forward with those instances that have been referred to as involved with matters of national security. And very frankly, the plea that Mr. Krogh entered the other day came as a result of some discussions that he and I had, and I think that because of the statements that he has made already, and that I understand he will make, perhaps at the time of sentencing, I think that that particular defense, and that particular reason for nondisclosure, as pointed to, is pretty well over with.

I do not think that I am going to face it again. It may be that in a different area it will arise, Senator Tunney. If it does, I am not going to accept it unless there is something that is truly so closely related to something involving the security of this Nation that I would have to take that into account before I brought it out.

At the moment it would be conjectural, I do not know what it might relate to. I think I indicated to you that there was one matter discussed with me that I do not see as any bar to my going forward with the things that I have in mind.

Senator TUNNEY. As I understand the answer, then, Senator Saxbe, to the question that I have asked, the man who will make the sole determinations as to whether we go ahead to discover evidence, despite any claims of national security and executive privilege by the President, would be Mr. Jaworski, and you would, in no way, advise the President on the matter, other than to say, speak to Mr. Jaworski about the matter?

Senator SAXBE. That is correct.

Senator TUNNEY. Mr. Jaworski, have there been any changes of attitude in the White House with respect to cooperation, or powers of the Special Prosecutor? I read in the newspapers recently that Mr. Zigler made an attack upon your staff. Do you notice, as a result of that attack, prior to the attack or subsequent thereto, that there has been any change in the cooperation at the White House?

Mr. JAWORSKI. Senator Tunney, I did not accept the attack as being a valid one, and took the position in writing on that particular attack. I realize that it is possible for there to be some disclosures that would embarrass our work. I have undertaken to make this very clear to the staff. I have talked to them a number of times. I try very hard to keep especially sensitive information available only to those that must directly work with it. I have not found that the staff has failed in its loyalty to me, or in its loyalty to the cause, and I have asked directly that if the White House can pinpoint any such instance, that I want it done.

It has not been done, sir. For that reason, I have not accepted the criticism as being supported.

Senator TUNNEY. You do not feel that there has been any indication of a lack of cooperation from the White House, as a result of that attack, or as a result of the events that led up to the attack?

Mr. JAWORSKI. There have been a number of developments. Sometimes it takes awhile for those to crest, as you know. I have had quite a number of documents turned over to me. I have had a number of tape recordings turned over to me, not those that were turned over to Judge Sirica—a number were turned over to me directly—I have a representative in the White House now, going through files in connection with our investigations.

And all I can say is, at the moment, I am without an instance of a rejection. I have a few matters pending that have not been passed on, but I am, at the moment, without a rejection on anything that I have asked for. I am not saying that that might not arise, I just do not know. We have not come to the crossroads on two or three of them. I hope it will not arise, but I have had all of the cooperation up to this point that I could have asked for, insofar as the production of documents, insofar as the production of tape recordings, are concerned.

Senator TUNNEY. Senator Saxbe, I do not know if you have had an opportunity to see a letter that Elliot Richardson wrote on November 8, to Robert Bork, Acting Attorney General, in which he listed a number of items of unfinished business which he felt were worth special merit and attention insofar as the administration of justice within the Justice Department was concerned.

One was a study of the role and policies of the FBI, another was the subject of guidelines for the use of electronic surveillance, and so on. It went on to include 15 points. Have you had an opportunity to see that letter?

Senator SAXBE. Yes, sir, I have seen that.
[The letter referred to follows:]

McLEAN, VA., November 14, 1973.

HON. CHARLES MCC. MATHIAS, JR.,
U.S. Senate,
Washington, D.C.

DEAR MAC: In the course of my recent testimony before the Senate Judiciary Committee, you expressed some concern with regard to certain matters left pending at the time of my resignation as Attorney General. I indicated that I was in the process of drafting a letter for Acting Attorney General Bork summarizing items of unfinished business. That letter has since been completed and forwarded to Bob Bork—who will, I am confident, give it proper attention.

Given your continuing personal interest and the interest of the members of the Senate Judiciary Committee, I am enclosing a copy of the letter—for possible distribution to members of the Committee and for possible inclusion in the record should it seem appropriate.

With warm regard,
Sincerely,

ELLIOT L. RICHARDSON.

McLEAN, VA., November 8, 1973.

HON. ROBERT BORK,
Acting Attorney General,
Washington, D.C.

DEAR BOB: It is with both a sense of regret for leaving so much yet to be done and appreciation for the dedication with which I know you are approaching the difficult problems of transition that I attempt here to provide a summary of those items of unfinished business—apart from specific legal cases—which I believe merit special attention:

(1) *Study of the role and policies of the FBI:* The study which I initiated—under the direction of Bill Ruckelshaus and with the full participation and

cooperation of Director Kelley—is comprised of eleven policy issues for analysis and decision. These issues are of significant interest to the public, the Congress, law enforcement generally and the FBI in particular. It seems to me highly desirable not only that work continue on these issues, but that the established procedure for resolving these issues be maintained. This procedure—developed by Bill Ruckelshaus and Clarence Kelley—involves: the full participation of the FBI in the preparation of initial analyses; review of and comment on these analyses by non-FBI experts chosen, as appropriate, by the Deputy Attorney General; preparation of objective decision documents for review and comment by the FBI and by Departmental officials with significant interest in the resolution of the issues; and presentation to the Attorney General for final decision. In addition, I would call to your attention the fact that Director Kelley, the Assistant Attorney General for Administration and the head of the Office of Criminal Justice recently agreed to undertake a cooperative, in depth analysis of the FBI budget. I suggest that this cooperative effort go forward with a view toward completion and review of its analysis prior to the preparation of the FY 76 budget.

