1974


Don Edwards

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On December 19, 1973 Jaworski furnished the Senate Judiciary Committee a written summary of his understanding of the arrangement made with the President through General Haig and confirmed by Bork and Attorney General designate William Saxbe regarding the independence he was to have in serving as Special Prosecutor. Jaworski stated that it had been expressly confirmed that he was to proceed with complete independence, including the right to sue the President, if necessary; and that the President would not discharge him or take any action that interfered with his independence without first consulting Majority and Minority leaders and Chairmen and ranking members of the Judiciary Committees of the House and the Senate and obtaining a consensus that accorded with his proposed action.

77.1 Letter from Leon Jaworski to James Eastland, December 19, 1973, SJC, Saxbe Nomination Hearings 32.
78. On January 15, 1974 the court-appointed panel of experts submitted a summary report respecting the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report included interim conclusions that the erasures occurred in the process of erasing and re-recording at least five to nine separate and contiguous segments and that hand operation of the recording controls of the Uher 5000 machine examined by the experts must have been and were required to produce each erasure segment.

79. In his State of the Union Address on January 30, 1974 the President said that he had provided to the Special Prosecutor all the material that the Special Prosecutor needed to conclude his investigations and to prosecute the guilty and clear the innocent.

79.1 President Nixon State of the Union Address, January 30, 1974, 9 Presidential Documents 121.
80. On February 14, 1974, Jaworski wrote to Chairman Eastland of the Senate Judiciary Committee that on February 4 Special Counsel to the President, James St. Clair, had written Jaworski that the President had decided not to comply with the Special Prosecutor's outstanding requests for recordings relating to the Watergate break-in and cover-up. Jaworski also stated that St. Clair subsequently informed him that the President had refused to reconsider the decision to terminate cooperation with the Watergate investigation, at least with regard to producing any tape recordings of Presidential conversations and that the White House had refused cooperation in the investigation of dairy contributions and had refused to allow review of files of two former staff members in the area of the Plumbers investigation. Jaworski stated that requests for documents were still pending.

80.2 Letter from Leon Jaworski to John Doar, March 13, 1974.
On February 15, 1974 the White House released a statement by St. Clair commenting on the Special Prosecutor's February 14 letter to Senator Eastland. St. Clair stated that the President believed he had furnished sufficient evidence to determine whether probable cause existed that a crime had been committed and, if so, by whom.

On February 25, 1974 Herbert Kalmbach pleaded guilty to charges that he had engaged in illegal activities during his solicitations of campaign contributions in 1970, including the promise of appointment to an ambassadorship in return for a campaign contribution. Kalmbach agreed to make full and truthful disclosure of all relevant information and documents in his possession and to testify as a witness for the United States in cases in which he may have relevant information.

82.1 United States v. Kalmbach, Information, Crim. No. 74-86.
82.2 United States v. Kalmbach, Docket, Crim. No. 74-86.
82.3 United States v. Kalmbach, Information, Crim. No. 74-87.
82.4 United States v. Kalmbach, Docket, Crim. No. 74-87.
82.5 Letter from Leon Jaworski to Kalmbach's attorney, James H. O'Connor, February 13, 1974.
83. On March 1, 1974 John Mitchell, H. R. Haldeman, John Ehrlichman, Charles Colson, Robert Mardian, Kenneth Parkinson and Gordon Strachan were indicted for conspiracy relating to the Watergate break-in. Mitchell, Haldeman, Ehrlichman and Strachan were also indicted for obstruction of justice and for making false statements to the Grand Jury or the Court or agents of the FBI.

On March 7, 1974 John Ehrlichman, Charles Colson, G. Gordon Liddy, Bernard Barker, Felipe DeDiego and Eugenio Martinez were indicted for conspiracy to violate civil rights of citizens in the break-in of Dr. Lewis Fielding's office. Ehrlichman was also charged with making false statements to the FBI and false declarations before the grand jury.

85. On March 12, 1974 Jaworski wrote to St. Clair requesting access to taped conversations and related documents to be examined and analyzed as the Government prepares for trial in United States v. Mitchell. Jaworski stated that the evidence sought was material and relevant either as proof of the Government's case or as possible exculpatory material required to be disclosed to the defendants.

86. On March 15, 1974 the Special Prosecutor served a subpoena on the White House calling for certain materials involving neither the Watergate cover-up nor the Fielding break-in. On March 29, 1974 the White House agreed to comply with the subpoena.

On April 11, 1974, Jaworski wrote to St. Clair informing him that in view of the failure to produce the materials requested by Jaworski in his letter of March 12, 1974, Jaworski would seek a subpoena for the materials deemed necessary for trial in United States v. Mitchell.

88. On April 11, 1974 the House Judiciary Committee issued a subpoena to the President for tape recordings and documents relating to specified conversations which took place in February, March and April 1973 between the President and Haldeman, Ehrlichman, Dean, Kleindienst and Petersen.

88.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, April 11, 1974.
89. On April 12, 1974 Jaworski wrote to Senator Charles Percy of the Senate Judiciary Committee stating that the government was obligated to produce at trial the material requested in Jaworski's March 12, 1974 letter respecting the trial of United States v. Mitchell, and that the failure of the White House to produce other requested evidence was impeding grand jury investigations of matters unrelated to the Watergate cover-up.

89.1 Letter from Leon Jaworski to Charles Percy, April 12, 1974, Congressional Record S 7103-04.
90. On April 16, 1974 the Special Prosecutor, joined by defendants Colson and Mardian, moved that a trial subpoena be issued in United States v. Mitchell directing the President to produce tapes and documents relating to specified conversations between the President and the defendants and potential witnesses. On April 18, 1974 Judge Sirica granted the motion.


On April 29, 1974 the President addressed the Nation to announce his answer to the House Judiciary Committee subpoena of April 11 for additional Watergate tapes. The President stated that the next day he would furnish to the Committee transcripts prepared by the White House of relevant portions of all the subpoenaed conversations. The President said that he had personally decided questions of relevancy. With regard to four subpoenaed conversations that occurred prior to March 21, 1973 the President informed the Committee that a search of the tapes had failed to disclose two of these conversations, furnished a transcript of a portion of the March 17 conversation between the President and Dean that related to the Fielding break-in, and furnished a transcript of a telephone conversation between the President and Dean on March 20, 1973.

91.1 President Nixon Address to the Nation, April 29, 1974, 10 Presidential Documents 450-57.

91.2 Appendix to the Submission of Edited White House transcripts, April 30, 1974.
92. On May 1, 1974 the President entered a special appearance before Judge Sirica and moved to quash the Special Prosecutor's subpoena issued April 18, 1974. The President invoked executive privilege with respect to all subpoenaed conversations except for the portions of twenty of the conversations he had made public on April 30 by way of edited transcripts.

92.1 Special Appearance and Motion to Quash, May 1, 1974, United States v. Mitchell, Crim. No. 74-110.

On May 15, 1974 the House Judiciary Committee issued a subpoena to the President for the production of tape recordings and other evidence relating to specified conversations between the President and Haldeman, Colson and Mitchell on April 4, 1972 and on June 20 and 23, 1972. On the same day the Committee issued a subpoena to the President for the President's daily diaries for certain specified time periods in 1972 and 1973.

93.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 15, 1974.

On May 20, 1974 Judge Sirica denied the President's motion to quash the Special Prosecutor's subpoena for tape recordings and other documents in United States v. Mitchell and ordered the President to produce the objects and documents.

On May 20, 1974 Jaworski wrote to Senator Eastland informing him that the President was challenging the right of the Special Prosecutor to bring an action against him to obtain evidence in United States v. Mitchell. Jaworski stated that this position contravened the express agreement made by Haig, after consultation with the President, that if Jaworski accepted the position of Special Prosecutor he would have the right to press legal proceedings against the President.

95.1 Letter from Leon Jaworski to James Eastland, May 20, 1974 (received from Watergate Special Prosecution Force).
96. On May 22, 1974 the President informed House Judiciary Committee Chairman Rodino that he declined to produce the tapes and documents covered by the Committee's subpoenas of May 15, 1974. The President asserted that the Committee had the full story of Watergate insofar as it related to Presidential knowledge and Presidential actions.

96.1 Letter from President Nixon to Chairman Rodino, May 22, 1974.
On May 30, 1974 the House Judiciary Committee issued a subpoena to the President to produce documents and tape recordings of specified conversations involving the President and Haldeman, Ehrlichman, Dean, Colson and Petersen.

98. On May 31, 1974 the court-appointed panel of experts filed their final report on the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report concluded that: (i) the erasing and recording producing the buzz on the tape were done on the examined tape, which was probably the original tape, (ii) the Uher 5000 recorder machine used by Woods for transcription probably produced the buzz, (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and, on at least five occasions, required hand operation of the controls of the Uher 5000 recorder to produce the erasures and recording, and (iv) the erased portion of the tape originally contained speech which, because of the erasures and rerecording, could not be recovered. The panel stated that in making its final report it had considered suggestions and alternative interpretations that differed markedly from the panel's and had discussed the material with technical advisors employed by counsel for the President.

On May 31, 1974 the President filed a claim of constitutional privilege with respect to a grand jury subpoena issued February 20, 1974 seeking the production of correspondence between the President and former FCRP Chairman Maurice Stans regarding selections and nominations for government offices including ambassadorships. The President asserted that, excluding the records relating to four named individuals as to whom he waived the privilege, it would be inconsistent with the public interest to produce the records.


100. On June 3, 1974 Charles Colson pleaded guilty by negotiated plea to a one-count information charging obstruction of justice in connection with the trial of the Ellsberg case by devising and implementing a scheme to defame and destroy the public image and credibility of Ellsberg and his defense counsel with intent to influence, obstruct and impede the conduct and outcome of the trial. Colson agreed to provide statements under oath and to produce all relevant documents in his possession upon request of the Special Prosecutor and testify as a witness for the United States in any and all cases with respect to which he may have information. In return the Special Prosecutor agreed to dismiss all charges against Colson in United States v. Mitchell and United States v. Ehrlichman.

100.1 United States v. Colson, Information, June 3, 1974.
100.2 Letter from Leon Jaworski to David Shapiro, May 31, 1974.
101. On June 10, 1974 the President's counsel informed the House Judiciary Committee that the President declined to furnish the material called for in the Committee's subpoena of May 30, 1974. In a separate letter of the same date, the President responded to Chairman Rodino's letter of May 30, 1974 for the Committee respecting the refusal of the President expressed in his May 22, 1974 letter to the Committee declining to produce Presidential tapes and diaries called for in the Committee's subpoenas of May 15, 1974.

101.1 Letter from James St. Clair to Chairman Rodino, June 10, 1974.

101.2 Letter from President Nixon to Chairman Rodino, June 10, 1974.

101.3 Letter from Chairman Rodino to President Nixon, May 30, 1974.

101.4 Letter from President Nixon to Chairman Rodino, May 22, 1974.
On December 19, 1973 Jaworski furnished the Senate Judiciary Committee a written summary of his understanding of the arrangement made with the President through General Haig and confirmed by Bork and Attorney General designate William Saxbe regarding the independence he was to have in serving as Special Prosecutor. Jaworski stated that it had been expressly confirmed that he was to proceed with complete independence, including the right to sue the President, if necessary; and that the President would not discharge him or take any action that interfered with his independence without first consulting Majority and Minority leaders and Chairmen and ranking members of the Judiciary Committees of the House and the Senate and obtaining a consensus that accorded with his proposed action.

NOMINATION OF WILLIAM B. SAXBE
TO BE ATTORNEY GENERAL

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-THIRD CONGRESS
FIRST SESSION
ON
NOMINATION OF WILLIAM B. SAXBE, OF OHIO, TO BE
ATTORNEY GENERAL

DECEMBER 12 AND 13, 1973

Printed for the use of the Committee on the Judiciary
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 10 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,  

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.
On January 15, 1974 the court-appointed panel of experts submitted a summary report respecting the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report included interim conclusions that the erasures occurred in the process of erasing and re-recording at least five to nine separate and contiguous segments and that hand operation of the recording controls of the Uher 5000 machine examined by the experts must have been and were required to produce each erasure segment.


January 15, 1974
Report to Chief Judge John J. Sirica
From the Advisory Panel on the White House Tapes

In response to your request we have made a comprehensive technical study of the White House tape of June 20, 1972, with special attention to a section of buzzing sounds that lasts approximately 18.5 minutes. Paragraphs that follow summarize our findings and indicate the kinds of tests and evidence on which we base the findings.

Magnetic signatures that we have measured directly on the tape show that the buzzing sounds were put on the tape in the process of erasing and re-recording at least five, and perhaps as many as nine, separate and contiguous segments. Hand operation of keyboard controls on the Uher 5000 recorder was involved in starting and again in stopping the recording of each segment. The magnetic signatures observed on the tape show conclusively that the 18.5-minute section could not have been produced by any single, continuous operation. Further, whether the footpedal was used or not, the recording controls must have been operated by hand in the making of each segment.

The erasing and recording operations that produced the buzzing section were done directly on the tape we received for study. We have found that this tape is 1814.5 feet long, which lies within a normal range for tapes sold as 1800 feet in length. We have examined the entire tape for physical splices and have found none. Other tests that we have made thus far are consistent with the assumption that the tape is an original and not a re-recording.
A Uher 5000 recorder, almost surely the one designated as Government Exhibit #60, was used in producing the 18.5-minute section. Support for this conclusion includes recorder operating characteristics that we measured and found to correspond to signal characteristics observed on the evidence tape.

The buzzing sounds themselves originated in noise picked up from the electrical power line to which the recorder was connected. Measurements of the frequency spectrum of the buzz showed that it is made up of a 60 cycles per second fundamental tone, plus a large number of harmonic tones at multiples of 60. Especially strong are the third harmonic at 180 and the fifth harmonic at 300 cycles per second. As many as forty harmonics are present in the buzz and create its "raucous" quality. Variations in the strength of the buzz, which during most of the 18.5-minute section is either "loud" or "soft," probably arose from several causes including variations in the noise on the power line, erratic functioning of the recorder, and changes in the position of the operator's hand while running the recorder. The variations do not appear to be caused by normal machine operations.

Can speech sounds be detected under the buzzing? We think so. At three locations in the 18.5-minute section, we have observed a fragment of speech-like sound lasting less than one second. Each of the fragments lies exactly at a place on the tape that was missed by the erase head during the series of operations in which the several segments of erasure and buzz were put on the tape. Further, the frequency spectra of the sounds in these fragments bear a reasonable resemblance to the spectra of speech sounds.

Can the speech be recovered? We think not. We know of no technique that could recover intelligible speech from the buzz section. Even the fragments that we have observed are so heavily obscured that we cannot tell what was said.

The attached diagram illustrates the sequence of sound events in the 18.5-minute section. Also illustrated is a sequence of Uher operations "erase-record on" and "erase-record off" that are consistent with signatures that we measured on the evidence tape. The five segments that can be identified unequivocally are labeled "1" through "5." In addition, the diagram shows four segments of uncertain ending.
In developing the technical evidence on which we have based the findings reported here, we have used laboratory facilities, measuring instruments, and techniques of several kinds, including: digital computers located in three different laboratories, specialized instruments for measuring frequency spectra and waveforms, techniques for "developing" magnetic marks that can be seen and measured directly on the tape, techniques for measuring the performance characteristics of recorders and voice-operated switches, and statistical methods for analyzing experimental results.

