STATEMENT OF PRESIDENT GERALD R. FORD

HOUSE COMMITTEE ON THE JUDICIARY
Subcommittee on Criminal Justice
October 17, 1974

We meet here today to review the facts and circumstances that were the basis for my pardon of former President Nixon on September 8, 1974.

I want very much to have those facts and circumstances known. The American people want to know them. And members of the Congress want to know them. The two Congressional resolutions of inquiry now before this Committee serve those purposes. That is why I have volunteered to appear before you this morning, and I welcome and thank you for this opportunity to speak to the questions raised by the resolutions.

My appearance at this hearing of your distinguished Subcommittee of the House Committee on the Judiciary has been looked upon as an unusual historic event -- one that has no firm precedent in the whole history of Presidential relations with the Congress. Yet, I am here not to make history, but to report on history.

The history you are interested in covers so recent a period that it is still not well understood. If, with your assistance, I can make for better understanding of the pardon of our former President, then we can help to achieve the purpose I had for granting the pardon when I did.

That purpose was to change our national focus. I wanted to do all I could to shift our attentions from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation. Our nation is under the severest of challenges now to employ its full energies and efforts in the pursuit of a sound and growing economy at home and a stable and peaceful world around us.

We would needlessly be diverted from meeting those challenges if we as a people were to remain sharply divided over whether to indict, bring to trial, and punish a former President, who already is condemned to suffer long and deeply in the shame and disgrace brought upon the office he held. Surely, we are not a revengeful people. We have often demonstrated a readiness to feel compassion and to act out of mercy. As a people we have a long record of forgiving even those who have been our country's most destructive foes.

Yet, to forgive is not to forget the lessons of evil in whatever ways evil has operated against us. And certainly the pardon granted the former President will not cause us to forget the evils of Watergate-type offenses or to forget the lessons we have learned that a government which deceives its supporters and treats its opponents as enemies must never, never be tolerated.

The pardon power entrusted to the President under the Constitution of the United States has a long history and rests on precedents going back centuries before our Constitution was drafted and adopted. The

power has been used sometimes as Alexander Hamilton saw its purpose: "In seasons of insurrection...when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall."1/ Other times it has been applied to one person as "an act of grace...which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."2/ When a pardon is granted, it also represents "the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."3/ However, the Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders.4/ Thus, I am firm in my conviction that as President I did have the authority to proclaim a pardon for the former President when I did.

Yet, I can also understand why people are moved to question my action. Some may still question my authority, but I find much of the disagreement turns on whether I should have acted when I did. Even then many people have concluded as I did that the pardon was in the best interests of the country because it came at a time when it would best serve the purpose I have stated.

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1. The Federalist No. 74, at 79 (Central Law Journal ed. 1914) (A. Hamilton).
2. Marshall, C.J., in United States v. Wilson, 32 U.S. (7 Pet.) 150, 160 (1833).
3. Biddle v. Perovich, 247 U.S. 480, 486 (1927).
4. Ex Parte Garland, 4 Wall. 333, 380 (1867); Burdick v. United States, 236 U.S. 79 (1915).

I come to this hearing in a spirit of cooperation to respond to your inquiries. I do so with the understanding that the subjects to be covered are defined and limited by the questions as they appear in the resolutions before you. But even then we may not mutually agree on what information falls within the proper scope of inquiry by the Congress.

I feel a responsibility as you do that each separate branch of our government must preserve a degree of confidentiality for its internal communications. Congress, for its part, has seen the wisdom of assuring that members be permitted to work under conditions of confidentiality. Indeed, earlier this year the United States Senate passed a resolution which reads in part as follows:

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> "...no evidence under the control and in the possession of the Senate of the United States can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession, but by its permission."
> (S. Res. 338, passed June 12, 1974)

In United States v. Nixon, 42 U.S.L.W. 5237, 5244 (U.S. July 24, 1974), the Supreme Court unanimously recognized a rightful sphere of confidentiality within the Executive Branch, which the Court determined could only be invaded for overriding reasons of the Fifth and Sixth Amendments to the Constitution.

As I have stated before, my own view is that the right of Executive Privilege is to be exercised with caution and restraint. When I was a Member of Congress, I did not hesitate to question the right of the

Executive Branch to claim a privilege against supplying information to the Congress if I thought the claim of privilege was being abused. Yet, I did then, and I do now, respect the right of Executive Privilege when it protects advice given to a President in the expectation that it will not be disclosed. Otherwise, no President could any longer count on receiving free and frank views from people designated to help him reach his official decisions.