(2) *Guidelines for the use of electronic surveillance*: In a letter of September 12 to the Chairman of the Senate Foreign Relations Committee, I articulated certain surveillance policy guidelines. And I indicated my intention to ensure not only the application of these guidelines, but also the continuation of effort to develop new standards and guidelines for both domestic criminal matters and national security purposes. It seemed to me then, as it seems to me now, desirable to give these standards precise public articulation in order to foster better understanding of the scope and nature of the limited use of electronic surveillance. I suggest, therefore, that the work of the FBI and the Deputy Attorney General—already well underway in this area—be continued.

(3) *Protection of individuals' rights to privacy—consistent with the need for efficient and effective criminal information systems*: The Department has developed and submitted to the Office of Management and Budget a proposed "Criminal Justice Information Systems Security and Privacy Act." This bill would, if enacted, provide a sound basis for protecting individuals' rights to privacy. I would hope that review by other Departments could be expedited and that the bill could be promptly forwarded for consideration by the Congress.

(4) *Protection of the public's rights to "freedom of information"—consistent with the limitations necessary to protect national security, the integrity of investigative processes, individuals' rights to privacy and the effective development and administration of policy within the Executive branch*: As you know, I have initiated—and the Department has budgeted for—a comprehensive, government-wide study of "freedom of information." I would hope that this important study of a complex set of legal and administrative problems would go forward in accord with the plans already formulated.

(5) *Reorganization of the Department*: On July 11, 1973, I established a Committee on the Management of the Department to provide the Attorney General with recommendations which would adapt the Department's antiquated administrative structure and practices to the demands of the latter portion of the twentieth century. On October 17, I announced decisions made on the basis of "Stage I" of the Committee's analysis. For reasons stated in the Committee's report and in my own comments to the press, I hope that these decisions will be implemented—and that the "Stage II" follow-on studies will receive top management support and attention.

(6) *Planning and Evaluation*: It is an unfortunate irony that the Department has, for the past several years, been preaching the merits of comprehensive planning to states and localities—without in any serious respect practicing what it preached. Upgrading the Office of Criminal Justice was a first step toward developing an appropriate analytic capacity for the federal level. I had hoped soon to establish an office with even broader staff responsibility for Planning and Evaluation. I would suggest that the Management Committee be directed promptly to provide a paper on this issue—it is already in the process of development—for the Attorney General's decision.

(7) *Creation of an Inspector General*: On August 8, I established a "Committee on the Inspector General" chaired by the Deputy Attorney General. The Committee provided me with a preliminary report recommending the circulation of a specific proposal for the creation of an "Office of the Inspector General."

I approved that recommendation and a specific proposal has been circulated and commented upon. The issue is, I believe now ready for further Committee recommendation and decision. While I have not had an opportunity to review the comments on the proposal, I have been generally in favor of the creation of an Office of Inspector General. And for reasons stated at the time of the Committee's creation, I would suggest prompt attention to the recommendation of the Committee.

(8) *Depoliticization of certain appointments*: At my direction, a comprehensive review of the appointment process for Assistant U.S. Attorneys, U.S. Attorneys, U.S. Marshals and Judges was recently completed. While this is in some respects a controversial subject which will demand careful consideration prior to decision, certain less controversial decisions seem to me to be clearly indicated: (a) the full "professionalization" of a career Marshals Service and (b) the creation of a central pool of career professionals for periodic rotation to U.S. Attorneys' office to assist in both litigation and personnel development.

(9) *Reform of the Federal Criminal Code*: At my direction a comprehensive analysis of the Brown Commission Report, S. 1 and S. 1400 has been completed and is available for review and decision. Reform of the federal criminal code would have been my number one legislative priority. Although the subject is vast, I believe that with prompt attention and thorough legislative planning, comprehensive code reform could be enacted by the next Congress.

(10) *Election Reform*: This subject is under continuing review by White House staff. I have noted to the President that there are at present significant gaps in the statutes concerning political "dirty tricks." I have urged—and would continue to urge—that, at a minimum, steps be taken promptly to seek legislation to close these gaps, I have, in addition, established a Committee under the direction of the Associate Attorney General to undertake a comprehensive review and analysis of the broad issues of election reform—and particularly the issues of campaign financing. I would hope that the work of this Committee would continue to receive high priority attention.

(11) *"Juvenile Delinquency" Prevention*: The serious crime problem in the United States is in very large measure a youth crime problem. Yet youth crime has attracted much too little rigorous analytic attention. The starting point for analysis and reform, in my opinion, should be with focus on the problems of classification, diagnosis and assignment of youth offenders. Insofar as the "juvenile delinquency" problem is more broadly conceived as a problem of youth development, I should emphasize that lack of adequate federal funding is not the cause—the federal government spends more than \$12 billion on youth development. The problem is largely conceptual and administrative. Here I would urge, as a first step, the strengthening of the Interagency Council on Juvenile Delinquency—as suggested by LEAA.

(12) *Improvement of inter-Departmental policy development and implementation*: Many of the Department's most serious responsibilities and problems involve policies which have been in important measure the responsibility of other Departments to develop and administer. It is for this reason that I urged the creation—and was pleased to be named chairman—of three Cabinet Committees: Civil Rights, Crime Prevention and Rehabilitation, and Drug Abuse. Priority at this stage should, in my opinion, be attached to the recruitment of strong staff support capability for each of these committees.

(13) *Reduction of unnecessary litigation*: Given the continuing increase in caseload, it is my opinion that the Department should pursue every opportunity to reduce that which may be essentially unproductive litigation which the Department is obliged to pursue—but which could be avoided altogether, without any adverse impact, by the minor modification or clarification of confusing statutory or regulatory language. I have asked the heads of the litigating divisions to examine this hypothesis. And given the competing demands upon the precious and limited legal resources of the Department, I would urge follow-ups on this point.