In summary we have reached complete agreement on the following conclusions:

1. The erasing and recording operations that produced the buzz section were done directly on the evidence tape.
2. The Uher 5000 recorder designated Government Exhibit #60 probably produced the entire buzz section.
3. The erasures and buzz recordings were done in at least five, and perhaps as many as nine, separate and contiguous segments.
4. Erasure and recording of each segment required hand operation of keyboard controls on the Uher 5000 machine.
5. Erased portions of the tape probably contained speech originally.
6. Recovery of the speech is not possible by any method known to us.
7. The evidence tape, insofar as we have determined, is an original and not a copy.

Respectfully submitted,

Richard H. Bolt
Franklin S. Cooper
James L. Flanagan
John G. (Jay) McKnight
Thomas G. Stockham, Jr.
Mark R. Weiss
KEY TO BUZZ SECTION IN WHITE HOUSE TAPE OF JUNE 20, 1972

SYMBOLS:

▼ ERASE-RECORD ON

▲ ERASE-RECORD OFF

— ERASE-RECORD ON AND OFF

~ SHORT SEGMENT OF SPEECH-LIKE SOUND UNDER BUZZ

—- START/STOP CLICK WITHIN BUZZ

◆ ERASE-HEAD-OFF SIGNATURE OF UHER 5000

(*) ERASE-HEAD-OFF SIGNATURE PARTIALLY ERASED

□ SEGMENT WITH UNCERTAIN ENDING

PLAYBACK TIME IN SECONDS FROM START OF BUZZ

SEQUENCE OF OPERATIONS
ON UHER 5000 RECORDER

SEQUENCE OF SOUND
ON THE TAPE

1/4/74
79. In his State of the Union Address on January 30, 1974 the President said that he had provided to the Special Prosecutor all the material that the Special Prosecutor needed to conclude his investigations and to prosecute the guilty and clear the innocent.

79.1 President Nixon State of the Union Address, January 30, 1974, 9 Presidential Documents 121.

Feb. 28
April 16  2  P8 Dean
June 4    P
Total exam 10 conv during period of cooperation
Don't know which. Bel [same] but Pres & Colson
Pending req 27 add'l rec. conversations.
Weekly Compilation of
PRESIDENTIAL DOCUMENTS

Monday, February 4, 1974

Volume 10 · Number 5
Pages 103-159
The President's Address Delivered Before a Joint Session of the Congress.
January 30, 1974

Mr. Speaker, Mr. President, my colleagues in the Congress, our distinguished guests, my fellow Americans:

We meet here tonight at a time of great challenge and great opportunities for America. We meet at a time when we face great problems at home and abroad that will test the strength of our fiber as a Nation. But we also meet at a time when that fiber has been tested and it has proved strong.

America is a great and good land, and we are a great and good land because we are a strong, free, creative people and because America is the single greatest force for peace anywhere in the world. Today, as always in our history, we can base our confidence in what the American people will achieve in the future on the record of what the American people have achieved in the past.

 Tonight, for the first time in 12 years, a President of the United States can report to the Congress on the state of a Union at peace with every nation of the world. Because of this, in the 22,000-word message on the state of the Union that I have just handed to the Speaker of the House and the President of the Senate, I have been able to deal primarily with the problems of peace—with what we can do here at home in America for the American people—rather than with the problems of war.

The measures I have outlined in this message set an agenda for truly significant progress for this Nation and the world in 1974. Before we chart where we are going, let us see how far we have come.

It was 5 years ago on the steps of this Capitol that I took the oath of office as your President. In those 5 years, because of the initiatives undertaken by this Administration, the world has changed. America has changed. As a result of those changes, America is safer today, more prosperous today, with greater opportunity for more of its people than ever before in our history.

Five years ago America was at war in Southeast Asia. We were locked in confrontation with the Soviet Union. We were in hostile isolation from a quarter of the world's people who lived in Mainland China.

Five years ago our cities were burning and besieged.

Five years ago our college campuses were a battleground.

Five years ago crime was increasing at a rate that struck fear across the Nation.

Five years ago the spiraling rise in drug addiction was threatening human and social tragedy of massive proportion, and there was no program to deal with it.

Five years ago—as young Americans had done for a generation before that—America's youth still lived under the shadow of the military draft.
Mr. Speaker, and Mr. President and my distinguished colleagues and our guests:

I would like to add a personal word with regard to an issue that has been of great concern to all Americans over the past year. I refer, of course, to the investigations of the so-called Watergate affair.

As you know, I have provided to the Special Prosecutor voluntarily a great deal of material. I believe that I have provided all the material that he needs to conclude his investigations and to proceed to prosecute the guilty and to clear the innocent.

I believe the time has come to bring that investigation and the other investigations of this matter to an end. One year of Watergate is enough.

And the time has come, my colleagues, for not only the executive, the President, but the Members of Congress, for all of us to join together in devoting our full energies to these great issues that I have discussed tonight which involve the welfare of all of the American people in so many different ways as well as the peace of the world.

I recognize that the House Judiciary Committee has a special responsibility in this area, and I want to indicate on this occasion that I will cooperate with the Judiciary Committee in its investigation. I will cooperate so that it can conclude its investigation, make its decision, and I will cooperate in any way that I consider consistent with my responsibilities to the Office of the Presidency of the United States.

There is only one limitation. I will follow the precedent that has been followed by and defended by every President from George Washington to Lyndon B. Johnson of never doing anything that weakens the Office of the President of the United States or impairs the ability of the Presidents of the future to make the great decisions that are so essential to this Nation and to the world.

Another point I should like to make very briefly. Like every Member of the House and Senate assembled here tonight, I was elected to the office that I hold. And like every Member of the House and Senate, when I was elected to that office, I knew that I was elected for the purpose of doing a job and doing it as well as I possibly can. And I want you to know that I have no intention whatever of ever walking away from the job that the people elected me to do for the people of the United States.

Now, needless to say, it would be understatement if I were not to admit that the year 1973 was not a very easy year for me personally or for my family. And as I have already indicated, the year 1974 presents very great and serious problems as very great and serious opportunities are also presented.

But my colleagues, this I believe: With the help of God, who has blessed this land so richly, with the cooperation of the Congress, and with the support of the American people, we can and we will make the year 1974 a year of unprecedented progress toward our goal of building a
On February 14, 1974 Jaworski wrote to Chairman Eastland of the Senate Judiciary Committee that on February 4 Special Counsel to the President James St. Clair had written Jaworski that the President had decided not to comply with the Special Prosecutor's outstanding requests for recordings relating to the Watergate break-in and coverup. Jaworski also stated that St. Clair subsequently informed him that the President had refused to reconsider the decision to terminate cooperation with the Watergate investigation, at least with regard to producing any tape recordings of Presidential conversations and that the White House had refused cooperation in the investigation of dairy contributions and had refused to allow review of files of two former staff members in the area of the Plumbers investigation. Jaworski stated that requests for documents were still pending.

80.2 Letter from Leon Jaworski to John Doar, March 13, 1974.
Special to The New York Times
WASHINGTON, Feb. 14 -- Following is the text of a letter from Leon Jaworski, the special Watergate prosecutor, to Senator James O. Eastland, chairman of the Senate Judiciary Committee, informing him of the White House's refusal to provide tape recordings and other data. Both Mr. Jaworski and the White House declined to release the White House letter on the ground that it was "confidential."

In your letter to me of Nov. 29, 1973, you asked that I advise the committee on the status of our requests to the White House for evidence relating to investigations within the special prosecutor's jurisdiction, I previously had assured the committee in response to a question by Senator Mathias, that I would make such a report available (hearings on special prosecutor, Nov. 20, 1973, Pt. 2, P 579), and I reaffirmed that commitment in response to a question by Senator Byrd when testifying in conjunction with then Attorney General-designate Saxbe on Dec. 12, 1973 (hearings on nomination of William B. Saxbe, P. 38, 43).

Moreover, as I am certain you are aware, the guidelines for the special prosecutor worked out under your committee's supervision expressly provide that the special prosecutor may make public reports as he deems appropriate.

I delayed answering your letter until Dec. 12, 1973, because at that time I was beginning discussions with General Haig and Mr. Buzhardt regarding the production of evidence. As I indicated in my response the White House by then had provided us with copies of recordings of nine Presidential conversations. Moreover, we had made arrangements for a member of our staff to examine the files of the White House special investigations unit, known as the plumbers. Several requests were still in dispute, however, and I represented that I would give you a detailed report at an appropriate date.

I am now in a position to fulfill this responsibility to the committee. On Feb. 4, James D. St. Clair, special counsel to the President, wrote to me, informing me that the President has decided not to comply with our outstanding requests for recordings for the grand jury investigations of the Watergate break-in and cover-up and certain dairy industry contributions, asserting that to do so would be inconsistent with the public interest and the constitutional integrity of the office of the Presidency.

Refusal to Reconsider

I met with Mr. St. Clair on Feb. 8 in order to explore all possible avenues for resolving this impasse. As a result of this meeting, I represented to Mr. St. Clair that if the outstanding requests were granted, we would have no further requests for evidence relating to the grand Watergate break-in and cover-up. This was in response to the President's concern that there would be an endless stream of requests.

Nevertheless, late yesterday Mr. St. Clair informed me by letter that the President has refused to reconsider this earlier decision to terminate his cooperation with this investigation, at least with regard to producing any tape recordings of Presidential conversations. Accordingly, it is now clear that evidence I deem material to our investigations will not be forthcoming.
Important Material

In order that the committee may be fully apprised, I believe it would be appropriate to outline not only the material we have been refused, but also the material we have received.

First, in the area of the Watergate break-in and cover-up, the White House produced seven recordings, a cassette and a dictabelt pursuant to the order of Judge Siraca, [sic] upheld by the Court of Appeals, compelling compliance with the grand jury's subpoena duces tecum. In addition, the White House has provided us copies of four additional Presidential conversations and allowed me access to six others.

Based upon these recordings and additional evidence that have come into our possessions, on Jan. 9 I requested the White House to produce copies of the recordings of 25 specified Presidential meetings and telephone conversations. About two weeks later, the White House asked for a statement of "particularized need" for each recording. I provided the statement on the same day--Jan. 22, including two additional conversations. That statement shows that there is reason to believe that each of the conversations is material to a particular facet of our investigation.

Although it is true that the grand jury will be able to return indictments without the benefit of this material, the material is important to a complete and thorough investigation and may contain evidence necessary for any future trials.

I should add here that I never have insisted that any material considered by me irrelevant to our investigations should be produced. Where the White House has contended that certain conversations were actually not relevant or were of a sensitive nature, I have agreed to go to the White House--alone--to listen to the conversations. There was no indication in the latest refusals that any requested recording is either irrelevant to our inquiries or subject to some particularized privilege.

The second major area in which the White House now has refused cooperation involves the contributions of the dairy industry during 1971 and 1972. Having disqualified myself in that investigation, I am reporting on the basis of advice received from my deputy, Mr. Henry Ruth.

The investigation of possible offenses arising out of these contributions is far from complete, and the White House refusal to produce the requested tape recording and Presidential documents will retard the scope of this investigation. I am told that Mr. St. Clair advised Mr. Ruth orally that the White House would take under consideration a request narrower in scope. (Thus far, the White House has produced three recordings, as well as most of the documentation in the possession of the Civil Division of the Justice Department which was ordered produced in court in a related civil proceeding.)

Documents on 'Plumbers'

In the area of the plumbers investigation, the White House has supplied one tape recorder and a number of documents. As I indicated above, a member of our staff was permitted to review the files of the special investigations unit, and we subsequently were provided with the documents from those files relevant to our investigation. Also, after a search by Mr. Buzhardt, the White House delivered documents from the files of a former staff member but refused to permit us to review the files to make our own determination of relevance. The White
House also has refused to let us review the files of another former staff member, requested as early as August, 1973.

So that there is no misunderstanding of the extent of the White House's past cooperation, I call your attention to the letter I addressed to you on Nov. 14, 1973, regarding requests made by Mr. Cox. We also have received copies of three recordings relating to our I.T.T. investigation, and we have been promised certain documents in connection with an F.B.I. investigation, at our request, into the possible obstruction of justice arising out of the destruction of alteration of evidence.

Finally, there are six requests for documents relating to distinct areas of investigation still pending. Two requests date back respectively to August and October, 1973; the other four were made in November and December, 1973. Although some documents were produced pursuant to two of these and Mr. Buzhardt reported as to another that his limited search did not disclose any material, we have reason to believe that there are additional documents somewhere in the White House files. Mr. St. Clair has informed us that he has not had an opportunity to review these requests since replacing Mr. Buzhardt as special counsel to the President.

If I can be of any assistance to the committee, please do not hesitate to call on me.
Text of Jaworski's Letter to Senate Panel on

White House Refusal to Yield Tapes

Special to The New York Times

WASHINGTON, Feb. 14—Following is the text of a letter from Leon Jaworski, the special Watergate prosecutor, to Senator James O. Eastland, chairman of the Senate Judiciary Committee, informing him of the White House's refusal to provide tape recordings and other data. Both Mr. Jaworski and the White House declined to release the White House letter on the ground that it was "confidential.

In your letter to me of Nov. 20, 1973, you asked that I advise the committee on the status of our requests to the White House for evidence relating to investigations within the special prosecutor's jurisdiction. I had previously assured the committee in response to a question by Senator McNamara that I would make such a report on December 16, 1973. I have now sent you a report on the White House's refusal to provide the material.

In the letter, Mr. Jaworski explained that he was not in a position to fulfill this responsibility to the committee. On Feb. 4, James D. St. Clair, special counsel to the President, wrote to me, informing me that the President had decided that the release of the tape recordings would be inconsistent with the public interest and the constitutional rights of the Office of the President. Mr. St. Clair also informed me that he had determined that the tape recordings would not be forthcoming.

Important Material

In order that the committee may be fully apprised, I believe it would be appropriate to outline not only the material we have received but also the material we have not received. In addition, the White House has provided us copies of four additional Presidential conversations and allowed us access to six others. Based upon these recordings and additional evidence that have come into our possession, we have requested the White House to produce copies of the recordings of 20 specified Presidential

[11772]
tial meetings and telephone conversations. About two weeks later, the White House asked for a statement of "particularized need" for each recording. I provided the statement on the same day—Jan. 22, including two additional conversations. That statement shows that there is reason to believe that each of the conversations is material to a particular facet of our investigation.

Although it is true that the grand jury will be able to return indictments without the benefit of this material, the material is important to a complete and thorough investigation and may contain evidence necessary for any future trials. I should add here that I never have insisted that any material considered by me irrelevant to our investigation should be produced. Where the White House has contended that certain conversations were actually not relevant or were of a sensitive nature, I have agreed to go to the White House—alone—to listen to the conversations. There was no indication in the latest refusals that any requested recording is either irrelevant to our inquiries or subject to some particularized privilege.

The second major area in which the White House now has refused cooperation involves the contributions of the dairy industry during 1971 and 1972. Having disqualified myself in that investigation, I am reporting on the basis of advice received from my deputy, Mr. Henry Ruth.

The investigation of possible offenses arising out of these contributions is far from complete, and the White House refusal to produce the requested tape recording and Presidential documents will retard the scope of this investigation. I am told that Mr. St. Clair advised Mr. Ruth orally that the White House would take under consideration a request narrower in scope. (Thus far, the White House has produced three recordings, as well as most of the documentation in the possession of the Civil Division of the Justice Department which was ordered produced in court in a related civil proceeding.)

