

Conversation: 037-116

Date: March 15, 1973

Time: Unknown time between 9:22 am and 10:05 am

Location: White House Telephone

Participants: Ronald L. Ziegler, John W. Dean, III

[Begin audio]

Ziegler: John, what is your thinking this morning on how to handle a question regarding your subpoena before the civil suit—the common cause suit?

Dean: Well, the—you mean, for the President? I'll say, "First of all, I was informed that Mr. Dean has never been served."

Ziegler: "You have not" [coughs]—"You have not been served yet."

Dean: "And all we have is press speculation"—Or just, "All we have is a press statement of what is going to happen"—

Ziegler: Right, so what if you are served, John?

Dean: If I am served? We'll have to find out why they're—"Mr. Dean doesn't know why they're calling him, doesn't know the relevancy of his testimony, what capacity they're calling him in"—

Ziegler: No, but John, that—even if you don't know why they're serving—like, let's just suppose they do serve you, from a constitutional standpoint—

Dean: Well, if they're serving me for something that's unrelated to my capacity as Counsel to the President—and that's what the root of the judgment will be—if—

Ziegler: Um-hmm.

Dean: —if you can separate my hats—

Ziegler: Um-hmm. In other words, if you're called to testify in an area unrelated to your capacity as Counsel to the President, then you would have to go.

Dean: That's right.

Ziegler: Um-hmm. But if you were called to testify on a matter related to you capacity as Counsel, then you would, under separation of power, not go.

Dean: That's correct.

Ziegler: And then there would be a test on that I suppose?

Dean: That is correct.

Ziegler: The court would take a test on that.

Dean: That's right.

Ziegler: Ok. But you have not been served, and if you—and have no idea why—

Dean: I have not been served, and I think that's the way to leave it right now. I don't think the President ought to get into it until we get well postured on which position it falls in.

Ziegler: Right.

Dean: You could say that, "Gentlemen, I understand that Mr. Dean—he has not been served."

Ziegler: Um-hmm.

Dean: [Unclear] Just knock that around: "What [unclear] Well, gentlemen, he hasn't been served, yet. He doesn't know what he's going to be served about. He doesn't know the nature—He's not privy to the, the reasons they're even calling him, even, so far."

Ziegler: It may say in the press release what you were being—

Dean: No. And I've been unable to find out why they want me.

Ziegler: So, you don't know why they—

Dean: I don't—

Ziegler: —would like you—Ok, now, did you check to see if an—if any assistant to a congressman or senator—administrative assistant, or anyone—who’s ever been—has been called to appear before a, a court.

Dean: Yes, I have. Yes, I have. Yeah.

Ziegler: Who? And [unclear]...?

Dean: The—I [unclear] about it—The aides to...

Ziegler: To Dodd?

Dean: I think Dodd’s aides, and Brewster’s.

Ziegler: And Brewster.

Dean: Yeah.

Ziegler: Um-hmm.

Dean: I would stay out of that analogy to the—

Ziegler: Right.

Dean: —[unclear]. And Mollenhoff would just come in with ten feet—he’s ten feet deep on that. He’s very hot on that one—using that analogy.

Ziegler: Um-hmm. Haven’t members of the White House staff given depositions in civil suits?

Dean: [Unclear] Yes, they have. [Unclear] Um-hmm.

Ziegler: Um-hmm. How do we distinguish?

Dean: Well, they didn’t go into—The, the questions that were asked [of] Mr. Colson did not relate, in any way, to—

Ziegler: His—

Dean: —his, his official functions. There were—Is my understanding.

Ziegler: Did not relate to official functions?

Dean: Um-hmm.

Ziegler: If, John—

Dean: I know it’s tough. We’ve got a tough situation with Colson having given that deposition. He wanted to.

Ziegler: Now, tell me, what, what is Mollenhoff—what’s his analogy?

Dean: Oh, is the President in your office?

Ziegler: No. I’m here.

[Unclear exchange; Nixon: With the President.]

Dean: Mollenhoff’s—does not like the use of the analogy that congressional aides are immune from any investigative—by the Executive branch.

Ziegler: Right. Um-hmm.

Dean: And he’s got a half a point. And he’s so adamant it’s not worth getting into the argument with him in a press conference.

Ziegler: Right. We—He understands that.

Dean: Yeah. Now, on [unclear; the deposition of] of Colson in a civil suit, say, “Gentlemen, there’s, there’s a tremendous difference between judicial executive privilege, and legislative executive privilege”—which there is. There’s a different, different case law. There are different precedents. And the whole thing. Mr. Colson wanted to appear in a deposition. It was very early in the, in the, the political fray, and no one objected to him appearing.

Ziegler: But the point is that it did not relate to his function—in Colson’s case—did not relate to his function here at the White House, right?

Dean: That’s correct.

Ziegler: What did it relate to—?

Dean: Well—Well, they, they asked him questions about Howard Hunt. So, he tried to establish that Howard Hunt had never worked him.

Ziegler: Um-hmm.

Dean: I.e. it didn't relate to his functions.

Ziegler: Um-hmm. Well, wouldn't, wouldn't the Ervin Committee hearing be asking about matters that don't relate to their White House function?

Dean: Well, the question is, how—if they—How will they draw the line when they get a—?

Ziegler: Um-hmm?

Dean: If they get a Chuck Colson up there, sure, they won't—they wouldn't stop with those two or three questions. And in, in his deposition, his counsel interposed and didn't let him answer those questions.

Ziegler: Right. So, he responded only to information relating to Hunt?

Dean: That's right.

Ziegler: Um-hmm.

Dean: Ok. Apparently, Sam Ervin was going to give a speech this morning that they were heralding as a major statement on Executive Privilege, but I just got a notice back that he is not giving it. So, it's just [laughs] a wipe—it's a wipe out.

Ziegler: Um-hmm. Hmm.

Dean: [Unclear] same thing. Just cancelled it.

Ziegler: Ok, good.

Dean: Ok.

Ziegler: Right. Fine.

[End audio]