(14) *Liaison with Gambling Commission*: There is much evidence which suggests that gambling is a principal source of financing for organized crime; but there is very little evidence as to the effect of law enforcement efforts on either the incidence of gambling or the strength of organized crime. This raises fundamental questions as to whether the benefits of present law enforcement approaches to gambling outweigh the costs. These questions—being investigated by

the Congressional and Presidential Commission on the Review of the National Policy Towards Gambling—must be of considerable concern and continuing interest to the Department of Justice.

(15) *Reduction of the influx of illegal aliens*: A number of coordinate actions should continue to be pursued to ameliorate this problem. With the combination of penalties against employers for the employment of illegal aliens (we have supported H.R. 982, which has not yet been acted on by the Senate) and the admission of a larger number of aliens to meet genuine labor shortages (I have asked for cooperation here from the Labor and Agriculture Departments), we could enforce the Fair Labor Standards Act as to the legally admitted workers and could police their conditions of work. Also, further attention to various personnel and administrative actions within INS is needed, starting with the confirmation by the Senate of General Leonard Chapman's nomination, to improve morale and performance there.

With best wishes,
Sincerely,

ELLIOT L. RICHARDSON.

Senator TUNNEY. Have you had an opportunity to discuss it with Mr. Richardson or Mr. Bork?

Senator SAXBE. I discussed it with Mr. Richardson. However, my discussions have been extremely limited because I was not nominated until yesterday. I felt it would be presumptuous of me to interject myself into the Justice Department until I had some reason and authority to do it. I have not been over there. I have not talked in length on anything.

There is a tremendous overhaul going on in the Justice Department. from top to bottom. There is a reorganization. There are a number of committees, on the freedom of information, there are committees on wiretapping, and surveillances, committees on the criminal code, and all of these things are going on at the present time.

I hope to get into them and to assess their respective values.

Senator TUNNEY. I was wondering if you feel that you can answer questions with respect to the items that were raised by Mr. Richardson with respect, for instance, to the role and policies of the FBI? Have you had a chance, in your own mind, over the period of years that you have served in the Senate and as attorney general of your State, to evaluate the role and policies of the FBI and the nature of the Attorney General's supervision over the FBI? Could you respond to questions that were raised by Mr. Richardson in this letter?

Senator SAXBE. I do not think that I could go into any depth on it. I have not talked to Mr. Kelley. I feel strongly that the FBI has gone through a rather traumatic experience in the last 3 years because for a long time after Mr. Hoover's death, and then the period of time when there was no director, then Mr. Gray, who left under circumstances not too attractive, and then Mr. Ruckelshaus and since then Mr. Kelley, who really has not had time to get involved in the general overhaul of the FBI.

I feel strongly that the FBI is a force for good in this country, that they should be an example to all law enforcement departments for fairness and capability, and I think that they can regain a great deal of their previous splendor through enthusiastic and hearty cooperation with the Attorney General. I intend to do that.

Senator TUNNEY. Mr. Richardson said, from the study that he initiated, that there are 11 policy issues for analysis and decision, and he

goes on to say that: "It seems to me highly desirable not only that work continue on these issues, but that the established procedure for resolving these issues be maintained." What are your thoughts on that?

Senator SAXBE. I do not have any on that right now. I have not made any assessment of that.

Senator TUNNEY. You have not seen the study?

Senator SAXBE. No; I have not. As I said, I do not think that I should interject myself until my disability was removed and that I was named and I did come up here.

Senator TUNNEY. In the Evening Star, Acting Attorney General Robert Bork was quoted as saying that he has told William P. Saxbe that his top priority, when he becomes Attorney General, should be to push a study of possible reorganization of the Federal Bureau of Investigation. He also told Saxbe that he should also push parts of the reorganization program that Richardson started before he resigned.

Senator SAXBE. He told me, he did, and I told him that I would look them over.

Senator TUNNEY. You have not made any decision on it?

Senator SAXBE. No.

Senator TUNNEY. How about guidelines for the use of electronic surveillance?

Apparently, Mr. Richardson was developing guidelines.

Are you familiar with these guidelines, and do you have any thoughts?

Senator SAXBE. The only guidelines that I am aware of is that no one but the Attorney General can authorize a request to a court for electronic surveillance.

Senator TUNNEY. Mr. Richardson said that:

It seemed to me then, as it seems to me now, desirable to give these standards precise public articulation in order to foster a better understanding of the scope and nature of the limited use of electronic surveillance. I suggest, therefore, that the work of the FBI and the Deputy Attorney General—already well underway in this area—be continued.

Do you agree with that?

Senator SAXBE. I do not know.

Senator TUNNEY. I assume that you feel that there should be a public articulation of the standards, however, do you not?

Senator SAXBE. What do you mean?

Senator TUNNEY. I assume that what Mr. Richardson means when he says public articulation of standards is to make clear to the public what those standards are, and that when electronic surveillance is going to be instituted it will be instituted according to those standards.

Senator SAXBE. In other words, tell public what and when?

Senator TUNNEY. And how, and what the standards are.

Senator SAXBE. That sounds reasonable.

Senator TUNNEY. Mr. Richardson goes on:

Protection of individuals' rights to privacy—consistent with the need for efficient and effective criminal information systems. The Department has developed and submitted to the Office of Management and Budget a proposed "Criminal Justice Information Systems Security and Privacy Act." This bill would, if enacted, provide a sound basis for protecting individuals' rights to privacy.

Do you have any knowledge of this legislation?

Senator SAXBE. Not specifically, but I am very much interested in this because I think that this is a very important right that an individual has and should not be invaded. There is great danger today with the electronic computers and so on that we do invade the individual's rights and you have to walk the fine line of making available information to proper law enforcement people and at the same time not invading individual rights.

Now, as I understand it, the number of electronic surveillance cases has dropped dramatically every year in the past 10 years, but there is a growing concern when you leave the electronic surveillance and you proceed to the building up of criminal information, because criminal information is growing, and the means of distributing this criminal information is becoming more sophisticated.