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If I can be of any assistance to the committee, please do not hesitate to call on me.
March 13, 1974

John Doar, Esquire
Special Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear John:

Pursuant to the request you made in our meeting on March 7, I am enclosing a list of those materials that the President has refused to provide this office in connection with our investigations. (This list does not include requests still pending.)

We recognize, of course, that the information enclosed would be subject to subpoena, and, accordingly, we see no reason to require the Committee to follow that course. We should add, however, that in our view this information can be provided without violating any legal constraints or the appropriate limits of the separation of powers.

Also, I trust that the enclosed list will be handled by the Committee and its staff in accordance with the rules and procedures adopted by the Committee on February 22, 1974.

Sincerely,

LEON JAWORSKI
Special Prosecutor

Enclosure
SCHEDULE OF MATERIALS REQUESTED BY
THE SPECIAL PROSECUTOR FROM THE
WHITE HOUSE IN CONNECTION WITH GRAND
JURY INVESTIGATIONS AND REFUSED AS
OF MARCH 11, 1974

A. INVESTIGATION INTO THE ALLEGED WATERGATE
COVER-UP CONSPIRACY

Tape recordings of the following conversations:

1. Telephone conversation on June 20, 1972, between the President and Mr. Colson from 11:33 p.m. to 12:05 a.m. of June 21, 1972.

2. Three meetings on June 23, 1972, between the President and Mr. Haldeman from 10:04 to 10:39 a.m., from 1:04 to 1:13 p.m., and from 2:20 to 2:45 p.m.

3. Meetings between the President and Mr. Colson on February 13, 1973, from 9:48 to 10:52 a.m. and on February 14, 1973, from 10:13 to 10:49 a.m.

4. Meetings between the President and Mr. Haldeman on March 20, 1973, from 10:47 a.m. to 12:10 p.m. and from 6:00 to 7:10 p.m.

5. Meeting on March 21, 1973, between the President and Mr. Ehrlichman from 9:15 a.m. to 10:12 a.m.

6. Telephone conversation between the President and Mr. Colson on March 21, 1973, from 7:53 to 8:24 p.m.

7. Meeting on March 22, 1973, between the President and Mr. Haldeman from 9:11 to 10:35 a.m.

8. Meeting on March 27, 1973, from 11:10 a.m. to 1:30 p.m. between Mr. Ehrlichman and the President, with Mr. Haldeman present from 11:35 a.m. on.

9. Meeting on March 30, 1973, from 12:02 to 12:18 p.m. between Mr. Ehrlichman and the President. Mr. Ziegler may also have been present.

10. Telephone conversation on April 12, 1973, from 7:31 to 7:45 p.m. between the President and Mr. Colson.

11. Meeting on April 14, 1973, from 8:55 to 11:31 a.m. between Mr. Ehrlichman and the President in the President's EOB office. The President's daily diary shows that Mr. Haldeman was present from 9:00 to 11:30 a.m.
12. Meeting on April 14, 1973, from 2:24 to 3:55 p.m. between Messrs. Ehrlichman and Haldeman and the President in the Oval Office.

13. Meeting on April 14, 1973, from 5:15 to 6:45 p.m. between Messrs. Ehrlichman and Haldeman and the President in the President's EOB office.

14. Telephone call on April 14, 1973, between the President and Mr. Ehrlichman from 11:22 to 11:53 p.m.

15. Meeting on April 15, 1973, from 1:12 to 2:22 p.m. between Mr. Kleindienst and the President in the President's EOB office.

16. Two telephone conversations on April 15, 1973, between 10:16 and 11:15 p.m. between Mr. Ehrlichman and Mr. Gray.

17. Two meetings between Messrs. Haldeman and Ehrlichman (or each) with the President on April 16, 1973, the first from 9:50 to 9:59 a.m., and the second from 10:50 to 11:04 a.m.

18. Meeting on April 19, 1973, from 8:26 to 9:32 p.m. between the President, Mr. John J. Wilson, and Mr. Frank H. Strickler in the President's EOB office.

19. Telephone conversation on April 19, 1973, from 9:37 to 9:53 p.m. between the President and Mr. Haldeman.

20. Telephone conversation on April 19, 1973, from 10:54 to 11:04 p.m. between the President and Mr. Ehrlichman.

21. Two telephone calls between the President and Mr. Haldeman on June 4, 1973, from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m.

B. INVESTIGATION INTO THE DAIRY INDUSTRY CONTRIBUTIONS

1. Any tape recordings, transcripts, memoranda, notes, or other writings relating to conversations between the President and Secretary Connally during the period February 15, 1971, to March 25, 1971. Information developed by this office indicates that in addition to the March 23, 1971, conversations between Secretary Connally and the President, Secretary Connally spoke to the President on March 11 (twice), March 16, March 18, and March 25, 1971.
2. All documents, memoranda, and correspondence in the files of Murray M. Chotiner relating to:

(a) Political contributions received or expected to be received from the Associated Milk Producers, Inc., the Trust for Agricultural Political Education, the Mid-America Dairymen, Agricultural and Dairy Educational Political Trust, Dairymen, Inc., and the Trust for Special Political Agricultural Community Education;

(b) The Section 22 Tariff Commission Recommendations proposed by the Tariff Commission on September 21, 1970, relating to dairy products;

(c) The milk price support level announced on March 12, 1971, and March 25, 1971; and

(d) The antitrust suit filed by the United States on February 1, 1972, against the Associated Milk Producers, Inc.

3. Any tape recordings, transcripts, memoranda, notes, and other writings relating to a meeting between Attorney General John Mitchell, Mr. Lee Nunn, and the President held on May 5, 1971.

C. INVESTIGATION INTO CAMPAIGN CONTRIBUTIONS IN CONNECTION WITH APPOINTMENT TO GOVERNMENT OFFICE

1. All letters, memoranda, or lists sent by Maurice H. Stans to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to a list of recommendations sent during or soon after the 1972 campaign and election period, and letters or memoranda addressed to Frederic V. Malek, which are believed to be in the files of the White House Personnel Office, similar communications sent by Mr. Stans to Peter M. Flanigan, which are believed to be in Mr. Flanigan's files or the Personnel Office files, and similar communications sent by Mr. Stans to Harry R. Haldeman, which are believed to be in Mr. Haldeman's files in Room 522 of the White House.
2. All letters, memoranda, or lists sent by Herbert W. Kalmbach to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to those sent to Mr. Haldeman, Mr. Flanigan, Mr. Malek, and others in the Personnel Office.

3. All correspondence, memoranda, documents, or other writings pertaining to the consideration for Presidential appointment, appointment, reappointment, or transfer of J. Fife Symington, Jr., Vincent W. deRoulet, Dr. Ruth Farkas, Cornelius V. Whitney, John Safer, Daniel Terra, Kingdon Gould, Jr., Florenz Ourisman, Dr. Jacob O. Kamm, and Martin Seretean.

4. A list of recommendations, similar to that described in paragraph 1 above, prepared by Mr. Stans during or soon after the 1968 campaign and election period, access to which is necessary because of its relevance both as background to a complete investigation of this matter and to certain actual or proposed Presidential appointments in 1970 or 1971.

INVESTIGATION INTO BREAK-IN AT OFFICE OF DR. FIELDING

Access to the files of John D. Ehrlichman.
81. On February 15, 1974 the White House released a statement by St. Clair commenting on the Special Prosecutor's February 14 letter to Senator Eastland. St. Clair stated that the President believed he had furnished sufficient evidence to determine whether probable cause existed that a crime had been committed and, if so, by whom.

that I disagree with and that you disagree with, and they
disagree with ours. But one-fourth of all the people of the
world live there. And, therefore, we should have relations
with them for the purpose of avoiding a conflict in war.
But there is another reason.

Just a few months ago, as a result of that visit, there
came into my office 15 doctors from the People's Republic
of China. That is the first time in 25 years that doctors
from the country in which one-fourth of all the people of
the world live had ever visited the United States of Amer-
ica. And as I met them and talked to them through an
interpreter I realized that if we are really going to do
everything that we should and can to find a cure or a
number of cures to the various types of cancer, which is
one of the great goals we have, if we are going to do every-
thing we can to develop better medical facilities and also
the answers to other diseases that today are a mystery even
to the great technical medical profession that we have, the
answer is not necessarily only going to be found in
America.

Oh, we have the best laboratories, I am sure. We have
the best equipment in America. I think perhaps we have
more qualified medical doctors and scientists in America
in this field than any place in the world, but there are
only 200 million Americans, and there are 3 billion that
live in this world and where is the genius, the genius that
may find an answer to the problem of cancer or arthritis
or any of these other diseases that we all know are being
studied and that you are contributing to.

It may not be an American. It may not be a white
man, or a woman, for that matter. It may be somebody
from Africa, from Asia, or even from China.

So one of the great objectives that I see looking ahead
is not only to keep the peace, but to see to it that what-
ever the differences we have between governments, let's
see that those who are working for good health for their
people work together with our people so that as far as
health is concerned, we work for good health not only
for America, but for three billion people on this earth.

The question then is not simply peace in the sense of
the absence of war; the question is what do you do with
peace, and one of the things you do with it is build a
better health care system, not only for America, but for
the whole world.

One of the things you do is to build a communication
between people even when governments disagree. Gandhi
said many, many years ago that "Health is the true
wealth, more important than gold and silver."

As we dedicate this hospital, this Health Care Center
and its facilities today, let us say it is a dedication to
better health, but also we are dedicating an institution
which serves the true wealth, the true wealth of America
and of the whole world, better health for all of us.

Thank you.

NOTE: The President spoke at 12:47 p.m. As printed above, this
item follows the text of the White House press release.

Medical Report on the President's Daughter

to the President, on the Hospitalization of
Julie Nixon Eisenhower. February 14, 1974

Wednesday evening while in Indianapolis, Ind., Julie
Eisenhower experienced severe discomfort in her lower
abdomen. This morning when Julie awoke the pain be-
came more severe. Due to the abdominal pain, Julie en-
tered the Indiana University Hospital in Indianapolis
this afternoon. An examination showed that the pain was
caused by an ovarian cyst accompanied by internal bleeding.
An operation will be performed this afternoon at
Indiana University Hospital in Indianapolis to stop the
internal bleeding.

Mrs. Nixon departed the residence at Key Biscayne at
4:20 this afternoon to fly to Indianapolis to be with Julie.
The operation will be performed by Dr. Sprague H.
Gardiner and Dr. Jack W. Pearson, professors of ob-
sterics and gynecology at the Indiana University School
of Medicine. Mrs. Nixon was accompanied by Dr. Wil-
liam Lukash, Assistant Physician to the President.

Julie was in Indianapolis in connection with her work
at the Saturday Evening Post.

NOTE: The statement was released at Key Biscayne, Fla.

Investigations by the Special Prosecutor

Statement by James D. St. Clair, Special Counsel to the
President. February 15, 1974

In connection with the letter of the Special Prosecutor
to Senator James O. Eastland, copies of which have been
made available to the public, I want to make the follow-
ing comments:

The President has fully cooperated with the Special
Prosecutor and his staff to the extent consistent with the
constitutional responsibilities of the Office of the Presi-
dency. Recordings of Presidential conversations and
documents voluntarily have been produced in a volume un-
precedented in our history. In response to a subpoena the
President produced recordings of eight conversations for
review by Judge Sirica. Of these, only four and a portion
of a fifth were ruled pertinent. In addition, recordings of
17 additional Presidential conversations and more than
700 documents were voluntarily furnished on request. In
responding to these requests of the Special Prosecutor no
attempt was made to confine the materials furnished to
the strict narrow guidelines established by the Court of
Appeals as an exception to “the presumption of privilege premised on the public interest in confidentiality.”

As soon as all these requests for recordings of Presidential conversations and documents had been furnished, the Special Prosecutor’s office on January 9, 1974, after more than 19 months of grand jury investigation, submitted a request for 40 more tapes and an unspecified number of additional documents. The production of this material would have the necessary result of further delaying grand jury deliberations many months. A careful review of this request led me to the conclusion that this new material was at best only corroborative of or cumulative to evidence already before the grand jury and therefore was not essential to its deliberations. Apparently the Special Prosecutor agrees since he states in his letter that “the Grand Jury will be able to return indictments without the benefit of this material.” The President believes that he has furnished sufficient evidence to determine whether probable cause exists that a crime has been committed and, if so, by whom. Under these circumstances, the President determined that continued and seemingly unending incursions into the confidentiality of Presidential communications was unwarranted, and instructed me to advise the Special Prosecutor that he respectfully declines to produce the additional material requested.

At the same time, the President has asked me to continue the private conversations I have been conducting with the Special Prosecutor. He has also given me firm instructions to cooperate fully, consistent with the principles of confidentiality of Presidential conversations, with a view toward bringing this matter to a prompt and just conclusion.

NOTE: The statement was released at Key Biscayne, Fla.

Counsellor to the President

Announcement of Appointment of Dean Burch. February 15, 1974

The President today announced the appointment of Dean Burch of Tucson, Ariz., as Counsellor to the President with Cabinet rank. Mr. Burch, together with Counsellors Anne Armstrong and Bryce Harlow, will advise the President on a broad range of policy questions.

Mr. Burch has been Chairman of the Federal Communications Commission since 1969. He was born on December 20, 1927, in Enid, Okla. Mr. Burch served in the U.S. Army from 1946 to 1948. He received his law degree from the University of Arizona in 1953. Following graduation, Mr. Burch served as assistant attorney general of Arizona from 1953 to 1954. He served as legislative assistant to Senator Barry Goldwater from 1955 until 1959, when he joined the law firm of Dunseath, Stubbs, and Burch, as a partner. Mr. Burch was chairman of the Republican National Committee in 1964–65. He left his law firm in September of 1969 when he was appointed by the President to the FCC.

Mr. Burch is married to the former Patricia Meeks. They have three children and reside in Washington, D.C.

NOTE: The announcement was released at Key Biscayne, Fla.

United States Ambassador to Peru

Announcement of Intention To Nominate
Robert W. Dean. February 15, 1974

The President today announced his intention to nominate Robert W. Dean as Ambassador to Peru. Mr. Dean, a Foreign Service officer of Class one, presently serving as Deputy Chief of Mission, Mexico City, would succeed Taylor G. Belcher, who is retiring from the Foreign Service.

He was born on May 25, 1920, in Hinsdale, Ill. Mr. Dean received a B.A. in 1948 and a M.A. in 1952 from the University of Chicago. He served with the United States Navy from 1945 to 1946. From 1942 to 1945, he was a clerk, then economic analyst in São Paulo. He was with the Institute of International Education in New York during 1948–49. He entered the Department of State as an Administrative Assistant in 1949 and in 1950 was appointed a Foreign Service officer. From 1950 to 1952, he was a resident officer, Kitzinger/HICOG, and from 1952 to 1954 a Consular Officer, Belém.

Mr. Dean from 1954 to 1957 was a Political Officer, Rio de Janeiro, and from 1957 to 1959, Chief of South American Branch, Division of Research for American Republics, in the Department. In 1959 he became Chief of the Inter-American Political Intelligence Division, and in 1961 he was on detail to the Department of Defense. He attended the National War College during 1962–63. In 1963–65 he served as Principal Officer, Brasilia, and from 1965 to 1969 he was Deputy Chief of Mission, Santiago. He was Country Director for Brazilian Affairs from 1969 to 1971, when he became Deputy Chief of Mission, Mexico City. He is fluent in Portuguese and Spanish.

