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cc: Mr. Dixon
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The Attorney General

January 31, 1974

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Assistant Attorney General
Office of Legal Counsel

Further Research on the Subpoena of the President by the California State Court.

As you recall, we discussed the general law of Presidential immunity, prior to Nixon v. Sirica, immediately before your press conference of January 30. I note that at the press conference you referred to further work being done by OLC on the question of the state court subpoena on the President in the Ehrlichman case.

In our present view, the matter is relatively simple, even though the outcome may not be predictable. We know of no past instance of a state court subpoena on the President. In regard to the federal courts, the tradition down until Nixon v. Sirica had been to plead a total immunity theory, and the courts accepted such a plea. The Aaron Burr case was a stand-off, and it could be said that such cooperation as President Jefferson extended was purely voluntary.

Nixon v. Sirica terminated the total immunity theory regarding the President in respect to federal grand jury subpoenas, but expressly recognized the existence of Executive privilege in regard to particular matters. In regard to a state court subpoena, a principle of federal supremacy could be asserted in addition to the general theory that the Presidency should not be disturbed by law suits, which was successful until the Sirica case.

Except for the novel question of a state subpoena, we already have detailed memoranda on the amenability of the President to judicial or congressional subpoenas. We can do further research and submit a longer memorandum if you wish.