Now, if this kind of information is made available to people who then disclose it illegally, it becomes an invasion of a personal right.

Senator TUNNEY. I assume that you are talking about, among other things, the electronic data by the NCIC and the distribution that is made of this criminal data to local police chiefs throughout the country?

Senator SAXBE. That is right. I have had some familiarity with this. When I was Attorney General of Ohio, I ran a clearinghouse for criminal information. I found that everyone from credit bureaus to employment offices were invading our sources and, actually, it was done on a first come, first serve basis. They actually charged a fee to supply information to employers.

We would gladly close up these holes. I have been led to understand that the information service is gradually closing up the holes, cutting off the outlets that misuse this information and make it available to people that are not authorized to have it. I will certainly continue that.

Senator TUNNEY. You take a personal interest in this matter?

Senator SAXBE. I do.

Senator TUNNEY. Mr. Richardson goes on to say:

Protection of the public's rights to "freedom of information"—consistent with the limitations necessary to protect national security, the integrity of investigative processes, individuals' rights to privacy and the effective development and administration of policy within the executive branch. I have initiated—and the Department has budgeted for—a comprehensive, Government-wide study of "freedom of information."

Do you feel that you would go ahead?

Senator SAXBE. The Freedom of Information Act has not been implemented to the degree that it should have, and it is something that has a lot of difficulty, of things with the various departments, not just the Justice Department, but all the departments, to cooperate, and I am hoping that the committee that is working on this will be able to work out some of those bugs, so that we can have full compliance with the law. The law is rather explicit. I do not believe it is being completely complied with, not only in the Justice but the other departments.

Senator TUNNEY. You feel that you would go ahead with the way that it was being done by Mr. Richardson in that area?

Senator SAXBE. If there is a committee on it, I would certainly want that committee to continue.

Senator TUNNEY. He goes on to talk about the reorganization of the Department. It says he:

Established a committee on the management of the Department to provide the Attorney General with recommendations which would adapt the Department's antiquated administrative structure and practices to the demands of the later portion of the 20th century.

Then he talks about stage I and stage II studies.

Do you plan to carry on those studies?

Senator SAXBE. They have already gone through with stage I. It was put on in October. Stage II is the first chance that will get to get a crack at it. Some of the things that he has done I can understand, some I cannot. I will have to have more information.

Senator TUNNEY. You feel that these studies are important?

Senator SAXBE. The studies are important. Whether the changes are necessary or not, I do not know. Some of them look very real. I am somewhat alarmed by the obvious effort to separate the Attorney General from some of the bureau chiefs. I do not quite understand this. I think the Attorney General should be very close to those bureau chiefs, certainly the FBI and some of the other, the persons in some of the other services. I will want to get more information on that.

Senator TUNNEY. Mr. Richardson in his letter said:

Planning and evaluation: It is an unfortunate irony that the Department has, for the past several years, been preaching the merits of comprehensive planning to States and localities—without in any serious respect practicing what it preached. Upgrading the Office of Criminal Justice was a first step.

Do you think that such actions on the part of the Attorney General are valuable, and should they be continued?

Senator SAXBE. I cannot give you an intelligent answer on that. I just do not know that much about it.

Senator TUNNEY. Creation of an Inspector General. He says that he:

Established a "Committee on the Inspector General" chaired by the Deputy Attorney General. The committee provided me with a preliminary report recommending the circulation of a specific proposal for the creation of an "Office of the Inspector General." I approved that recommendation and a specific proposal has been circulated.

Do you have any feeling about that?

Senator SAXBE. I was an Inspector General in the Air Force for some period of time. I am familiar with the operation of it. It is a quasi-military approach to control. Whether that will fit into an office such as the Department of Justice, I do not know. It is a satisfactory means of detecting omissions and mistakes. It is worthless without a proper followup.

The followup has to have the authority to see that there are corrections made. Just to identify the problem is no answer. So I will continue the investigation on that, and if it lives up to the expectations and there can be an adequate follow, I am not that familiar with the chain of command over there to know if it will work. To work there has to be a very tight organization with command responsibility.

I have a feeling that some of these responsibilities are rather loose. And to go around and shake down, say, a district attorney's office without being able to help the guy is not very effective. If he is short-handed, if he is overrun with work, if he cannot hire the kind of people

he wants, what good does it do to come out and come in with a deficiency list a mile long? It would be better to send a guy out there and tell him to go to work rather than picking the ox to pieces.

Now, as I say, unless you have a strict command responsibility, an Inspector General is just a nuisance.

Senator TUNNEY. Point 8. Depoliticization of certain appointments. He says:

At my direction, a comprehensive review of the appointment process for Assistant U.S. Attorneys, U.S. Attorneys, U.S. Marshals and Judges was recently completed." Then some of the decisions that he felt were clearly indicated: "(a) the full 'professionalization' of a career Marshals Service and (b) the creation of a central pool of career professionals.

Senator SAXBE. This is a problem because of the deficiencies in professionalism that is necessary. However, you and I are here through politics. If you remove politics from all aspects of American life, you remove political party responsibility.

Congress—and this is a congressional problem, it is not a problem for the Attorney General's Office alone—Congress can remove these standards tomorrow and say that the Congressman and the Senator has no input on the naming of a judge or on the naming of a district attorney. What I would like to know is who does and how is he better qualified than a Senator.

I think that when you start depoliticizing things, you had better watch out, you have depoliticized yourself, because if you stick entirely to the bureaucracy, it is not always the answer to all problems. In fact, I can point to a number of bureaucracies that bogged down in their own redtape. I am sure that one of the reasons that we do get as good people as we do for district attorneys and for judges is because they feel an individual challenge. Get a young man on his way up. If you make this strictly a civil service job, you are going to get a lot of old dreamers in there that are in there for the trip and are not going to be the kind of people that you want.