Mr. Dean is married to the former Doris Wilkins and they have two children.

NOTE: The announcement was released at Key Biscayne, Fla.
On February 25, 1974 Herbert Kalmbach pleaded guilty to charges that he had engaged in illegal activities during his solicitations of campaign contributions in 1970, including the promise of appointment to an ambassadorship in return for a campaign contribution. Kalmbach agreed to make full and truthful disclosure of all relevant information and documents in his possession and to testify as a witness for the United States in cases in which he may have relevant information.

82.1 United States v. Kalmbach, Information, Crim. No. 74-86.

82.2 United States v. Kalmbach, Docket, Crim. No. 74-86.

82.3 United States v. Kalmbach, Information, Crim. No. 74-87.

82.4 United States v. Kalmbach, Docket, Crim. No. 74-87.

82.5 Letter from Leon Jaworski to Kalmbach's attorney, James H. O'Connor, February 13, 1974.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
v.
HERBERT W. KALMBACH,
Defendant.

The Special Prosecutor charges:

1. On or about November 3, 1970, pursuant to the Constitution and laws of the United States and the laws of the several states, a general election was held at which candidates for the United States Senate and House of Representatives were voted for.

2. From on or about March 1, 1970, to on or about December 31, 1970, there existed in the District of Columbia, a political committee as defined by §241(c) of Title 2, United States Code, which committee willfully accepted contributions and willfully made expenditures for the purpose of influencing the election of candidates of the Republican Party for the United States Senate and House of Representatives in the aforesaid general election in, among others, the following states: Alaska, Connecticut, Florida, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, Nevada, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Utah, Vermont and Wyoming, at a time when a chairman and treasurer of said committee had not yet been chosen as required by Section 242(a) of Title 2, United States Code.
From on or about March 1, 1970, to on or about December 31, 1970, in the District of Columbia and elsewhere, the defendant HERBERT W. KALMBACH did knowingly and willfully aid, abet, counsel, induce and procure the commission by the aforesaid committee of the offense set forth in paragraph 2 of this information and did cause the aforesaid committee to accept contributions and make expenditures at a time when a chairman and treasurer of that committee had not yet been chosen.

All in violation of Section 252(b) of Title 2 and Section 2 of Title 18, United States Code.

LEON JAWORSKI
Special Prosecutor
United States District Court for the District of Columbia

United States v. Kalmbach, docket, Crim. No. 74-86

**CRIMINAL DOCKET**

**PARTIES**

| UNITED STATES | VS. | HERBERT W. KALMBACH |

**ATTORNEYS**

| Office of Watergate Special Prosecutor, US Dept. of Justice | Charles P. O'Conor |
| Federal Building, Phoenix, Arizona |

**CHARGE**

| 18 USC 2 | 2 USC 242(c) |
| 252(b) Violation of Federal Corrupt Practices Act: Promise of Employment or other benefit for political activity; 18 USC 600 |

**DATE FILED**

2-27-74 | PR w/cond's |

**DATE**

74 Feb 25 | INFORMATION FILED (2 counts) |

**INFORMATION**

Appearance of James H. O'Connor, Esq., as counsel for deft. Filed.

INFORMATION, Waiver of Indictment, together with letter dated 2-13-74 from Leon Jaworski, Watergate Special Prosecutor, to James H. O'Connor, Esq. FILED IN OPEN COURT; ARRAIGNED; PLEA GUILTY entered to information; referred; deft. permitted to remain on personal recognizance pending sentencing upon following conditions: (1) Travel is restricted to US; (2) Passport, if any, must be surrendered to the Court immediately; (3) Deft. must report by phone to DC Bail Agent at least once a week; and (4) counsel for deft will assure deft's appearance in court as required. STRICA, C.J. Rep: J. Maher J. O'Connor, Atty.

**PROCEEDINGS**

26 Feb 26 | TRANSCRIPT of Proceedings of 2/25/74; Pages 1 - 18; Court copy; Rep: Jack Maher |

27 Feb 27 | ORDER granting release on Personal Recognizance pending sentencing;
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Crim. No. 74-87
v. 171a
HERBERT W. KALMBACH, (18 U.S.C. § 600)
Defendant.

INFORMATION

The Special Prosecutor charges:

On or about the 16th day of September, 1970, the defendant HERBERT W. KALMBACH promised employment, position, work, compensation and other benefit provided for and made possible by an Act of Congress, to wit, an appointment as United States Ambassador to a European country, to one J. Fife Symington, Jr. as consideration, favor, and reward for political activity and for support of a candidate and political party in an election, to wit, for the making of a political contribution of $100,000 by J. Fife Symington, Jr. and others for the support of Republican Senatorial and Gubernatorial candidates in 1970 federal and state elections and the Republican Presidential and Vice Presidential candidates in the 1972 federal election, all in violation of §600, Title 18, United States Code.

LEON JAKORSKI
Special Prosecutor.
United States District Court for the District at Columbus

SIRICA, C.J.

PARTIES

UNITED STATES

-vs-

ERBERT W. KALMBACH

ATTORNEYS

Office of Watergate Special
U. S. Attorney
Prosecutor, US Dept
OF JUSTICE, Thomas F. KEHR
Charles F. C. RUT

CRIMINAL NO.

74... 974

CHARGE: 18 USC 2; 2 USC

242(a) 252(b) Violation of
Federal Corrupt Practices Act;
Promise of Employment or oth-
benefit for political activit-

18 USc 600

DATE FILED

2-27-74

PR w/conds

PROCEEDINGS

Feb 25 INFORMATION FILED (2 Counts)

Feb 25 Appearance of James H. O'Connor, Esq., as counsel for deft.

Feb 25 INFORMATION FILED IN OPEN COURT.

Feb 25 LETTER dated 2-13-74 from Leon Jaworski, Watergate Special Prosecutor to James H. O'Connor, Esq. FILED IN OPEN COURT.

Feb 25 ARRAIGNED: PLEA GUILTY entered to information; referred deft. permitt to remain on personal recognizance pending sentence upon following...conditions: (1) Travel is restricted to US; (2) Passport, if any, must be surrendered to Court immediately; (3) Deft. must report by phone to DC Bail Agency at least once a week; and (4) Counsel for deft will assure deft's appear in Court as required. SIRICA, C.J. Rep: J. Maher J. O'Connor, Atty.

Feb 26 TRANSCRIPT of Proceedings of 2/25/73; pages 1 - 18; Court copy: Rep-Jack Maher.
February 13, 1974

James H. O'Connor, Esq.
O'Connor, Cavanagh, Anderson, Westover,
Killingsworth & Beshears
Suite 1800 First Federal Savings Building
3003 North Central Avenue
Phoenix, Arizona 85012

Dear Mr. O'Connor:

On the understandings specified below, the United States will accept guilty pleas from Herbert W. Kalmbach to a one-count information charging violation of 2 U.S.C. §252(b) and a one-count information charging a violation of 18 U.S.C. §600. This will dispose of pending or potential charges based on matters presently known to this office and specifically including charges relating to the so-called Watergate cover-up, contributions from the milk producers, other contributions from persons seeking ambassadorial appointments and any charges arising out of grand jury testimony heretofore given by Mr. Kalmbach.

The understandings are that Mr. Kalmbach will enter his pleas in the District Court for the District of Columbia, that he will waive indictment on the 2 U.S.C. §252(b) [felony] charge, that he will waive objection to venue on the 18 U.S.C. §600 charge, and that full and truthful disclosure will be made of all relevant information and documents in Mr. Kalmbach's possession, which disclosure is to commence immediately after the entering of the pleas of guilty. Ultimately, of course, Mr. Kalmbach may be required to testify as a witness for the United States in cases with respect to which he may have relevant information. It is further understood that in other grand jury indictments or other charges brought by the United States and the Special Prosecutor, Mr. Kalmbach may be named as an unindicted co-conspirator.
It is further understood that the United States will make no recommendation concerning Mr. Kalmbach's sentencing but will bring to the attention of the pre-sentencing investigators, information in its possession relating to Mr. Kalmbach and to the extent of his cooperation with the United States. Such cooperation will also be brought to the attention of a court or professional disciplinary body, if requested.

This disposition will not bar prosecution for any false testimony given hereafter, nor to prosecution for any serious offenses committed by Mr. Kalmbach of which this office is presently unaware.

Enclosed are copies of two draft informations as discussed in our meeting last week.

Sincerely,

LEON JAWORSKI
Special Prosecutor
83. On March 1, 1974 John Mitchell, H. R. Haldeman, John Ehrlichman, Charles Colson, Robert Mardian, Kenneth Parkinson and Gordon Strachan were indicted for conspiracy relating to the Watergate break-in. Mitchell, Haldeman, Ehrlichman and Strachan were also indicted for obstruction of justice and for making false statements to the Grand Jury or the Court or agents of the FBI.

FOR IMMEDIATE RELEASE

MARCH 1, 1974

THE FOLLOWING INDICTMENT WAS HANDED DOWN BY A FEDERAL GRAND JURY IN WASHINGTON TODAY:

NAMES:

Charles Colson, 42, McLean, Virginia
John Ehrlichman, 48, Seattle, Washington
Harry R. Raldeman, 47, Los Angeles, California
Robert C. Mardian, 50, Phoenix, Arizona
John Mitchell, 60, New York, New York
Kenneth W. Parkinson, 46, Washington, D.C.
Gordon Strachan, 30, Salt Lake City, Utah

CHARGES:

All defendants were charged with one count of conspiracy (Title 18, USC, §371).

The following defendants were indicted on additional charges:

MITCHELL: One count of violation of 18, USC, §1503 (Obstruction of Justice), two counts of violation of 18, USC, §1623 (Making false declaration to Grand Jury or Court), one count of violation of 18, USC, §1621 (Perjury) and one count of violation of 18, USC, §1001 (Making false statement to agents of the Federal Bureau of Investigation).

EHRLICHMAN: One count of violation of 18, USC, §1503 (Obstruction of Justice), one count of violation of 18, USC, §1001 (Making false statement to agents of the Federal Bureau of Investigation) and two counts of violation of 18, USC, §1623 (Making false declaration to Grand Jury or Court).

Haldeman: One count of violation of 18, USC, §1503 (Obstruction of Justice), three counts of violation of 18, USC, §1621 (Perjury).

STRACHAN: One count of violation of 18, USC, §1503 (Obstruction of Justice), one count of violation of 18, USC, §1623 (Making false declaration to Grand Jury or Court).
PENALTIES:

§ 371. Conspiracy. Carries a maximum penalty of five years imprisonment or fine of $5,000, or both.

§ 1503. Obstruction of Justice. Carries a maximum penalty of five years imprisonment or a fine of $5,000, or both.

§ 1001. Making false statement to agents of the Federal Bureau of Investigation. Carries a maximum penalty of five years imprisonment or a fine of $10,000, or both.

§ 1621. Perjury. Carries a maximum penalty of five years imprisonment or a fine of $2,000, or both.

§ 1623. Making false declaration to Grand Jury or Court. Carries a maximum penalty of five years imprisonment or a fine of $10,000, or both.

A COPY OF THE INDICTMENT AND COPIES OF THE APPROPRIATE STATUTES ARE ATTACHED TO THIS FACT SHEET.


***************
84. On March 7, 1974 John Ehrlichman, Charles Colson, G. Gordon Liddy, Bernard Barker, Felipe DeDiego and Eugenio Martinez were indicted for conspiracy to violate civil rights of citizens in the break-in of Dr. Lewis Fielding's office. Ehrlichman was also charged with making false statements to the FBI and false declarations before the grand jury.

FOR IMMEDIATE RELEASE

MARCH 7, 1974

THE FOLLOWING INDICTMENT WAS HANDED DOWN BY A FEDERAL GRAND JURY IN WASHINGTON TODAY:

NAMES:

John Ehrlichman, 48, Seattle, Washington
Charles Colson, 42, McLean, Virginia
G. Gordon Liddy, 43, Oxon Hill, Maryland
Bernard L. Barker, 56, Miami, Florida
Felipe De Diego, 45, Miami, Florida
Eugenio Martinez, 51, Miami, Florida

CHARGE:

Each defendant was charged with a single count of violation of Title 18, USC, Section 241, Conspiracy against rights of citizens. *

Ehrlichman was also charged with one count of violation of Title 18, USC, Section 1001, making false statement to agents of the Federal Bureau of Investigation, and three counts of violation of Title 18, USC, Section 1623, making false declaration to grand jury or court.

*Named as co-conspirators, but not indicted, were the following: Egil Krogh, Jr., E. Howard Hunt, Jr., and David R. Young. Krogh pleaded guilty on November 30, 1973, to a charge of violation of Title 18, USC, Section 241. Hunt was granted immunity by order of U.S. District Court Chief Judge John J. Sirica on March 28, 1973. Young was granted immunity by Chief Judge Sirica on May 16, 1973.

PENALTIES:

SECTION 241. Fine of not more than $10,000 or imprisonment for not more than 10 years, or both.

SECTION 1001. Fine of not more than $10,000 or imprisonment not more than five years, or both.

SECTION 1623. Fine of not more than $10,000 or imprisonment not more than five years, or both.

On March 12, 1974 Jaworski wrote to St. Clair requesting access to taped conversations and related documents to be examined and analyzed as the Government prepares for trial in United States v. Mitchell. Jaworski stated that the evidence sought was material and relevant either as proof of the Government's case or as possible exculpatory material required to be disclosed to the defendants.

James D. St. Clair, Esquire  
Special Counsel to the President  
The White House  
Washington, D. C.

Dear Mr. St. Clair:

Now that an indictment has been returned concerning the Watergate cover-up, it is necessary to request access to certain taped conversations and related documents that must be examined and analyzed as the Government prepares for trial. These conversations and documents, identified on the basis of the evidence now known to us, are listed in the enclosed schedule. You indicated in your letters to me of February 13, and February 27, 1974, that you would consider such requests on a case-by-case basis.

As you know, 27 recordings previously were requested in an effort to assure that the Watergate investigation would be as thorough and as fair as possible. Although the White House did not see fit to make these recordings available for this purpose, I hope that you will understand that this present request is dictated by a different and, if anything, more important reason. Information now available to us indicates that each of the conversations shown on the enclosed schedule contains or is likely to contain evidence that will be relevant and material to the trial of the seven individuals who have been indicted, either as proof of the Government's case or as possibly exculpatory material that must be disclosed to the defense under Brady v. Maryland. (Of course, if you inform us that certain of the requested conversations are irrelevant to the trial and you permit someone in this office, as you have in the past, to verify this by listening to them, there will be no need for you to produce those conversations, except as otherwise may be required by a court upon request of defendants.)
In a spirit of cooperation, I made available to you in my letter of January 22, 1974, the information that leads us to believe that the recordings requested in that letter are important. Similar information for a few additional recordings that were not discussed in that letter, but are now requested, is footnoted on the enclosed schedule.

Since most of the requested tapes were initially sought many weeks ago, I assume that the task of locating and examining the material now requested is largely complete. Moreover, if litigation relating to this material becomes necessary, it would be best for everyone concerned that it be initiated promptly in order to avoid any trial delay. Accordingly, I would appreciate a definitive response to this letter at your earliest convenience and, in any event, no later than March 19. Although early production of the requested materials would greatly ease the problems of trial preparation, I would deem it a sufficient response to this letter if you assure us in writing that the President will provide the materials prior to June 15, 1974. If the President wishes to withhold any of the recordings on the ground of irrelevance, I would ask that arrangements be made so that we can complete our review of those recordings prior to June 15, 1974.