Also, it is certainly not my intention or even within my authority to detract on this occasion or in any other instance from the generally recognized rights of the President to preserve the confidentiality of internal discussions or communications whenever it is properly within his Constitutional responsibility to do so. These rights are within the authority of any President while he is in office, and I believe may be exercised as well by a past President if the information sought pertains to his official functions when he was serving in office.

I bring up these important points before going into the balance of my statement, so there can be no doubt that I remain mindful of the rights of confidentiality which a President may and ought to exercise in appropriate situations. However, I do not regard my answers as I have prepared them for purposes of this inquiry to be prejudicial to those rights in the present circumstances or to constitute a precedent for responding to Congressional inquiries different in nature or scope or under different circumstances.

Accordingly, I shall proceed to explain as fully as I can in my present answers the facts and circumstances covered by the present resolutions of inquiry. I shall start with an explanation of these events which were the first to occur in the period covered by the inquiry, before I became President. Then I will respond to the separate questions as they are numbered in H. Res. 1367 and as they specifically relate to the period after I became President.

H. Res. 1367* before this Subcommittee asks for information about certain conversations that may have occurred over a period that includes when I was a Member of Congress or the Vice President. In that entire period no references or discussions on a possible pardon for then President Nixon occurred until August 1 and 2, 1974.

You will recall that since the beginning of the Watergate investigations, I had consistently made statements and speeches about President Nixon's innocence of either planning the break-in or of participating in the cover-up. I sincerely believed he was innocent.

Even in the closing months before the President resigned, I made public statements that in my opinion the adverse revelations so far did not constitute an impeachable offense. I was coming under

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* Tab A attached.

increasing criticism for such public statements, but I still believed them to be true based on the facts as I knew them.

In the early morning of Thursday, August 1, 1974, I had a meeting in my Vice Presidential office, with Alexander M. Haig, Jr., Chief of Staff for President Nixon. At this meeting, I was told in a general way about fears arising because of additional tape evidence scheduled for delivery to Judge Sirica on Monday, August 5, 1974. I was told that there could be evidence which, when disclosed to the House of Representatives, would likely tip the vote in favor of impeachment. However, I was given no indication that this development would lead to any change in President Nixon's plans to oppose the impeachment vote.

Then shortly after noon, General Haig requested another appointment as promptly as possible. He came to my office about 3:30 P.M. for a meeting that was to last for approximately three-quarters of an hour. Only then did I learn of the damaging nature of a conversation on June 23, 1972, in one of the tapes which was due to go to Judge Sirica the following Monday.

I describe this meeting because at one point it did include references to a possible pardon for Mr. Nixon, to which the third and fourth questions in H. Res. 1367 are directed. However, nearly the entire meeting covered other subjects, all dealing with the totally new situation resulting from the critical evidence on the tape of

June 23, 1972. General Haig told me he had been told of the new and damaging evidence by lawyers on the White House staff who had first-hand knowledge of what was on the tape. The substance of his conversation was that the new disclosure would be devastating, even catastrophic, insofar as President Nixon was concerned. Based on what he had learned of the conversation on the tape, he wanted to know whether I was prepared to assume the Presidency within a very short time, and whether I would be willing to make recommendations to the President as to what course he should now follow.

I cannot really express adequately in words how shocked and stunned I was by this unbelievable revelation. First, was the sudden awareness I was likely to become President under these most troubled circumstances; and secondly, the realization these new disclosures ran completely counter to the position I had taken for months, in that I believed the President was not guilty of any impeachable offense.

General Haig in his conversation at my office went on to tell me of discussions in the White House among those who knew of this new evidence.

General Haig asked for my assessment of the whole situation. He wanted my thoughts about the timing of a resignation, if that decision were to be made, and about how to do it and accomplish an orderly change of Administration. We discussed what scheduling problems there might be and what the early organizational problems would be.

General Haig outlined for me President Nixon's situation as he saw it and the different views in the White House as to the courses of action that might be available, and which were being advanced by various people around him on the White House staff. As I recall there were different major courses being considered:

(1) Some suggested "riding it out" by letting the impeachment take its course through the House and the Senate trial, fighting all the way against conviction.

(2) Others were urging resignation sooner or later.

I was told some people backed the first course and other people a resignation but not with the same views as to how and when it should take place.

On the resignation issue, there were put forth a number of options which General Haig reviewed with me. As I recall his conversation, various possible options being considered included:

(1) The President temporarily step aside under the 25th Amendment.