Senator TUNNEY. Insofar as U.S. Attorneys are concerned, I wholeheartedly agree with you. I wonder what your thoughts are with regard to the Marshals Service, depoliticizing the Marshals Service?

Senator SAXBE. If there are deficiencies in the Marshals Service the way it is now, I am not aware of it. I always thought they operated rather well.

Senator TUNNEY. Mr. Richardson goes on to talk of reform of the Federal Criminal Code. "At my direction a comprehensive analysis of the Brown Commission Report, S. 1 and S. 1400 has been completed and is available for review and decision."

Quite clearly that subject is a vast one, and I have no intention of asking you specifics.

Senator SAXBE. It has been before Congress for some time. I think it is essential that Congress move on it. Without any input from the Attorney General's Office, I am just aware of the fact that our criminal code is antiquated and needs to be brought up to date. There is a lot of standardization that is necessary. The bill has been in this committee, in subcommittee. There are a lot of members here that have done a tremendous amount of work on it. It seems to hang up somewhere along the line. Why, I am just not sure.

Senator TUNNEY. Do you intend to review the Federal Criminal Code and the recommendations that have been made for reform so that you will have an ability to give a personal input to the Congress as to recommended changes?

Senator SAXBE. Yes. I might add that I do have some information as to what is in it now. I am interested in it. I was on the executive committee of the Attorney Generals Association. All those organizations were consulted 10 years ago, and there has been a million hours of work on this criminal code.

Now, for me to say that I am going to get completely familiar with it in the next 6 weeks, no. I know generally what it is. I know what the guidelines are. But as I say, I do not think it is going to pass this session of Congress.

Senator TUNNEY. It is going to be a lot longer than 6 weeks before it passes.

Senator SAXBE. That is right. But I would certainly be able to supply people who can testify, because the Department of Justice has been working very closely with the members of this committee and the House Committee and others that are interested.

Senator TUNNEY. Election reform. This is a subject which Mr. Richardson says is under continuing review by the White House staff.

Do you intend to involve yourself in this?

Do you feel there is a need?

Senator SAXBE. No, I do not think the Attorney General has any business involving himself in such delicate congressional activities as these. He would provide such information as he might be called on, but to make recommendations I think would be presumptuous.

Senator TUNNEY. How about in the areas of campaign financing?

Senator SAXBE. I do not think that is the Attorney General's job, unless I completely misconstrue what it is. I think the Attorney General runs the Department of Justice. The Department of Justice takes the laws that Congress sends over there and does their utmost to try to see that they work, those that have criminal or civil liability, vigorously prosecutes both of those. I am certainly not going to try to advise Congress about what kind of campaign spending law they should pass.

Senator TUNNEY. Juvenile Delinquency Prevention. He writes about the need to develop far better procedures to attack the problems of juvenile delinquency.

Do you feel that this is important?

Senator SAXBE. I think it is extremely important. I think that we waste many lives by the system. The problem is how to go about it.

Senator TUNNEY. He recommends strengthening the Interagency Council on Juvenile Delinquency.

Are you familiar with that?

Senator SAXBE. I am not familiar enough with their job to give you an opinion.

Senator TUNNEY. There are a number of other areas that are covered, but I am sure that when you take office you will have ample opportunity to study them, and I assume you will address yourself to them. I do not want to hold up the proceedings today by going over them.

Senator SAXBE. Senator Tunney, there is one thing I might add in that regard. In my limited contact with the Justice Department—as I say, I have not been there; it is secondhand, sending people over there, looking over material that was brought back—I am amazed at the turmoil that seems to exist there of numerous committees, all studying very big problems that portend great changes. The vigorous reorganization which they are in the midst of, the vacancies that are created by this reorganization, the changing of approaches to many of the bureaus through different avenues of approach, all of these things have just complicated the job of Attorney General terribly, and I am sure that Mr. Richardson, had he been permitted to continue, would have been very active in the next 2 or 3 years that he has instigated. It is going to mean an assessment of his activities by my people just as soon as I get in there.

We are going to have to proceed on those that we feel have the first priority, and set priorities for the rest of them. I do not see how we can proceed on all of them, because there are too many balls in the air.

Senator TUNNEY. Do you have any idea of what your first priority will be when you get there?

Senator SAXBE. The first priority will be staffing, because I have to get a deputy, I have to get at least five supergrade people within a very short time, people to come in to head major bureaus and departments. And, frankly, my first priority after that is to get acquainted with every aspect of the Office of the Attorney General.

Senator TUNNEY. Will you have freedom to pick your own deputy?

Senator SAXBE. Yes. I intend to keep Mr. Bork. He is a capable Solicitor. I certainly hope he will stay. Other than that, I have no comment. I have been apprised of a wonderful lot of talent down there of people that are in offices now. I hope they will stay. Frankly, for the last 3 months, since my name came up. I have been sending almost daily messages down there, hang in there, because a lot of people want to leave. There is a great uncertainty, just trying to hang onto them until I get over there.

Senator TUNNEY. This morning in answer to questions from Senator Kennedy, you said that you would not participate in the Kent State investigation. You said you did not want to use the word recuse. The impression was that, in effect, you completely disqualified yourself.

Senator SAXBE. That is my intent. If there are decisions to be made—and frankly, I think the major decision was made yesterday to call a grand jury—if there is evidence forthcoming, this is where it is going to be developed.

Senator TUNNEY. I was shown during the luncheon break an article that appeared in the Los Angeles Times, November 7, 1973, in which reportedly you said in an interview that you had no thought to disqualify yourself and that you did not perceive yourself as being biased on that issue.