Sincerely,

LEON JAWORSKI
Special Prosecutor

Enclosure
86. On March 15, 1974 the Special Prosecutor served a subpoena on the White House calling for certain materials involving neither the Watergate cover-up nor the Fielding break-in. On March 29, 1974 the White House agreed to comply with the subpoena.

Subpoena Requests More Nixon Files

Continued From Page 1, Col. 5

... break-in at the office of Daniel Ellsberg's former psychiatrist. Presumably, therefore, the subpoena dealt with one of the other areas under investigation by the three Watergate grand juries—the International Telephone and Telegraph case, the milk fund case, political contributions, and the erasure of 18 minutes from one of the White House tapes.

On Feb. 14, Mr. Jaworski wrote to Senator James O. Eastland, Democrat of Mississippi, who is chairman of the Senate Judiciary Committee, complaining that the President had refused to give him material that he needed for his Watergate investigation. The material at issue included 27 tapes relating to the Watergate cover-up as well as political donations of milk producers and the activities of the White-House's so-called "plumbers" unit.

The subpoena may deal with some or all of this data. Mr. St. Clair, appearing on the National Broadcasting Company's "Today" program, did not clear up the confusion. "We have recently received a subpoena," he said. "I don't think it would cover material he [Mr. Jaworski] has recently been denied. But this would be, maybe, a quibble. Let's say we recently have received a subpoena."

In any event, Mr. Jaworski's action will undercut one of the principal debating points Mr. Nixon has used in his recent public campaign to re-establish his credibility.

The President has repeatedly defended his refusal to yield to a subpoena from the House Judiciary Committee, which is arguing that Mr. Jaworski had investigating impeachment, by arguing that Mr. Jaworski had all the material he needed and noting that the House group had received everything Mr. Jaworski had. Mr. Jaworski never said that he had all the materials he needed. Mr. Nixon apparently based his comments on Mr. Jaworski's comment, in an interview with The New York Times on Feb. 26, that his office knew the full story of the Watergate case.

His subpoena indicates that even if he knows the full story, he does not feel he has sufficient material to frame all the indictments.

At the regular White House news briefing this morning, Mr. Warren conceded that Mr. Nixon knew of the subpoena issued Tuesday night, when he agreed to supply the tapes "voluntarily," with the proviso that he set no precedent.

Thus the legal issue of Presidential vulnerability to a subpoena was noted, the President not mentioning it.

Mr. Warren was asked, why did the President not mention it? "The subpoena did not reach the Supreme Court. If Mr. Nixon was not asked again refuses to honor the subpoena, the constitutional struggle might continue."

The deputy press secretary could resume.

Ziegler Comment Noted

Mr. Jaworski's new subpoena was the first directed at the President by the special prosecutor's office since last July, when Mr. Cox subpoenaed tapes of nine Presidential conversations, Mr. Nixon balked, and a legal struggle ensued, with the White House losing both in the District Court and the Court of Appeals.

At that juncture, the President attempted to work out a compromise. Mr. Cox resisted and was dismissed. In theup roar that followed, Mr. Nixon knew of the subpoena.

On Tuesday night, when he conducted a nationally televised question-and-answer session in Houston, in that case, Mr. Nixon knew of the subpoena.

Thus the legal issue of Presidential vulnerability to a subpoena was noted, the President not mentioning it. The subpoena did not reach the Supreme Court. If Mr. Nixon was not asked again refuses to honor the subpoena, the constitutional struggle might continue.

The deputy press secretary could resume.
WHITE HOUSE YIELDS DATA SUBPOENAED BY JAWORSKI IN POLITICAL-GIFT INQUIRY

FIGHT IS AVERTED

But Talks Continue on Impeachment Panel's Plea for Documents

By JOHN HERBERS
Special to The New York Times

WASHINGTON, March 20—The White House agreed today to surrender all the materials subpoenaed March 15 by the special Watergate prosecutor, Leon Jaworski.

President Nixon, in deciding not to fight the subpoena, made an important concession in his efforts to limit, on the ground of executive privilege, the number of documents and tape recordings he turns over to the investigations of alleged wrongdoing in his Administration.

Still pending was the dispute between Mr. Nixon and the House Judiciary Committee, which asked for additional tapes and documents for its impeachment inquiry. However, lawyers for the two sides were negotiating on the committee's request, and there were some indications that a compromise might soon be reached.

New Subpoenas Expected

The materials covered by the Jaworski subpoena pertained to documents concerning political contributions, one of the areas still under grand jury investigation. Mr. Jaworski is expected to issue further subpoenas for materials in the milk price controversy and the International Telephone and Telegraph Corporation antitrust case.

There was also the possibility that he would subpoena additional material to be used in the prosecution of defendants indicted in the cover-up of the Watergate burglary.

Ronald L. Ziegler, the White House press secretary, informally disclosed the breakthrough in the constitutional struggle as if it were a routine decision that had never been in doubt.

Yielding of Materials

He wandered into the White House press room this morning and, in the course of chatting with a small group of reporters, said that James D. St. Clair, the President's chief attorney for Watergate matters, had told him "all of the materials requested" by Mr. Jaworski would be turned over later in the day. Today was the deadline for surrendering the material.

A spokesman for Mr. Jaworski said that the materials were delivered to the prosecutor's office in a brown paper package at 5:15 P.M.

Mr. Jaworski had issued the subpoena only after he was

Continued on Page 14, Column 1
White House Yields to Jaworski
On Data in Political-Gift Inquiry

Continued from Page 1, Col. 8

unable to obtain the materials
voluntarily in long negotiations
with White House lawyers.

President Nixon had repeatedly
argued that Mr. Jaworski had
all the materials he needed for
the Watergate and other in-
vestigations.

Last July, Mr. Nixon defied
subpoenas for tape recordings
informed sources said that the
from Mr. Jaworski’s predecessor,
Archibald Cox, who took
the President to court and won
an order, approved by the
United States Court of Appeals
for the District of Columbia,
Circuit, requiring that the
tapes be surrendered for
judicial review.

Mr. Nixon ousted Mr. Cox
but then surrendered the tapes
and for a time it appeared
that he would honor all re-
quests for White House
materials.

But, as the demands mounted
in recent weeks, he said that
he would resist efforts to ob-
tain large volumes of material
on the same ground that he had
resisted the original Cox sub-
poena — that the confiden-
tiality of the Presidency would
be seriously compromised,
making it impossible for future
Presidents to receive candid
t advice in private.

Mr. Ziegler, in his brief press
room appearance today, did
not say why the President had
agreed to meet the demands of
Mr. Jaworski. However, many
Republicans in Congress have
recently warned the President
and his assistants that refusal
On April 11, 1974 Jaworski wrote to St. Clair informing him that in view of the failure to produce the materials requested by Jaworski in his letter of March 12, 1974 Jaworski would seek a subpoena for the materials deemed necessary for trial in United States v. Mitchell.

April 11, 1974

James D. St. Clair, Esq.
Special Counsel to the President
The White House
Washington, D.C.

Dear Mr. St. Clair:

On March 12, 1974, I wrote to you requesting access to certain taped conversations and related documents that must be examined and analyzed as the Government prepares for trial in United States v. Mitchell. If the President declines to produce these materials, which we deem necessary for trial, I am compelled by my responsibilities to seek appropriate judicial process. As I indicated in my letter, any judicial proceedings, if they are necessary, must be initiated promptly in order to avoid unnecessary trial delays.

I have conferred with you several times during the last month about this matter. I have delayed seeking a subpoena in the hope that the President would comply with our request voluntarily. Indeed, I have sought no more at this time than an assurance that the materials would be provided sufficiently in advance of trial to allow thorough preparation. Your latest communication to this office was that we would receive any materials the President produces to the Committee on the Judiciary of the House of Representatives. As to other materials requested by my letter, you have said you would not consider our request until the President decided what to provide the House Judiciary Committee. I have emphasized repeatedly that our request is in no way tied to the requests of the House Judiciary Committee. The requests are distinguishable both factually and legally. Nevertheless, you have
refused to consider them separately, and you have been unable to tell us the criteria that will govern the President's response to our request or to assure us when we will receive a definitive response.

Under these circumstances, in accordance with my responsibilities to secure a prompt and fair trial for the Government and the defendants in United States v. Mitchell, I am obliged to seek a subpoena for those materials we deem necessary for trial. Accordingly, on Tuesday, April 16, we will apply to Judge Sirica for a trial subpoena pursuant to Rule 17 (c) of the Federal Rules of Criminal Procedure.

Sincerely,

LEON JAWORSKI
Special Prosecutor
On April 11, 1974 the House Judiciary Committee issued a subpoena to the President for tape recordings and documents relating to specified conversations which took place in February, March and April 1973 between the President and Haldeman, Ehrlichman, Dean, Kleindienst and Petersen.

88.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, April 11, 1974.
BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule,

to be and appear before the Committee on the Judiciary of the House of Representatives of the United States, of which the Hon. Peter W. Rodino, Jr. is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof,

in their chamber in the city of Washington, on or before April 25, 1974, at the hour of 10:00 A.M.

produce and deliver said things to said Committee, or their duly authorized representative, in connection with the Committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of April, 1974.

Peter W. Rodino, Jr. Chairman

Attest: John E. Jennings Clerk.
SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA DATED APRIL 11, 1974

All tapes, dictabelts or other electronic recordings, transcripts, memoranda, notes or other writings or things relating to the following conversations:

1. Certain conversations between the President and Mr. Haldeman or Mr. Ehrlichman or Mr. Dean in February, March and April, 1973, as follows:

   (a) Conversations between the President and Mr. Haldeman on or about February 20, 1973, that concern the possible appointment of Mr. Magruder to a government position;

   (b) Conversations between the President, Mr. Haldeman and Mr. Ehrlichman on or about February 27, 1973, that concern the assignment of Mr. Dean to work directly with the President on Watergate and Watergate-related matters;

   (c) Conversations between the President and Mr. Dean on March 17, 1973, from 1:25 to 2:10 p.m. and March 20, 1973, from 7:29 to 7:43 p.m.

   (d) Conversations between the President and Mr. Ehrlichman on March 27, 1973 from 11:10 a.m. to 1:30 p.m., and on March 30, 1973, from 12:02 to 12:18 p.m.; and

   (e) Conversations between the President and Mr. Haldeman and the President and Mr. Ehrlichman during the period April 14 through 17, 1973, as follows:

April 14

8:55 - 11:31 a.m. Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

1:55 - 2:13 p.m. Meeting between the President and Mr. Haldeman

2:24 - 3:55 p.m. Meeting among the President, Mr. Ehrlichman and Mr. Haldeman
April 15

5:15 - 6:45 p.m.  Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

11:02 - 11:16 p.m.  Telephone conversation between the President and Mr. Haldeman

11:22 - 11:53 p.m.  Telephone conversation between the President and Mr. Ehrlichman

April 16

10:35 - 11:15 a.m.  Meeting between the President and Mr. Ehrlichman

2:24 - 3:30 p.m.  Meeting between the President and Mr. Ehrlichman

3:27 - 3:44 p.m.  Telephone conversation between the President and Mr. Haldeman

7:50 - 9:15 p.m.  Meeting among the President, Mr. Haldeman and Mr. Ehrlichman

10:16 - 11:15 p.m.  Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

April 16

12:08 - 12:23 a.m.  Telephone conversation between the President and Mr. Haldeman

8:18 - 8:22 a.m.  Telephone conversation between the President and Mr. Ehrlichman

9:50 - 9:59 a.m.  Meeting among the President, Mr. Haldeman and Mr. Ehrlichman

10:50 - 11:04 a.m.  Meeting among the President, Mr. Haldeman and Mr. Ehrlichman

12:00 - 12:31 p.m.  Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

3:27 - 4:02 p.m.  Meeting between the President and Mr. Ehrlichman (Mr. Ziegler present from 3:35 - 4:06 p.m.)
April 16 (Continued)

9:27 - 9:49 p.m. Telephone conversation between the President and Mr. Ehrlichman

April 17

9:47 - 9:59 a.m. Meeting between the President and Mr. Haldeman

12:35 - 2:30 p.m. Meeting among the President, Mr. Haldeman and Mr. Ehrlichman (Mr. Ziegler present from 2:10 - 2:17 p.m.)

2:39 - 2:40 p.m. Telephone conversation between the President and Mr. Ehrlichman

3:50 - 4:35 p.m. Meeting among the President, Mr. Haldeman and Mr. Ehrlichman

5:50 - 7:14 p.m. Meeting among the President, Mr. Haldeman and Mr. Ehrlichman (Mr. Rogers present from 5:20 - 6:19 p.m.)

2. Conversations between the President and Mr. Kleindienst and the President and Mr. Petersen during the period from April 15 through 18, 1973, as follows:

April 15

10:13 - 10:15 a.m. Telephone conversation between the President and Mr. Kleindienst

1:12 - 2:22 p.m. Meeting between the President and Mr. Kleindienst

3:48 - 3:49 p.m. Telephone conversation between the President and Mr. Kleindienst

4:00 - 5:15 p.m. Meeting among the President, Mr. Kleindienst and Mr. Petersen

8:14 - 8:18 p.m. Telephone conversation between the President and Mr. Petersen
April 15 (Continued)

8:25 - 8:26 p.m.  Telephone conversation between the President and Mr. Petersen

9:39 - 9:41 p.m.  Telephone conversation between the President and Mr. Petersen

11:45 - 11:53 p.m.  Telephone conversation between the President and Mr. Petersen

April 16

1:39 - 3:25 p.m.  Meeting between the President and Mr. Petersen (Mr. Ziegler present from 2:25 - 2:52 p.m.)

8:58 - 9:14 p.m.  Telephone conversation between the President and Mr. Petersen

April 17

2:46 - 3:49 p.m.  Meeting between the President and Mr. Petersen

April 18

2:50 - 2:56 p.m.  Telephone conversation between the President and Mr. Petersen

6:28 - 6:37 p.m.  Telephone conversation between the President and Mr. Petersen.
On April 12, 1974 Jaworski wrote to Senator Charles Percy of the Senate Judiciary Committee stating that the government was obligated to produce at trial the material requested in Jaworski's March 12, 1974 letter respecting the trial of United States v. Mitchell, and that the failure of the White House to produce other requested evidence was impeding grand jury investigations of matters unrelated to the Watergate cover-up.

89.1 Letter from Leon Jaworski to Charles Percy, April 12, 1974, Congressional Record S 7103-04.
The prospect of an emerging chronic global scarcity of food as a result of growing pressures on available food resources underlines the need to stabilize and eventually halt population growth in as short a period of time as possible. One can make the case that this occurring in the industrial countries, given recent demographic trends. In the poor countries, however, it will be much more difficult to achieve population stability within an acceptable time frame, at least as things are going now. For one thing, birth rates do not usually decline unless certain basic social needs are satisfied—a reasonable standard of living, an assured food supply, a high literacy, and a reduced infant mortality rate. Other factors—which provide the basic motivation for smaller families—will continue to increase in importance in the rural areas, which contain the great majority of the world’s people and most of the very poor. This effort would not only increase food production at a relatively low cost, but would also meet the basic social needs of people living in the world as a whole. The latter requires in lowering birth rates. Population-induced pressures on the global food supply and are likely to continue worldwide. The latter is likely to continue to increase if substantial economic and social progress is made in a population that has grown by 25 percent in the last 50 years—and many place a higher status on their nations—multiply eightfold in scarcely 75 years!