(2) Delaying resignation until further along the impeachment process.

(3) Trying first to settle for a censure vote as a means of avoiding either impeachment or a need to resign.

(4) The question of whether the President could pardon himself.

(5) Pardoning various Watergate defendants, then himself, followed by resignation.

(6) A pardon to the President, should he resign.

The rush of events placed an urgency on what was to be done. It became even more critical in view of a prolonged impeachment trial which was expected to last possibly four months or longer.

The impact of the Senate trial on the country, the handling of possible international crises, the economic situation here at home, and the marked slowdown in the decision-making process within the federal government were all factors to be considered, and were discussed.

General Haig wanted my views on the various courses of action as well as my attitude on the options of resignation. However, he indicated he was not advocating any of the options. I inquired as to what was the President's pardon power, and he answered that it was his understanding from a White House lawyer that a President did have the authority to grant a pardon even before any criminal action had been taken against an individual, but obviously, he was in no position to have any opinion on a matter of law.

As I saw it, at this point the question clearly before me was, under the circumstances, what course of action should I recommend that would be in the best interest of the country.

I told General Haig I had to have time to think. Further, that I wanted to talk to James St. Clair. I also said I wanted to talk to my wife before giving any response. I had consistently and firmly held the view previously that in no way whatsoever could I recommend

either publicly or privately any step by the President that might cause a change in my status as Vice President. As the person who would become President if a vacancy occurred for any reason in that office, a Vice President, I believed, should endeavor not to do or say anything which might affect his President's tenure in office. Therefore, I certainly was not ready even under these new circumstances to make any recommendations about resignation without having adequate time to consider further what I should properly do.

Shortly after 8:00 o'clock the next morning James St. Clair came to my office. Although he did not spell out in detail the new evidence, there was no question in my mind that he considered these revelations to be so damaging that impeachment in the House was a certainty and conviction in the Senate a high probability. When I asked Mr. St. Clair if he knew of any other new and damaging evidence besides that on the June 23, 1972, tape, he said "no." When I pointed out to him the various options mentioned to me by General Haig, he told me he had not been the source of any opinion about Presidential pardon power.

After further thought on the matter, I was determined not to make any recommendations to President Nixon on his resignation. I had not given any advice or recommendations in my conversations with his aides, but I also did not want anyone who might talk to the President to suggest that I had some intention to do so.

For that reason I decided I should call General Haig the afternoon of August 2nd. I did make the call late that afternoon and told him I wanted him to understand that I had no intention of recommending what President Nixon should do about resigning or not resigning, and that nothing we had talked about the previous afternoon should be given any consideration in whatever decision the President might make. General Haig told me he was in full agreement with this position.

My travel schedule called for me to make appearances in Mississippi and Louisiana over Saturday, Sunday, and part of Monday, August 3, 4, and 5. In the previous eight months, I had repeatedly stated my opinion that the President would not be found guilty of an impeachable offense. Any change from my stated views, or even refusal to comment further, I feared, would lead in the press to conclusions that I now wanted to see the President resign to avoid an impeachment vote in the House and probable conviction vote in the Senate. For that reason I remained firm in my answers to press questions during my trip and repeated my belief in the President's innocence of an impeachable offense. Not until I returned to Washington did I learn that President Nixon was to release the new evidence late on Monday, August 5, 1974.

At about the same time I was notified that the President had called a Cabinet meeting for Tuesday morning, August 6, 1974.

At that meeting in the Cabinet Room, I announced that I was making no recommendations to the President as to what he should do in the light of the new evidence. And I made no recommendations to him either at the meeting or at any time after that.

In summary, I assure you that there never was at any time any agreement whatsoever concerning a pardon to Mr. Nixon if he were to resign and I were to become President.

The first question of H. Res. 1367 asks whether I or my representative had "specific knowledge of any formal criminal charges pending against Richard M. Nixon." The answer is: "no."

I had known, of course, that the Grand Jury investigating the Watergate break-in and cover-up had wanted to name President Nixon as an unindicted co-conspirator in the cover-up. Also, I knew that an extensive report had been prepared by the Watergate Special Prosecution Force for the Grand Jury and had been sent to the House Committee on the Judiciary, where, I believe, it served the staff and members of the Committee in the development of its report on the proposed articles of impeachment. Beyond what was disclosed in the publications of the Judiciary Committee on the subject and

additional evidence released by President Nixon on August 5, 1974, I saw on or shortly after September 4th a copy of a memorandum prepared for Special Prosecutor Jaworski by the Deputy Special Prosecutor, Henry Ruth.* Copy of this memorandum had been furnished by Mr. Jaworski to my Counsel and was later made public during a press briefing at the White House on September 10, 1974.