Senator SAXBE. That is the reason I did not want to use the word recuse. I do not think I am biased. I do not think I am prejudiced on this matter. If there is any reason to believe that there was a conspiracy, I think they should have a full opportunity to proceed. I

have no one to protect. I think that because of the attention that has been drawn, the best way to demonstrate it is that any decision that will be made will be made by others in the department.

Senator TUNNEY. Just a few last questions.

What is your feeling with respect to going around the country giving political speeches as Attorney General?

Would you feel compelled to do that? Will you do it?

Senator SAXBE. I think in normal times there is nothing wrong with the Attorney General doing this, but I do not think these are normal times. It will not be my practice to do so.

Senator TUNNEY. Senator Hart asked me to ask you a question, a question related to possible contributions which Senator Saxbe may or may not have received in his campaign.

It seems to me that the public confidence requires that all questions be asked before rather than after a nominee takes office, so I offer that to suggest the tone of the questions I am about to ask.

Officials of Armco Steel and Republic Steel are considered active contributors and fundraisers to the Republican Party in Ohio. Perhaps they contributed to your campaign?

Senator SAXBE. I do not know. I would hope they did, but I do not know.

Senator TUNNEY. Further, the two steel companies own the Reserve Mining Co. in Silver Bay, Minn. The Environmental Protection Agency asked the Justice Department to bring suit against Reserve Mining for dumping taconite tailings into Lake Superior. The Department brought the suit and litigation is under way. Environmentalists, particularly in Michigan and Minnesota, are concerned that the suit be vigorously pursued by the Justice Department.

For the record, would there be an association with Armco and Republic Steel that would affect the manner in which the Justice Department would pursue that Reserve Mining case?

Senator SAXBE. No. I might add that I think I received contributions—when I say it, I do not know it is true—but I think I received contributions from 4,000 or 5,000 people. If I were to tailor the activities of the Justice Department on the basis of whether or not they contributed to me, there would be a lot of people that would be in the same class as this, and I assure you I am not going to keep any list of people that contributed on what the Justice Department does. I am going to be completely objective.

Senator TUNNEY. Would you review the matter and your possible conflict and make a determination if you should recuse yourself?

Senator SAXBE. On what?

Senator TUNNEY. On the question on the suit against the Reserve Mining Co.

Senator SAXBE. No. There again presumption of prejudice. In the Kent State thing there is a lot of emotion. People were hurt. It is a hot question in Ohio. I was a member of the National Guard. I was acquainted with everybody involved in that. I think there is sound basis for me to say any decision be made by somebody else.

On the other, I cannot think of any other cases that the Justice Department may have where I have any interest that would suggest that there is prejudice on my part.

Senator TUNNEY. What you are telling us is you would in no way allow the fact that they gave you a campaign contribution to affect your judgment on the case and your willingness to pursue it?

Senator SAXBE. No. Even if I had stock in the company, which I do not. In fact I made a large sacrifice—last week I sold my 10 shares in IBM because they are involved in litigation. I plan to liquidate other insignificant shareholdings that I have where there may be litigation.

Senator TUNNEY. Mr. Jaworski, it was reported yesterday that U.S. Attorney Harold Titus suggested that his office was subjected to compelling pressures during his year-long investigation of the Watergate scandal. He declined to state who applied the pressure. Do you feel that possibly obstruction of justice has been involved that you should investigate the matter?

Mr. JAWORSKI. I think he should make available to us any information he has. We would be pleased to receive it and pursue the matter. It would be within the jurisdiction of the Special Prosecutor.

Senator TUNNEY. Has he made any attempt to give it to you yet?

Mr. JAWORSKI. As far as I know, he has not. He has not been in touch with me, but he may have been in touch with my deputy or someone else. I have not heard about it if he has.

We commented on—not that part of the story but another phase of the story. I do not think they have been in touch with our office yet.

Senator TUNNEY. You have not personally felt any pressure?

Mr. JAWORSKI. No. There has not been any, Senator Tunney. If there were an attempt to apply it, I assure you I would not pay any attention to it.

Senator TUNNEY. You said that before. I am sure that is true.

Senator Saxbe, I am personally convinced that you are going to be confirmed very soon, and I just want you to know that I wish you very well in your new responsibilities. I think you are going to have a very difficult job, very difficult job, and one which I cannot imagine anybody giving up the U.S. Senate for. I think that you are to be commended for attempting to solve many of the difficult problems that exist in the Department of Justice, notwithstanding the morale problem that you will face, and you have a reputation for being plain-spoken, being honest, and I think you are going to need those qualities, as well as the indefatigable constitution that I also know you have and the character that you also possess. I wish you very well.

Senator SAXBE. Thank you.

Senator TUNNEY. Senator Mathias.

Senator MATHIAS. Thank you, Mr. Chairman.

I promised Senator Eastland I would not be more than 10 minutes. I will try to live up to that.

I will take off where Senator Tunney finished in welcoming you and wishing you well, and saying that I am sure members of this committee would want to be as helpful as they can.

I have just been looking over your biographical sheet here and thinking, really, what a happy circumstance it is that you have had the particular kind of preparation that you have had as you go to the Justice Department at this time. Your service in the Legislature of

Ohio, your service as attorney general of Ohio, your experience as a private practitioner of the law, I think, will give you a realistic approach to some of the problems of people—the human problems and other problems of a personal dimension—an approach which is often lost by people who come to the Capitol, by people who come to Washington and head the great departments of our Government. And as great as these departments are, I think they often have difficulties in solving problems of individual people, and I am sure that this is an ability that you can bring to the department.

Were you a member of the National Association of Attorneys General?

Senator SAXBE. Yes, sir. I served on the executive committee.

Senator MATHIAS. You will recall that in that association there were two classes of members, one class that was known as the attorneys general and the other the attorneys genial.

Senator SAXBE. I belong to both.

Senator MATHIAS. I am also encouraged by some of the activities that you have undertaken as a member of the Senate, which I think will now, in your new position, give you a good foundation for facing some of the problems which have not been solved and need solutions very badly.