There is a moral imperative to take action to reduce the impact of the present food scarcity and reduce the likelihood of future disaster. The point was forcefully articulated by Chancellor Willy Brandt of Germany in his first address before the U.N. General Assembly: “Eternally it makes no difference what a man is killed or condemned to death by the indifference of others.”

WHO DETERMINES RELEVANCE OF REQUESTED WATERGATE EVIDENCE?

Mr. PERCY. Mr. President, over the weekend the President’s lawyer, Mr. St. Clair, and his Chief of Staff, Mr. Haig, clearly indicated what has seemed evident for many months. Despite the fact that the President and former members of his staff are the subject of investigations into alleged wrongdoing, the White House nonetheless is refusing to reveal the right to determine what is relevant to these investigations. For instance, General Haig said Sunday that—

The President now has put out for public assessment what we consider to be all of the relevant information on the Watergate story.

Mr. St. Clair commented in like manner that “the President feels he has told them everything that he thinks they need.” When asked repeatedly why the President should be able to determine what is and what is not relevant, Mr. St. Clair indicated that the relevancy question was answered by the transcripts of the tapes which have been made public.

Thus it is clear that the White House has determined that it will decide what is needed by the Special Prosecutor and the House Judiciary Committee. This is a most unfortunate and counter-productive tactical decision.

Key to completing the Watergate Investigation is getting Watergate behind us. In the question of who has the authority to determine the scope of the inquiries now being conducted by the Special Prosecutor and the House Judiciary Committees? Who has the authority to determine what is and what is not relevant to these investigations?

The policy of the White House to place itself in the position of judging what is relevant threatens to delay further still the time when Watergate will be behind us, and, in fact, raises the specter of more constitutional confrontations and more trauma to the White House to alter its strategy in a fundamental way. It should acknowledge the authority of the House Judiciary Committee and the Special Prosecutor to determine relevancy. Otherwise it will not only delay the investigation, but will be unable to resolve the questions of guilt and innocence as swiftly as possible.

Because, over the past year, I have been firm in my belief that the necessity of the Special Prosecutor able to investigate and prosecute matters relating to Watergate fully and expeditiously, I forwarded to Special Prosecutor Jaworski correspondence between General Haig and myself which discussed the question of who determines relevancy. In reply to my remarks, the Special Prosecutor states that:

The Special Prosecutor should determine what documents and recordings are important for matters within his jurisdiction. The White House is not privy to the scope or results of our investigations, and, therefore, is in no position to judge what material is required for the pursuant of these investigations and the prosecution of any trials.

Referring to the refusal of the President to yield the evidence which the Special Prosecutor has requested, Mr. Jaworski concludes:

The failure to produce this requested evidence is now impeding these grand jury investigations.

The capacity of the President to determine what is or is not relevant to Watergate investigations is now impeding these grand jury investigations.

Mr. President, I do not preclude the matters now under investigation. I do not question that, along with my colleagues in the Senate, I may be called upon to sit as a juror in judgment of these critical matters. However, it is not improper, and it is essential, to point out my deep concern about the manner in which the White House is responding to the Special Prosecutor and to the House Judiciary Committee.

In the White House to reverse its present position and spare us unnecessary and risky confrontations. We should allow those who are duly constituted and vested with the authority to decide what is relevant and necessary.

EXHIBIT I

WATERGATE SPECIAL PROSECUTOR, Washington, D.C., April 12, 1974.

Mr. CHARLES H. PERCY, U.S. Senate, Washington, D.C.

Dear Senator Percy: Thank you for your letter of April 2, 1974, enclosing a copy of General Haig’s letter to you. Although I disagree to take issue with statement, I believe two matters warrant clarification.

General Haig indicates that I have stated publicly that the Watergate Grand Jury knew all that it had to. It is true that I have indicated that the Grand Jury was sufficiently constituted to allow the Grand Jury to return its indictment. I never have stated that the Government, represented in this matter by the Special Prosecutor, knows all the facts relating to the events charged in the indictment. Clearly, burdens of proof differ in presentation to the Grand Jury and to a trial on an indictment. The prosecution, I believe, is obligated to bring before the trial jury all facts necessary and material to conviction.

Moreover, it is possible that certain materials now in the President’s possession will have to be made available to the defense under the doctrine of Brady v. Maryland or the provisions of the Jencks Act, 18 U.S.C. § 3500.

On March 13, 1974, I addressed a letter to Mr. Haig requesting access to those taped conversations and related materials we deemed necessary for trial preparation. The material requested for the Grand Jury as early as January 9, 1974, and subsequently refused. As of now, there has been no evidence that we have refused a satisfactory explanation for the delay.

General Haig also states that the White House has produced voluntarily 19 recordings of Presidential conversations and that the return of the Watergate indictment reveals that the Grand Jury did not need the other requested material. General Haig, however, overlooks our responsibility for other areas of investigation under the mandate of the Special Prosecutor. Indeed, some of the 19 recordings had not been made available to the investigators of the alleged Watergate conspiracy—yet are vitally essential to other investigations for which this office has responsibility and for which grand juries have been impaneled. The failure to produs this requested evidence is now impeding these grand jury investigations.

I would further observe that White House cooperation can only hamper the volume of materials produced. One must act at each request on its merits. In this regard, as your letter to General Haig states, the Special Prosecutor should determine what documents and recordings are important for matters within his jurisdiction. The White House is not privy to the scope of our investigations and, therefore, is in no position to judge what material is required
Mr. McCLELLAN. Mr. President, under the provisions of title III of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 219), the Director of the Administrative Office of the U.S. Courts is required to transmit to the Congress in April of each year a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications.

The Congress has just received the sixth report under the wiretapping and electronic surveillance provisions of Title III. The report summarizes the period from January 1, 1973, to December 31, 1973, and again demonstrates the key role court-ordered wiretapping and electronic surveillance is playing in the fight against crime.

As observed by Mr. Henry E. Peterson, Assistant Attorney General in the Criminal Division, Department of Justice, during hearings before a House subcommittee on April 10, 1974: We maintain that electronic surveillance techniques are, to date, the most effective method to bring criminal sanctions against organized criminals, and are indispensable in developing witnesses with corroborating testimony, and generally in providing a useful tool in the evidence-gathering process. The Department's most notable success with the use of electronic surveillance has been against organized crime controlled gambling enterprises. However, surveillances have also proved extremely useful in detecting and arresting violators of the other crimes listed in Section 2516 of Title 18.

Mr. President, the report shows that during the calendar year 1973 there were 864 applications for orders to intercept wire or oral communications granted by State and Federal judges. Only two applications for orders were denied during this period, which indicates that thorough, studied consideration is given before an application for an order is made.

Nineteen of the 34 States which had laws authorizing courts to issue wiretap orders used those laws in 1973. See Exhibit No. 11. Wiretap authorizations were reported from 33 State jurisdictions and the Department of Justice. The States issued by far the majority of intercept orders—724 out of 864. Seventy-five percent of the State authorizations were issued in the two-State area of New York and New Jersey. Out of the 864 total applications approved, only 120 were authorized by Federal judges. This figure represents a 37-percent decline in Federal orders over 1972.

The length of time authorized for the 864 orders varied from 1 day to 210 days. The average length of the orders, which was authorized for a single intercepted intercept order, was $153,488 for a Federal wiretap. The average cost for the total intercept orders was $5,632. See exhibit No. 2.

As a result of intercepts installed during the calendar year 1973, a total of 2,268 arrests had been made as of December 31, 1973. There were 409 convictions in 1973, compared to 402 in 1972. Many of the criminal cases for which orders were authorized in 1973 are still under active investigation.

Mr. President, I feel that the procedures requiring public reporting of statistics on electronic surveillance are very beneficial, not only to provide us, with the actual numbers of cases involved, but also to keep the citizens of this country advised of the true scope and operation of this important tool of law enforcement.

Mr. President, I ask unanimous consent that the following exhibits summarizing the availability and use of intercept procedures appear in the Record at the conclusion of my remarks:

No. 1—Jurisdictions with statutes authorizing the interception of wire or oral communications effective during the period January 1, 1973, to December 31, 1973.

No. 2—Summary report on authorized intercepts granted pursuant to Title 18, U.S.C. 2518.

No. 3—Arrests and convictions as a result of intercept orders installed, calendar years 1969-1973.

EXHIBIT NO. 1

JURISDICTIONS WITH STATUTES AUTHORIZING THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS EFFECTIVE DURING THE PERIOD JAN. 1 TO DEC. 31, 1973

<table>
<thead>
<tr>
<th>State</th>
<th>Statutory citation</th>
<th>Reported use of wiretap in 1973</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>3775</td>
<td>Yes.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>35-92</td>
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</tr>
<tr>
<td>Delaware</td>
<td>11-207</td>
<td>Yes.</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>541-546</td>
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</tr>
<tr>
<td>Georgia</td>
<td>52-909</td>
<td>Yes.</td>
</tr>
<tr>
<td>Hawaii</td>
<td>775-900</td>
<td>Yes.</td>
</tr>
<tr>
<td>Idaho</td>
<td>29-957</td>
<td>Yes.</td>
</tr>
<tr>
<td>Illinois</td>
<td>254-909</td>
<td>Yes.</td>
</tr>
<tr>
<td>Indiana</td>
<td>254-900</td>
<td>Yes.</td>
</tr>
<tr>
<td>Iowa</td>
<td>254-900</td>
<td>Yes.</td>
</tr>
<tr>
<td>Kansas</td>
<td>25-921</td>
<td>Yes.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>254-900</td>
<td>Yes.</td>
</tr>
<tr>
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<td>254-900</td>
<td>Yes.</td>
</tr>
<tr>
<td>Maine</td>
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</tr>
<tr>
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<td>Yes.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>277-9</td>
<td>Yes.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>624-51</td>
<td>Yes.</td>
</tr>
<tr>
<td>Mississippi</td>
<td>526-24</td>
<td>Yes.</td>
</tr>
<tr>
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</tr>
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<td>6-909</td>
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<tr>
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<td>New Jersey</td>
<td>24-154-164</td>
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<td>New Mexico</td>
<td>603-12-11</td>
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<td>251-A to 259-A</td>
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<td>North Carolina</td>
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<td>12-4-1 to 12-5-16</td>
<td>Yes.</td>
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<td>South Carolina</td>
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<tr>
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<td>Tennessee</td>
<td>71-900</td>
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<td>Texas</td>
<td>827-920 to 827-920</td>
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</tr>
<tr>
<td>Utah</td>
<td>251-A to 259-A</td>
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</tr>
<tr>
<td>Vermont</td>
<td>2-909</td>
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</tr>
<tr>
<td>Virginia</td>
<td>4-909</td>
<td>Yes.</td>
</tr>
<tr>
<td>Washington</td>
<td>328-51</td>
<td>Yes.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>505-27 to 508-33</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

1 Excludes jurisdictions which enacted legislation in 1974.
On April 16, 1974 the Special Prosecutor, joined by defendants Colson and Mardian, moved that a trial subpoena be issued in United States v. Mitchell directing the President to produce tapes and documents relating to specified conversations between the President and the defendants and potential witnesses. On April 18, 1974 Judge Sirica granted the motion.


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, et al.,

Defendants.

Criminal No. 74-110

MOTION

The United States of America hereby moves the Court for an order, pursuant to Rule 17(c), Federal Rules of Criminal Procedure, directing the issuance of a subpoena for the production of certain materials before the Court prior to the trial of the above-captioned action and permitting inspection of such materials by attorneys for the Government for the reasons stated in the Affidavit and Memorandum filed in support of this motion. The United States of America respectfully requests the Court to make the subpoena returnable before the Court at ten A.M. on April 23, 1974, or at such other time as the Court deems appropriate.

Dated:
April 16, 1974

LEON JAWORSKI
Special Prosecutor

Watergate Special Prosecution Force
1425 K Street, N. W.
Washington, D. C. 20005

Attorney for the United States of America
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLOMBIA

UNITED STATES OF AMERICA
v.
JOHN N. MITCHELL, et al.

Cr. Case No. 74-110

ORDER

Upon consideration of the Motion of the United States for an order, pursuant to Rule 17(c), Federal Rules of Criminal Procedure, permitting the issuance of a subpoena for the production of certain materials before the Court prior to the trial of the above-captioned action, and defendants Charles W. Colson and Robert C. Mardian having joined in said Motion, and the Court having considered the Affidavit and Memorandum submitted in support of said Motion, and the Court having determined that the Motion should be granted, it is hereby this 18th day of April, 1974,

ORDERED that the attached subpoena be issued and made returnable before the Court at 10:00 a.m. on the 2nd day of May, 1974; and it is

FURTHER ORDERED that the United States Marshal for the District of Columbia is directed to serve forthwith a certified copy of this Order and the attached subpoena on Richard M. Nixon, The White House, Washington, D.C.; and it is

FURTHER ORDERED that delivery to James D. St. Clair,
Special Counsel to the President, or any other person of suitable age and discretion at the White House or the Old Executive Office Building, Washington, D.C. on or before the 22nd day of April, 1974, shall be deemed good and sufficient service.

John J. Sirica
United States District Judge
On April 29, 1974 the President addressed the Nation to announce his answer to the House Judiciary Committee subpoena of April 11 for additional Watergate tapes. The President stated that the next day he would furnish to the Committee transcripts prepared by the White House of relevant portions of all the subpoenaed conversations. The President said that he had personally decided questions of relevancy. With regard to four subpoenaed conversations that occurred prior to March 21, 1973 the President informed the Committee that a search of the tapes had failed to disclose two of these conversations, furnished a transcript of a portion of the March 17 conversation between the President and Dean that related to the Fielding break-in, and furnished a transcript of a telephone conversation between the President and Dean on March 20, 1973.

91.1 President Nixon Address to the Nation, April 29, 1974, 10 Presidential Documents 450-57.

91.2 Appendix to the Submission of Edited White House transcripts, April 30, 1974.

In addition Pres provided 11 add'l conv., 3 of which we had req. (transcript)
Weekly Compilation of
PRESIDENTIAL DOCUMENTS

Monday, May 6, 1974

Volume 10 • Number 18
Pages 449-488
The Corporation for Public Broadcasting was established by Public Law 90-129 of November 7, 1967, to facilitate the development of noncommercial educational radio and television broadcasting. The Board of Directors consists of 15 members appointed by the President with the advice and consent of the Senate.

SUBPOENA OF PRESIDENTIAL TAPES AND MATERIALS

The President’s Address to the Nation Announcing His Answer to the Subpoena From the House Judiciary Committee. April 29, 1974

Good evening:

I have asked for this time tonight in order to announce my answer to the House Judiciary Committee's subpoena for additional Watergate tapes, and to tell you something about the actions I shall be taking tomorrow—about what I hope they will mean to you and about the very difficult choices that were presented to me.

These actions will at last, once and for all, show that what I knew and what I did with regard to the Watergate break-in and coverup were just as I have described them to you from the very beginning.

I have spent many hours during the past few weeks thinking about what I would say to the American people if I were to reach the decision I shall announce tonight. And so, my words have not been lightly chosen; I can assure you they are deeply felt.

It was almost 2 years ago, in June 1972, that five men broke into the Democratic National Committee headquarters in Washington. It turned out that they were connected with my reelection committee, and the Watergate break-in became a major issue in the campaign.