I have supplied the Subcommittee with a copy of this memorandum. The memorandum lists matters still under investigation which "may prove to have some direct connection to activities in which Mr. Nixon is personally involved." The Watergate cover-up is not included in this list; and the alleged cover-up is mentioned only as being the subject of a separate memorandum not furnished to me. Of those matters which are listed in the memorandum, it is stated that none of them "at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon."

This is all the information I had which related even to the possibility of "formal criminal charges" involving the former President while he had been in office.

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* Tab B attached.

The second question in the resolution asks whether Alexander Haig referred to or discussed a pardon with Richard M. Nixon or his representatives at any time during the week of August 4, 1974, or any subsequent time. My answer to that question is: not to my knowledge. If any such discussions did occur, they could not have been a factor in my decision to grant the pardon when I did because I was not aware of them.

Questions three and four of H. Res. 1367 deal with the first and all subsequent references to, or discussions of, a pardon for Richard M. Nixon, with him or any of his representatives or aides. I have already described at length what discussions took place on August 1 and 2, 1974, and how these discussions brought no recommendations or commitments whatsoever on my part. These were the only discussions related to questions three and four before I became President, but question four relates also to subsequent discussions.

At no time after I became President on August 9, 1974, was the subject of a pardon for Richard M. Nixon raised by the former President or by anyone representing him. Also, no one on my staff brought up the subject until the day before my first press conference

on August 28, 1974. At that time, I was advised that questions on the subject might be raised by media reporters at the press conference.

As the press conference proceeded, the first question asked involved the subject, as did other later questions. In my answers to these questions, I took a position that, while I was the final authority on this matter, I expected to make no commitment one way or the other depending on what the Special Prosecutor and courts would do. However, I also stated that I believed the general view of the American people was to spare the former President from a criminal trial.

Shortly afterwards I became greatly concerned that if Mr. Nixon's prosecution and trial were prolonged, the passions generated over a long period of time would seriously disrupt the healing of our country from the wounds of the past. I could see that the new Administration could not be effective if it had to operate in the atmosphere of having a former President under prosecution and criminal trial. Each step along the way, I was deeply concerned, would become a public spectacle and the topic of wide public debate and controversy.

As I have before stated publicly, these concerns led me to ask from my own legal counsel what my full right of pardon was under the Constitution in this situation and from the Special Prosecutor what criminal actions, if any, were likely to be brought against the former President, and how long his prosecution and trial would take.

As soon as I had been given this information, I authorized my Counsel, Philip Buchen, to tell Herbert J. Miller, as attorney for Richard M. Nixon, of my pending decision to grant a pardon for the former President. I was advised that the disclosure was made on September 4, 1974, when Mr. Buchen, accompanied by Benton Becker, met with Mr. Miller. Mr. Becker had been asked, with my concurrence, to take on a temporary special assignment to assist Mr. Buchen, at a time when no one else of my selection had yet been appointed to the legal staff of the White House.

The fourth question in the resolution also asks about "negotiations" with Mr. Nixon or his representatives on the subject of a pardon for the former President. The pardon under consideration was not, so far as I was concerned, a matter of negotiation. I realized that unless Mr. Nixon actually accepted the pardon I was preparing to grant, it probably would not be effective. So I certainly had no intention to proceed without knowing if it would be accepted. Otherwise, I put no conditions on my granting of a pardon which required any negotiations.

Although negotiations had been started earlier and were conducted through September 6th concerning White House records of the prior administration, I did not make any agreement on that subject a condition

of the pardon. The circumstances leading to an initial agreement on Presidential records are not covered by the Resolutions before this Subcommittee. Therefore, I have mentioned discussions on that subject with Mr. Nixon's attorney only to show they were related in time to the pardon discussions but were not a basis for my decision to grant a pardon to the former President.

The fifth, sixth, and seventh questions of H. Res. 1367 ask whether I consulted with certain persons before making my pardon decision.

I did not consult at all with Attorney General Saxbe on the subject of a pardon for Mr. Nixon. My only conversation on the subject with Vice Presidential nominee Nelson Rockefeller was to report to him on September 6, 1974, that I was planning to grant the pardon.