I think, for example, of the bill which you cosponsored, and had a large part in writing, which dealt with the reform of the entire system of criminal justice, beginning with the counseling of juveniles who were first beginning to show some wayward tendencies, and carrying all the way through to the badly needed reform of the corrections system.

Senator SAXBE. And the parole system.

Senator MATHIAS. Yes, and taking in all the way-stations.

Another is the bill which you cosponsored which deals with total access to information on the part of all congressional committees who have the jurisdictional right to that information. This is really a stronger bill than the Freedom of Information Act. I am sure that in your new role you will not forget that.

Since Mr. Jaworski is still with us, and we are not going to hold him long, I have one or two specific questions.

When you were here before, Mr. Jaworski, on the 20th of November, I asked you whether or not you would supply the committee with a written status report on the requests for evidence, bearing on the matters in your jurisdiction, which have been directed to the White House.

Subsequently Chairman Eastland, on November 29, sent you the specifics of that request.

I wonder how you are coming along in giving us an answer?

Mr. JAWORSKI. I had the letter on my desk to sign, I think it was on Monday, when there came an arrangement that I had made, had concluded on Monday afternoon, that increased the flow of materials substantially. There also was a development that occasioned the delivery of a number of recorded tapes to me, and I then revised the report that I was going to file with you. It is in the course of preparation now. It will be filed. It is a different report than I would have had to

file a few days ago. I thought I would bring it up to date, rather than file the one that was outdated.

Senator MATHIAS. Your report today is progress?

Mr. JAWORSKI. Yes, sir, it is.

Senator MATHIAS. I know, as far as Senator Saxbe is concerned, that Senator Byrd went over this whole area. He has committed himself to your full right to access to such information.

Senator Saxbe, the Senator from California has saved us a lot of time by going over the letter of November 8 which Mr. Richardson sent to Mr. Bork on projects in the Justice Department which were pending at the time of the Boston Massacre.

I would simply, without going into detail on these items, point out that many of them are projects which were developed as a result of conversations with Mr. Richardson and as a result of colloquies that took place during the confirmation hearings on his nomination as Attorney General.

One in which I have a particular interest is the Criminal Justice Information Systems Security and Privacy Act that Senator Tunney mentioned. I would hope that we will be able to develop a bill that will reach all information, including State systems, which we can reach because of the LEAA involvement, and which will expedite the inclusion of the dispensation of arrest records, and provide citizens with the right of review and the mechanics for purging erroneous information. I think it should have some criminal penalties for violation. I do not think we could today lay you under any time limit, but I would hope that we could have a bill early in the next session and begin work on that.

Senator SAXBE. Was there an understanding that the Justice Department would provide such a bill?

Senator MATHIAS. Yes; there was an understanding. I cannot make it a commitment, but there was an understanding. We even got so far as to write the title of it, and there is a draft available. I hope that this is a matter that you will give some early attention to.

Senator SAXBE. I will.

Senator MATHIAS. I will mention the question of the FBI again. The FBI largely operates in a statutory vacuum. Some of its most critical powers are derived from Franklin Roosevelt's Executive orders and that is not a happy way to have it. It is not happy for the FBI. I do believe that we need a statutory base there. This committee will be happy to work with you. I think it is much better that we work together than to work at cross purposes. I know that we will have your cooperation on it.

Finally, we have made a good start, and we have had fine cooperation from Melvin Laird and Secretary Weinberg as well as from the Department of Justice, in the field of juvenile delinquency. As you know, as much as 70 percent of the crime in many parts of America is committed by juvenile delinquents.

I would lay you under particular injunctions in these three areas. They are of critical importance.

Senator SAXBE. I think it is indicative of the problem when you have four or five agencies involved in juvenile delinquency, no one has been able to find a handle on this. It is a product of a very destruc-

tive social influence that are beyond the Department of Justice, and I will be happy to work on this, but you have got to remember that the Department of Justice is not a social agency and in most of these things, they are caused by a breakdown in family and community life. I am very much interested, and hope that we can work together.

Senator MATHIAS. One of the most troublesome things that has come up in the last couple of years—it came up in the Richardson confirmation, it came up in the Patrick Gray hearing, it came up in Chief Kelley's confirmation—is the maintenance of the so-called dossiers on Members of Congress.

It would seem to me that the time has long since passed for keeping these records. I would hope that you would see to it that the pledges that have been given to this committee—

Senator SAXBE. I was amazed that this practice existed. I did not even know it until I got into some of these discussions.

Senator MATHIAS. If you find that it has persisted, despite all the pledges that were given, I hope that you will dispense with it.

Senator SAXBE. I will give it immediate attention.

Senator MATHIAS. As a final word, I feel that one of the tragedies of the Boston massacre was the evidence later put before this Committee that the Attorney General, Mr. Richardson, did not have an opportunity to talk with the President personally during some of the most critical days leading up to that event. I would urge that you would maintain your rank as one of the senior members of the Cabinet to insist upon personal access to the President.

Senator SAXBE. This, he has assured me.

Senator MATHIAS. This is a critical element in the kind of service that you can render to the country, and to the President.

We wish you well.

Senator SAXBE. Thank you.

[Senator Mathias subsequently made the following material a part of the record.]

U.S. SENATE,
November 28, 1973.

HON. ELLIOT L. RICHARDSON,
McLean, Va.

DEAR ELLIOT: I note by this morning's Washington Post that you have made reference to two documents bearing on the firing of Archibald Cox which have not yet been made a part of the record of the oversight hearings of the Senate Judiciary Committee. I am wondering if you would be willing to supply me with copies of these documents for inclusion in the record.

I should also advise you that I will submit copies of these documents to General Haig for his comment in the light of the differences of opinion that have been aired publicly with respect to the circumstances under which Mr. Cox was fired.