The full resources of the FBI and the Justice Department were used to investigate the incident thoroughly. I instructed my staff and campaign aides to cooperate fully with the investigation. The FBI conducted nearly 1,500 interviews. For 9 months—until March 1973—I was assured by those charged with conducting and monitoring the investigations that no one in the White House was involved.

Nevertheless, for more than a year, there have been allegations and insinuations that I knew about the planning of the Watergate break-in and that I was involved in an extensive plot to cover it up. The House Judiciary Committee is now investigating these charges.

On March 6, I ordered all materials that I had previously furnished to the Special Prosecutor turned over to the committee. These included tape recordings of 19 Presidential conversations and more than 700 documents from private White House files.

On April 11, the Judiciary Committee issued a subpoena for 42 additional tapes of conversations which it contended were necessary for its investigation. I agreed to respond to that subpoena by tomorrow.

In these folders that you see over here on my left are more than 1,200 pages of transcripts of private conversations I participated in be-
between September 15, 1972, and April 27 of 1973, with my principal aides and associates with regard to Watergate. They include all the relevant portions of all of the subpoenaed conversations that were recorded, that is, all portions that relate to the question of what I knew about Watergate or the coverup and what I did about it.

They also include transcripts of other conversations which were not subpoenaed, but which have a significant bearing on the question of Presidential actions with regard to Watergate. These will be delivered to the committee tomorrow.

In these transcripts, portions not relevant to my knowledge or actions with regard to Watergate are not included, but everything that is relevant is included—the rough as well as the smooth, the strategy sessions, the exploration of alternatives, the weighing of human and political costs.

As far as what the President personally knew and did with regard to Watergate and the coverup is concerned, these materials—together with those already made available—will tell it all.

I shall invite Chairman Rodino and the committee's ranking minority member, Congressman Hutchinson of Michigan, to come to the White House and listen to the actual, full tapes of these conversations, so that they can determine for themselves beyond question that the transcripts are accurate and that everything on the tapes relevant to my knowledge and my actions on Watergate is included. If there should be any disagreement over whether omitted material is relevant, I shall meet with them personally in an effort to settle the matter. I believe this arrangement is fair, and I think it is appropriate.

For many days now, I have spent many hours of my own time personally reviewing these materials, and personally deciding questions of relevancy. I believe it is appropriate that the committee's review should also be made by its own senior elected officials, and not by staff employees.

The task of Chairman Rodino and Congressman Hutchinson will be made simpler than was mine by the fact that the work of preparing the transcripts has been completed. All they will need to do is to satisfy themselves of their authenticity and their completeness.

Ever since the existence of the White House taping system was first made known last summer, I have tried vigorously to guard the privacy of the tapes. I have been well aware that my effort to protect the confidentiality of Presidential conversations has heightened the sense of mystery about Watergate and, in fact, has caused increased suspicions of the President. Many people assume that the tapes must incriminate the President, or that otherwise, he would not insist on their privacy.

But the problem I confronted was this: Unless a President can protect the privacy of the advice he gets, he cannot get the advice he needs.

This principle is recognized in the constitutional doctrine of executive privilege, which has been defended and maintained by every President since Washington and which has been recognized by the courts whenever tested as inherent in the Presidency. I consider it to be my constitutional responsibility to defend this principle.

Three factors have now combined to persuade me that a major unprecedented exception to that principle is now necessary.
First, in the present circumstances, the House of Representatives must be able to reach an informed judgment about the President's role in Watergate.

Second, I am making a major exception to the principle of confidentiality because I believe such action is now necessary in order to restore the principle itself, by clearing the air of the central question that has brought such pressures upon it—and also to provide the evidence which will allow this matter to be brought to a prompt conclusion.

Third, in the context of the current impeachment climate, I believe all the American people, as well as their Representatives in Congress, are entitled to have not only the facts but also the evidence that demonstrates those facts.

I want there to be no question remaining about the fact that the President has nothing to hide in this matter.

The impeachment of a President is a remedy of last resort; it is the most solemn act of our entire constitutional process. Now, regardless of whether or not it succeeded, the action of the House in voting a formal accusation requiring trial by the Senate would put the Nation through a wrenching ordeal it has endured only once in its lifetime, a century ago, and never since America has become a world power with global responsibilities.

The impact of such an ordeal would be felt throughout the world, and it would have its effect on the lives of all Americans for many years to come.

Because this is an issue that profoundly affects all the American people, in addition to turning over these transcripts to the House Judiciary Committee, I have directed that they should all be made public—all of these that you see here.

To complete the record, I shall also release to the public transcripts of all those portions of the tapes already turned over to the Special Prosecutor and to the committee that relate to Presidential actions or knowledge of the Watergate affair.

During the past year, the wildest accusations have been given banner headlines and ready credence, as well. Rumor, gossip, innuendo, accounts from unnamed sources of what a prospective witness might testify to have filled the morning newspapers and then are repeated on the evening newscasts day after day.

Time and again, a familiar pattern repeated itself. A charge would be reported the first day as what it was—just an allegation. But it would then be referred back to the next day and thereafter as if it were true.

The distinction between fact and speculation grew blurred. Eventually, all seeped into the public consciousness as a vague general impression of massive wrongdoing, implicating everybody, gaining credibility by its endless repetition.

The basic question at issue today is whether the President personally acted improperly in the Watergate matter. Month after month of rumor, insinuation, and charges by just one Watergate witness—John Dean—suggested that the President did act improperly.

This sparked the demands for an impeachment inquiry. This is the question that must be answered. And this is the question that will be answered by these transcripts that I have ordered published tomorrow.
These transcripts cover hour upon hour of discussions that I held with Mr. Haldeman, John Ehrlichman, John Dean, John Mitchell, former Attorney General Kleindienst, Assistant Attorney General Petersen, and others with regard to Watergate.

They were discussions in which I was probing to find out what had happened, who was responsible, what were the various degrees of responsibilities, what were the legal culpabilities, what were the political ramifications, and what actions were necessary and appropriate on the part of the President.

I realize that these transcripts will provide grist for many sensational stories in the press. Parts will seem to be contradictory with one another, and parts will be in conflict with some of the testimony given in the Senate Watergate committee hearings.

I have been reluctant to release these tapes not just because they will embarrass me and those with whom I have talked—which they will—and not just because they will become the subject of speculation and even ridicule—which they will—and not just because certain parts of them will be seized upon by political and journalistic opponents—which they will.

I have been reluctant because in these and in all the other conversations in this office, people have spoken their minds freely, never dreaming that specific sentences or even parts of sentences would be picked out as the subjects of national attention and controversy.

I have been reluctant because the principle of confidentiality is absolutely essential to the conduct of the Presidency. In reading the raw transcripts of these conversations, I believe it will be more readily apparent why that principle is essential and must be maintained in the future. These conversations are unusual in their subject matter, but the same kind of uninhibited discussion—and it is that—the same brutal candor, is necessary in discussing how to bring warring factions to the peace table or how to move necessary legislation through the Congress.

Names are named in these transcripts. Therefore, it is important to remember that much that appears in them is no more than hearsay or speculation, exchanged as I was trying to find out what really had happened, while my principal aides were reporting to me on rumors and reports that they had heard, while we discussed the various, often conflicting stories that different persons were telling.

As the transcripts will demonstrate, my concerns during this period covered a wide range. The first and obvious one was to find out just exactly what had happened and who was involved.

A second concern was for the people who had been, or might become, involved in Watergate. Some were close advisers, valued friends, others whom I had trusted. And I was also concerned about the human impact on others, especially some of the young people and their families who had come to Washington to work in my Administration, whose lives might be suddenly ruined by something they had done in an excess of loyalty or in the mistaken belief that it would serve the interests of the President.

And then I was quite frankly concerned about the political implications. This represented potentially a devastating blow to the Administration and to its programs, one which I knew would be exploited for all it
was worth by hostile elements in the Congress as well as in the media. I
wanted to do what was right, but I wanted to do it in a way that would
cause the least unnecessary damage in a highly charged political
atmosphere to the Administration.

And fourth, as a lawyer, I felt very strongly that I had to conduct
myself in a way that would not prejudice the rights of potential defendants.

And fifth, I was striving to sort out a complex tangle, not only of
facts but also questions of legal and moral responsibility. I wanted, above
all, to be fair. I wanted to draw distinctions, where those were appro-
priate, between persons who were active and willing participants on the
one hand, and on the other, those who might have gotten inadvertently
cought up in the web and be technically indictable but morally innocent.

Despite the confusions and contradictions, what does come t11rough
clearly is this:

John Dean charged in sworn Senate testimony that I was “fully
aware of the coverup” at the time of our first meeting on September 15,
1972. These transcripts show clearly that I first learned of it when Mr.
Dean himself told me about it in this office on March 21—some 6 months
later.

Incidentally, these transcripts—covering hours upon hours of con-
versations—should place in somewhat better perspective the controversy
over the 18½ minute gap in the tape of a conversation I had with Mr.
Haldeman back in June of 1972.

Now, how it was caused is still a mystery to me and I think to many
of the experts, as well. But I am absolutely certain, however, of one thing:
that it was not caused intentionally by my secretary, Rose Mary Woods,
or any of my White House assistants. And certainly if the theory were
ture that during those 18½ minutes Mr. Haldeman and I cooked up
some sort of a Watergate coverup scheme, as so many have been quick
to surmise, it hardly seems likely that in all of our subsequent conver-
sations—many of them are here—which neither of us ever expected would
see the light of day, there is nothing remotely indicating such a scheme;
indeed, quite the contrary.

From the beginning, I have said that in many places on the tapes
there were ambiguities—statements and comments that different people
with different perspectives might interpret in drastically different ways—
but although the words may be ambiguous, though the discussions may
have explored many alternatives, the record of my actions is totally clear
now, and I still believe it was totally correct then.

A prime example is one of the most controversial discussions, that
with Mr. Dean on March 21—the one in which he first told me of the
coverup, with Mr. Haldeman joining us midway through the
conversation.

His revelations to me on March 21 were a sharp surprise, even
though the report he gave to me was far from complete, especially since
he did not reveal at that time the extent of his own criminal involvement.

I was particularly concerned by his report that one of the Watergate
defendants, Howard Hunt, was threatening blackmail unless he and his
lawyer were immediately given $120,000 for legal fees and family support,
and that he was attempting to blackmail the White House, not by
threatening exposure on the Watergate matter, but by threatening to
reveal activities that would expose extremely sensitive, highly secret national security matters that he had worked on before Watergate.

I probed, questioned, tried to learn all Mr. Dean knew about who was involved, what was involved. I asked more than 150 questions of Mr. Dean in the course of that conversation.

He said to me, and I quote from the transcripts directly: “I can just tell from our conversation that these are things that you have no knowledge of.”

It was only considerably later that I learned how much there was that he did not tell me then—for example, that he himself had authorized promises of clemency, that he had personally handled money for the Watergate defendants, and that he had suborned perjury of a witness.

I knew that I needed more facts. I knew that I needed the judgments of more people. I knew the facts about the Watergate coverup would have to be made public, but I had to find out more about what they were before I could decide how they could best be made public.

I returned several times to the immediate problem posed by Mr. Hunt’s blackmail threat, which to me was not a Watergate problem, but one which I regarded, rightly or wrongly, as a potential national security problem of very serious proportions. I considered long and hard whether it might in fact be better to let the payment go forward, at least temporarily, in the hope that this national security matter would not be exposed in the course of uncovering the Watergate coverup.

I believed then, and I believe today, that I had a responsibility as President to consider every option, including this one, where production of sensitive national security matters was at issue—protection of such matters. In the course of considering it and of “just thinking out loud,” as I put it at one point, I several times suggested that meeting Hunt’s demands might be necessary.

But then I also traced through where that would lead. The money could be raised. But money demands would lead inescapably to clemency demands, and clemency could not be granted. I said, and I quote directly from the tape: “It is wrong, that’s for sure.” I pointed out, and I quote again from the tape: “But in the end we are going to be bled to death. And in the end it is all going to come out anyway. Then you get the worst of both worlds. We are going to lose, and people are going to—”

And Mr. Haldeman interrupts me and says: “And look like dopes!”

And I responded, “And in effect look like a coverup. So that we cannot do.”

Now I recognize that this tape of March 21 is one which different meanings could be read in by different people. But by the end of the meeting, as the tape shows, my decision was to convene a new grand jury and to send everyone before the grand jury with instructions to testify.

Whatever the potential for misinterpretation there may be as a result of the different options that were discussed at different times during the meeting, my conclusion at the end of the meeting was clear. And my actions and reactions as demonstrated on the tapes that follow that date show clearly that I did not intend the further payment to Hunt or anyone else be made. These are some of the actions that I took in the weeks that followed in my effort to find the truth, to carry out my responsibilities to enforce the law.
As a tape of our meeting on March 22, the next day, indicates, I directed Mr. Dean to go to Camp David with instructions to put together a written report. I learned 5 days later, on March 26, that he was unable to complete it. And so on March 27 I assigned John Ehrlichman to try to find out what had happened, who was at fault, and in what ways and to what degree.

One of the transcripts I am making public is a call that Mr. Ehrlichman made to the Attorney General on March 28, in which he asked the Attorney General to report to me, the President, directly, any information he might find indicating possible involvement of John Mitchell or by anyone in the White House. I had Mr. Haldeman separately pursue other, independent lines of inquiry.

Throughout, I was trying to reach determinations on matters of both substance and procedure on what the facts were and what was the best way to move the case forward. I concluded that I wanted everyone to go before the grand jury and testify freely and fully. This decision, as you will recall, was publicly announced on March 30, 1973. I waived executive privilege in order to permit everybody to testify. I specifically waived executive privilege with regard to conversations with the President, and I waived the attorney-client privilege with John Dean in order to permit him to testify fully and, I hope, truthfully.

Finally, on April 14—3 weeks after I learned of the coverup from Mr. Dean—Mr. Ehrlichman reported to me on the results of his investigation. As he acknowledged, much of what he had gathered was hearsay, but he had gathered enough to make it clear that the next step was to make his findings completely available to the Attorney General, which I instructed him to do.

And the next day, Sunday, April 15, Attorney General Kleindienst asked to see me, and he reported new information which had come to his attention on this matter. And although he was in no way whatever involved in Watergate, because of his close personal ties, not only to John Mitchell but to other potential people who might be involved, he quite properly removed himself from the case.

We agreed that Assistant Attorney General Henry Petersen, the head of the Criminal Division, a Democrat and career prosecutor, should be placed in complete charge of the investigation.

Later that day I met with Mr. Petersen. I continued to meet with him, to talk with him, to consult with him, to offer him the full cooperation of the White House, as you will see from these transcripts, even to the point of retaining John Dean on the White House Staff for an extra 2 weeks after he admitted his criminal involvement because Mr. Petersen thought that would make it easier for the prosecutor to get his cooperation in breaking the case if it should become necessary to grant Mr. Dean’s demand for immunity.

On April 15, when I heard that one of the obstacles to breaking the case was Gordon Liddy’s refusal to talk, I telephoned Mr. Petersen and directed that he should make clear not only to Mr. Liddy but to everyone that—and now I quote directly from the tape of that telephone call—“As far as the President is concerned, everybody in this case is to talk and to tell the truth.” I told him if necessary I would personally meet with
Mr. Liddy’s lawyer to assure him that I wanted Liddy to talk and to tell the truth.

