RGD:HM:rsn

cc: Files
Dixon
Marcuse
Gauf

Do Funderburk (undated) 10/29/73

MEMORANDUM

Re: Power of the House of Representatives to demand criminal investigation files in connection with impeachment proceedings

There are a number of Presidential statements to the effect that the President would not claim Executive privilege against demands for information made by the House of Representatives when it acts as the Grand Inquest of the Nation in order to determine whether to institute impeachment proceedings or to impeach an officer of the United States. See, e.g., President Polk's statement:

> "It may be alleged that the power of impeachment belongs to the House of Representatives, and that, with a view to the exercise of this power, that House has the right to investigate the conduct of all public officers under the Government. This is cheerfully admitted. In such a case the safety of the Republic would be the supreme law, and the power of the House in the pursuit of this object would penetrate into the most secret recesses of the Executive Departments. It could command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge. But even in a case of that kind they would adopt all wise precautions to prevent the exposure of all such matters the publication of which might injuriously affect the public interest, except so far as this might be necessary to accomplish the great ends of public justice. If the House of Representatives, as the grand inquest

of the nation, should at any time have reason to believe that there has been malversation in office by an improper use or application of the public money by a public officer, and should think proper to institute an inquiry into the matter, all the archives and papers of the Executive Departments, public or private, would be subject to the inspection and control of a committee of their body and every facility in the power of the Executive be afforded to enable them to prosecute the investigation." Richardson, Messages and Papers of the Presidents Vol. 4, pp. 431 at 434, 435. */

The latest pertinent statement is the opinion of Attorney General Jackson of April 30, 1941, issued with approval and at the direction of the President (40 Op. A.G. 45, 46), to the effect that while the investigative files of the FBI are normally confidential and will not be made available to Congress, such information would be supplied to congressional committees in impeachment proceedings. The opinion adds by way of explanation but presumably not by way of limitation "usually instituted at the suggestion of the Department and for the good of the administration of justice." 40 Op. A.G. 45, 51.

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Office of Legal Counsel

*/ See, however, President Buchanan's Messages to the House of Representatives of March 28 and June 22, 1860, Richardson, op. cit. Vol. 5, pp. 614 and 619, which suggest that the protection against self-incrimination somehow modifies the right of the House of Representatives to demand self-incriminating information from the President.