Sincerely yours,

CHARLES McC. MATHIAS, JR.
U.S. Senator.

McLEAN, VA., November 30, 1973.

HON. CHARLES McC. MATHIAS, JR.,
U.S. Senate,
Washington, D.C.

DEAR MAC: Here, in response to your letter of November 28, are the two documents bearing on the firing of Archibald Cox which were referred to in that morning's Washington Post.

The first document embodies my initial attempt to put in writing, at the suggestion of Mr. Cox, the proposal I had submitted to him orally. This document contains a paragraph captioned "Other Tapes and Documents" which was omitted from later drafts at the urging of Mr. J. Fred Buzhardt, who pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

The second document is a draft press release written Friday evening, October 19, immediately after I received the President's letter instructing me to direct Mr. Cox to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I held up this release upon learning that the President's letter to me had not been made public.

I would be glad to have these documents included in the record of the hearing on legislation to create the position of special prosecutor at which I recently testified.

With warm regard,
Sincerely,

ELLIOT L. RICHARDSON.

Enclosures.

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 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 signify (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.

DRAFT PRESS RELEASE

The President's decision to call on Senator Stennis to prepare an authenticated record constitutes, in my view, a reasonable and constructive compromise of the "Watergate tapes" issue. It seems to me inconsistent, however, with the explicit understandings on which the office of Special Prosecutor was created to deal now with hypothetical future attempts by Mr. Cox to invoke judicial process, and the proposal I presented to Mr. Cox this week did not attempt to do so, I plan to seek an early opportunity to discuss this approach with the President.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., December 5, 1973.

Gen. ALEXANDER M. HAIG, Jr.,
Assistant to the President, The White House,
Washington, D.C.

DEAR GENERAL HAIG: The fact that testimony given before the Senate Judiciary Committee by Elliot Richardson has been publicly disputed has been a matter of concern to members of the Committee. In view of the Committee's specific agreement with Mr. Richardson and the Administration with respect to departmental regulations creating and governing the office of Special Prosecutor, it is obviously important to know why and how the office so created was abolished.

Mr. Richardson has now made available to me, at my request, two documents not heretofore submitted for the Committee record or otherwise available to the public. These documents are described by Mr. Richardson as follows:

"The first document embodies my initial attempt to put in writing, at the suggestion of Mr. Cox, the proposal I had submitted to him orally. This document contains a paragraph captioned 'Other Tapes and Documents' which was omitted from later drafts at the urging of Mr. J. Fred Buzhardt, who pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

"The second document is a draft press release written Friday evening, October 19, immediately after I received the President's letter instructing me to direct Mr. Cox to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I held up this release upon learning that the President's letter to me had not been made public."

It is my intention to enter these documents into the record at the next meeting of the Judiciary Committee.

I might point out that the draft of the Stennis compromise prepared by Mr. Richardson and amended by Mr. Buzhardt would seem to corroborate Mr. Richardson's testimony that he had not agreed to any limitation of the authority of the Special Prosecutor during the early part of the week of October 15th. The letter from Mr. Cox to Mr. Wright dated October 19th, which is already a part of Committee record, would indicate that the matter of limiting the Special Prosecutor's authority was, however, a subject of conversation between Mr. Charles Alan Wright and Mr. Cox by that date. This again would seem to corroborate Mr. Richardson's testimony.

Since there have been conflicting versions of this story, notwithstanding this evidence, and since Mr. Richardson's telephone and appointment logs submitted

to the Committee identify you as a principal member participant in these events, I am hopeful that you will be able to resolve the apparent contradictions.

It would, of course, be helpful to have your comment and I want to give you an opportunity to register your views.

I should advise you that I would expect to advise the Committee of your reply and introduce it as part of the Committee record.

Sincerely yours,

CHARLES MCC. MATHIAS, Jr.,
U.S. Senator.

Enclosures.

WASHINGTON, D.C., October 19, 1973.

CHARLES ALAN WRIGHT, Esq.,
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.*

THE WHITE HOUSE,
Washington, D.C., December 12, 1973.

DEAR SENATOR MATHIAS: In responding to your letter of December 5th, I would first like to state without equivocation that in recent discussions there has been no intention of which I am aware to discredit Elliot Richardson or to in any way impugn his integrity or cast doubt on his veracity. I have the highest regard for Mr. Richardson and consider him a good personal friend.

It is not unique that several people, bent on the mutual goal of resolving a problem rather than contemporaneously recording their actions, will differ in their recollection of events leading up to a decision.

This is particularly the case in regard to the recollections of those who were involved in the meeting of Friday, October 19, which set in train, events which led up to the discharge of Mr. Cox. Individual recollections of specific details of that meeting may differ, but not the good faith of those attempting to recall what took place. For this reason, I sincerely feel that any further debate on this matter can serve no constructive purpose. I believe Elliott, with whom I have discussed the whole affair, shares my feeling. It is for this reason that I hope and trust that this response will satisfy your inquiry and lay this issue to rest.

I thank you for your thoughtfulness in writing and affording me this opportunity to provide my comments.

Sincerely,

ALEXANDER M. HAIG, Jr.,
General, U.S. Army (Retired),
Assistant to the President.

Senator EASTLAND. The Chairman has been requested to have Mr. Bork in the morning.

It has nothing in the world to do with the hearings on Senator Saxbe and Senator Saxbe need not be here.

We will recess now until 10 o'clock in the morning and there will be an executive session of the committee at 2 o'clock tomorrow afternoon.

Mr. JAWORSKI. Mr. Chairman, may I be excused too? It will not be necessary for me to be here?

Senator EASTLAND. No, sir, it will not be.

The committee is recessed.

[Whereupon, at 6:10 p.m., the committee recessed to reconvene at 10 a.m., Thursday, December 13, 1973.]