Special Prosecutor Jaworski was contacted on my instructions by my Counsel, Philip Buchen. One purpose of their discussions was to seek the information I wanted on what possible criminal charges might be brought against Mr. Nixon. The result of that inquiry was a copy of the memorandum I have already referred to and have furnished to this Subcommittee. The only other purpose was to find out the opinion of the Special Prosecutor as to how long a delay would follow,

in the event of Mr. Nixon's indictment, before a trial could be started and concluded.

At a White House press briefing on September 8, 1974, the principal portions of Mr. Jaworski's opinion were made public. In this opinion, Mr. Jaworski wrote that selection of a jury for the trial of the former President, if he were indicted, would require a delay "of a period from nine months to a year, and perhaps even longer." On the question of how long it would take to conduct such a trial, he noted that the complexities of the jury selection made it difficult to estimate the time. Copy of the full text of his opinion dated September 4, 1974, I have now furnished to this Subcommittee.*

I did consult with my Counsel, Philip Buchen, with Benton Becker, and with my Counsellor, John Marsh, who is also an attorney. Outside of these men, serving at the time on my immediate staff, I consulted with no other attorneys or professors of law for facts or legal authorities bearing on my decision to grant a pardon to the former President.

Questions eight and nine of H. Res. 1367 deal with the circumstances of any statement requested or received from Mr. Nixon. I asked for no

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* Tab C attached.

confession or statement of guilt; only a statement in acceptance of the pardon when it was granted. No language was suggested or requested by anyone acting for me to my knowledge. My Counsel advised me that he had told the attorney for Mr. Nixon that he believed the statement should be one expressing contrition, and in this respect, I was told Mr. Miller concurred. Before I announced the pardon, I saw a preliminary draft of a proposed statement from Mr. Nixon, but I did not regard the language of the statement, as subsequently issued, to be subject to approval by me or my representatives.

The tenth question covers any report to me on Mr. Nixon's health by a physician or psychiatrist, which led to my pardon decision. I received no such report. Whatever information was generally known to me at the time of my pardon decision was based on my own observations of his condition at the time he resigned as President and observations reported to me after that from others who had later seen or talked with him. No such reports were by people qualified to evaluate medically the condition of Mr. Nixon's health, and so they were not a controlling factor in my decision. However, I believed and still do, that prosecution and trial of the former President would have proved a serious threat to his health, as I stated in my message on September 8, 1974.

H. Res. 1370* is the other resolution of inquiry before this Subcommittee. It presents no questions but asks for the full and complete facts upon which was based my decision to grant a pardon to Richard M. Nixon.

I know of no such facts that are not covered by my answers to the questions in H. Res. 1367. Also:

Subparagraphs (1) and (4): There were no representations made by me or for me and none by Mr. Nixon or for him on which my pardon decision was based.

Subparagraph (2): The health issue is dealt with by me in answer to question ten of the previous resolution.

Subparagraph (3): Information available to me about possible offenses in which Mr. Nixon might have been involved is covered in my answer to the first question of the earlier resolution.

In addition, in an unnumbered paragraph at the end, H. Res. 1370 seeks information on possible pardons for Watergate-related offenses which others may have committed. [I have decided that all persons requesting consideration of pardon requests should submit them through the Department of Justice.]

Only when I receive information on any request duly filed and considered first by the Pardon Attorney at the Department of Justice would I consider the matter. As yet no such information has been

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* Tab D attached.

received, and if it does I will act or decline to act according to the particular circumstances presented, and not on the basis of the unique circumstances, as I saw them, of former President Nixon.

By these responses to the resolutions of inquiry, I believe I have fully and fairly presented the facts and circumstances preceding my pardon of former President Nixon. In this way, I hope I have contributed to a much better understanding by the American people of the action I took to grant the pardon when I did. For having afforded me this opportunity, I do express my appreciation to you, Mr. Chairman, and to Mr. Smith, the Ranking Minority Member, and to all the other distinguished Members of this Subcommittee; also to Chairman Rodino of the Committee on the Judiciary, to Mr. Hutchinson, the Ranking Minority Member of the full Committee, and to other distinguished Members of the full Committee who are present.

In closing, I would like to re-emphasize that I acted solely for the reasons I stated in my proclamation of September 8, 1974, and my accompanying message and that I acted out of my concern to serve the best interests of my country. As I stated then: "My concern is the immediate future of this great country...My conscience tells me it is my duty, not merely to proclaim domestic tranquility, but to use every means that I have to insure it."