From the time Mr. Petersen took charge, the case was solidly within the criminal justice system, pursued personally by the Nation’s top professional prosecutor with the active, personal assistance of the President of the United States.

I made clear there was to be no coverup.

Let me quote just a few lines from the transcripts—you can read them to verify them—so that you can hear for yourself the orders I was giving in this period.

Speaking to Haldeman and Ehrlichman, I said: “... It is ridiculous to talk about clemency. They all knew that.”

Speaking to Ehrlichman, I said: “We all have to do the right thing... We just cannot have this kind of a business...”

Speaking to Haldeman and Ehrlichman, I said: “The boil had to be pricked... We have to prick the boil and take the heat. Now that’s what we are doing here.”

Speaking to Henry Petersen, I said: “I want you to be sure to understand that you know we are going to get to the bottom of this thing.”

Speaking to John Dean, I said: “Tell the truth. That is the thing I have told everybody around here.”

And then speaking to Haldeman: “And you tell Magruder, now Jeb, this evidence is coming in, you ought to go to the grand jury. Purge yourself if you’re perjured and tell this whole story.”

I am confident that the American people will see these transcripts for what they are, fragmentary records from a time more than a year ago that now seems very distant, the records of a President and of a man suddenly being confronted and having to cope with information which, if true, would have the most far-reaching consequences not only for his personal reputation but, more important, for his hopes, his plans, his goals for the people who had elected him as their leader.

If read with an open and a fair mind and read together with the record of the actions I took, these transcripts will show that what I have stated from the beginning to be the truth has been the truth: that I personally had no knowledge of the break-in before it occurred, that I had no knowledge of the coverup until I was informed of it by John Dean on March 21, that I never offered clemency for the defendants, and that after March 21 my actions were directed toward finding the facts and seeing that justice was done, fairly and according to the law.

The facts are there. The conversations are there. The record of actions is there.

To anyone who reads his way through this mass of materials I have provided, it will be totally abundantly clear that as far as the President’s role with regard to Watergate is concerned, the entire story is there.

As you will see, now that you also will have this mass of evidence I have provided, I have tried to cooperate with the House Judiciary Committee. And I repeat tonight the offer that I have made previously: to answer written interrogatories under oath and if there are then issues still unresolved to meet personally with the Chairman of the committee and with Congressman Hutchinson to answer their questions under oath.
APPENDIX TO SUBMISSION

1. Item 1(a) - On or about February 20, 1973 - Conversation between The President and Haldeman about Magruder.

2. Item 1(b) - On or about February 27, 1973 - Conversation between The President and Ehrlichman assigning Dean to work with The President on Watergate.

3. Item 1(c) - March 17, 1973 - Conversation between The President and Dean, Oval Office, 1:25 - 2:10 pm.

4. - March 20, 1973 - Telephone conversation between The President and Dean, 7:29 - 7:43 pm.

5. Item 1(d) - March 27, 1973 - Conversation between The President and Ehrlichman, EOB Office, 11:10 am - 1:30 pm.

6. - March 30, 1973 - Conversation between The President and Ehrlichman, Oval Office, 12:02 - 12:18 pm.


11. - April 14, 1973 - Telephone conversation between The President and Haldeman, 11:02 - 11:16 pm.

Search of tapes failed to disclose such a conversation.

Search of tapes failed to disclose such a conversation.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.

Supplied.
   Supplied.

   Supplied.

14. - April 15, 1973 - Meeting: The President and Ehrlichman, EOB Office, 2:30 - 3:34 pm.  
   See # 31.

15. - April 15, 1973 - Telephone conversation between The President and Haldeman, 3:27 - 3:44 pm.  
   Supplied.

   See # 31.

   See # 31.

18. - April 16, 1973 - Telephone conversation between The President and Haldeman, 12:08 - 12:23 am.  
   Call made from residence telephone. Conversation not recorded.

19. - April 16, 1973 - Telephone conversation between The President and Ehrlichman, 8:18 - 8:22 am.  
   Call made from residence telephone. Conversation not recorded.

   Supplied.

   Supplied.
22. - April 16, 1973 - Meeting: The President, Haldeman and Ehrlichman, Oval Office, 12:00 - 12:31 pm.


27. - April 17, 1973 - Telephone conversation between The President and Ehrlichman, 2:39 - 2:40 pm.


32. - April 15, 1973 - Telephone conversation between The President and Kleindienst, 3:48 - 3:49 pm.

33. - April 15, 1973 - Meeting: The President, Kleindienst and Petersen, EOB Office, 4:00 - 5:15 pm.

34. - April 15, 1973 - Telephone conversation between the President and Petersen, 8:14 - 8:18 pm.

35. - April 15, 1973 - Telephone conversation between The President and Petersen, 8:25 - 8:26 pm.


37. - April 15, 1973 - Telephone conversation between The President and Petersen, 11:45 - 11:53 pm.


40. - April 17, 1973 - Meeting: The President and Petersen, Oval Office, 2:46 - 3:49 pm.

41. - April 18, 1973 - Telephone conversation between The President and Petersen, 2:50 - 2:56 pm.
- 5 -

42. April 18, 1973 - Telephone conversation between The President and Petersen, 6:28 - 6:37 pm.

Non-Subpoenaed Material:

43. April 8, 1973 - Telephone conversation between The President and Ehrlichman, 7:33 - 7:37 am.

44. April 14, 1973 - Telephone conversation between Ehrlichman and Kleindienst at approximately 6:00 pm.

45. April 15, 1973 - Telephone conversation between Higby and Haldeman.


50. April 17, 1973 - Statement by the President.


52. April 30, 1973 - Statement by the President.

Call made from Camp David. Conversation not recorded.
92. On May 1, 1974 the President entered a special appearance before Judge Sirica and moved to quash the Special Prosecutor's subpoena issued April 18, 1974. The President invoked executive privilege with respect to all subpoenaed conversations except for the portions of twenty of the conversations he had made public on April 30 by way of edited transcripts.

92.1 Special Appearance and Motion to Quash, May 1, 1974, United States v. Mitchell, Crim. No. 74-110.

Special Appearance and Motion to Quash

Pursuant to Rule 17(c), Federal Rules of Criminal Procedure, Richard M. Nixon, President of the United States, through his counsel, enters this special appearance for the limited purpose of moving this Court to quash the subpoena duces tecum issued by this Court's order dated April 18, 1974, permitting production and inspection of certain materials and made returnable before this Court on May 2, 1974. For the reasons set forth in the Memorandum filed in support of this Motion, we respectfully request that this Court enter an order quashing the subpoena in all respects.

Respectfully submitted,

JAMES D. ST. CLAIR
MICHAEL A. STERLACCI
JOHN A. MC CAHILL
JEROME J. MURPHY
JEAN A. STAUDT
EUGENE R. SULLIVAN
JAMES J. TANSEY

Of Counsel

CHARLES ALAN WRIGHT
2500 Red River Street
Austin, Texas 78705

Attorneys for the President

The White House
Washington, D.C. 20500
Telephone Number: 456-1414
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, et al.,

Defendants.

Criminal no. 74-119

Formal Claim of Privilege

I, Richard Nixon, President of the United States, hereby represent to the Court that, except as noted hereafter, the materials covered by the subpoena issued April 18, 1974, to the extent that they exist, are within the constitutional privilege of the President to refuse to disclose confidential information when disclosure would be contrary to the public interest.

Portions of twenty of the conversations described in the subpoena have been made public and no claim of privilege is advanced with regard to those Watergate-related portions of those conversations. These are items 9, 11, 15, 16, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31 of the subpoena.

The other items sought are confidential conversations between a President and his close advisors that it would be inconsistent with the public interest to produce. Thus I must respectfully claim privilege with regard to them to the extent that they may have been recorded, or that there may be memoranda, papers, transcripts, or other writings relating to them.

Respectfully submitted,

Richard Nixon
President of the United States

May 1, 1974
93. On May 15, 1974 the House Judiciary Committee issued a subpoena to the President for the production of tape recordings and other evidence relating to specified conversations between the President and Haldeman, Colson and Mitchell on April 4, 1972 and on June 20 and 23, 1972. On the same day the Committee issued a subpoena to the President for the President's daily diaries for certain specified time periods in 1972 and 1973.

93.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 15, 1974.

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To ...Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon ..........................................................

Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule,

to be and appear before the ...Committee on the Judiciary

Committee of the House of Representatives of the United States, of which the Hon. ...

Peter W. Rodino, Jr. is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof,

in their chamber in the city of Washington, on ...or before ..........................................................

May 22, 1974, at the hour of ...10:00 A.M.

 produce and deliver said things to said Committee, or their duly authorized representative, in connection with the Committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 15th day of May, 1974.

Peter W. Rodino, Jr. Chairman.

Attest:

Clerk.
SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA OF THE COMMITTEE ON THE JUDICIARY

All tapes, dictabelts, other electronic and mechanical recordings, and transcripts, memoranda, notes or other writings or things relating to the following conversations:

1. Meetings among the President, Mr. Haldeman and Mr. Mitchell on April 4, 1972 from 4:13 to 4:50 p.m. and between the President and Mr. Haldeman from 6:03 to 6:18 p.m.

2. Conversations on June 20, 1972 between the President and Mr. Haldeman, and the President and Mr. Colson, as follows:

   2:20 - 3:30 p.m. Meeting between the President and Mr. Colson
   4:35 - 5:25 p.m. Meeting between the President and Mr. Haldeman
   7:52 - 7:59 p.m. Telephone conversation between the President and Mr. Haldeman
   8:04 - 8:21 p.m. Telephone conversation between the President and Mr. Colson
   8:42 - 8:50 p.m. Telephone conversation between the President and Mr. Haldeman
   11:33 p.m. 6/20 - 12:05 a.m. 6/21 Telephone conversation between the President and Mr. Colson

3. Conversations on June 23, 1972 between the President and Mr. Haldeman, as follows:

   10:04 - 10:39 a.m. Meeting between the President and Mr. Haldeman (Mr. Ziegler present from 10:33 - 10:39 a.m.)
   1:04 - 1:13 p.m. Meeting between the President and Mr. Haldeman
   2:20 - 2:45 p.m. Meeting between the President and Mr. Haldeman (Mr. Ziegler present from 2:40 - 2:43 p.m.)
COPY

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To: Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule,

to be and appear before the Committee on the Judiciary of the House of Representatives of the United States, of which the Hon. Peter W. Rodino, Jr. is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof,
in their chamber in the city of Washington, on May 22, 1974, at the hour of 10:00 A.M.,
then and there to produce and deliver said things to said Committee, or their duly authorized representative, in connection with the Committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 15th day of May, 1974.

Peter W. Rodino, Jr.  Chairman.

Attest: 

On behalf of Richard M. Nixon, President of the United States of America, I accept service of the original subpoena, of which the foregoing is a copy.

Dated: May 6, 1974.

JAMES D. ST. CLAIR
Special Counsel to the President
SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA OF THE COMMITTEE ON THE JUDICIARY

94. On May 20, 1974 Judge Sirica denied the President's motion to quash the Special Prosecutor's subpoena for tape recordings and other documents in *United States v. Mitchell* and ordered the President to produce the objects and documents.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, et al.

Criminal No. 74-110

OPINION AND ORDER

This matter comes before the Court on motion of President Richard M. Nixon to quash a subpoena ducum issued to him by the Watergate Special Prosecutor with leave of this Court.

On April 16, 1974, Special Prosecutor Leon Jaworski moved the Court for an order, pursuant to Rule 17(c), Federal Rules of Criminal Procedure, directing the issuance of a subpoena for the production of specified materials prior to trial in the case of United States v. John N. Mitchell, et al., CR 74-110, DDC. The proposed subpoena, prepared by the Special Prosecutor and directed to the President "or any subordinate officer, official, or employee with custody or control of the documents or objects" described, listed in 46 paragraphs the specific meetings and

1/ Rule 17. Subpoena

(c) For Production of Documentary Evidence and of Objects.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

2/ The motion asked that the subpoenaed materials be ordered produced before the Court with permission granted to Government attorneys to inspect them. Three of the seven defendants in United States v. Mitchell have filed motions joining in that of the Special Prosecutor with the stipulation that materials produced be made available to the defendants in full. A fourth defendant filed a response in support of the subpoena, but in opposition to the Special Prosecutor's motion insofar as it failed to assure defendants access to the materials upon production.
To protect the rights of individuals, various of the proceedings and papers concerning this subpoena have been sealed. Such matters will remain under seal, and all persons having knowledge of them will remain subject to restrictions of confidentiality imposed upon them pending further order of the Court. The foregoing, of course, does not affect the transmittal of such materials to appellate courts under seal as a necessary part of the record in this matter. The Court sees no need to grant more extensive protective orders at this time or to expunge portions of the record. Matter sought to be expunged is relevant, for example, to a determination that the presumption of privilege is overcome.

Now, therefore, it is by the Court this 20th day of May, 1974,

ORDERED that the President's motion to quash be, and the same hereby is, denied; and it is

FURTHER ORDERED that on or before May 31, 1974, the President or any subordinate officer, official, or employee with custody or control of the documents or objects subpoenaed by the Special Prosecutor with leave of Court on April 18, 1974, shall deliver to the Court the originals of all subpoenaed items together with an index and analysis and copy tape recording as described in the foregoing opinion; and it is

FURTHER ORDERED that motions for protective orders and to expunge filed or raised orally in this matter, except to the extent already granted by the Court in proceedings here-tofore, be, and the same hereby are, denied; and it is

[11882]
95. On May 20, 1974 Jaworski wrote to Senator Eastland informing him that the President was challenging the right of the Special Prosecutor to bring an action against him to obtain evidence in United States v. Mitchell. Jaworski stated that this position contravened the express agreement made by Haig, after consultation with the President, that if Jaworski accepted the position of Special Prosecutor he would have the right to press legal proceedings against the President.

95.1 Letter from Leon Jaworski to James Eastland, May 20, 1974 (received from Watergate Special Prosecution Force).
May 20, 1974

Honorable James O. Eastland
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C.

Dear Mr. Chairman:

When I appeared before your Committee during the hearings on the nomination of the Honorable William B. Saxbe to be Attorney General, I assured the Committee in response to a question by Senator Byrd that I would inform the Committee of any attempt by the President "to circumvent or restrict or limit" the jurisdiction or independence of the Special Prosecutor. I am constrained to advise you and the members of your Committee, consonant with this and other promises made when I testified at hearings before your Committee on the Special Prosecutor bill, that in recent days these events have occurred:

Following the issuance of a subpoena for White House tapes to be used as evidence in the trial of United States v. Mitchell, et al, (which are needed for prosecution purposes and perhaps to comply with the rights of the defendant under Supreme Court rulings), the President, through his counsel, filed a Motion to Quash the Subpoena.

Because of sensitive matters involved in our response to the Motion to Quash, I joined with White House counsel in urging Judge Sirica to conduct further proceedings in camera. After the court determined to hold further proceedings in camera, White House counsel for the first time urged the Court to quash the subpoena on the additional
ground that the Special Prosecutor had no standing in court because the matter of his obtaining the tapes in question involved "an intra-executive dispute." As stated by counsel for the President in the argument before Judge Sirica, it is the President's contention that he has ultimate authority to determine when to prosecute, whom to prosecute, and with what evidence to prosecute. Judge Sirica has now ruled and I am released from in camera secrecy.

The crucial point is that the President, through his counsel, is challenging my right to bring an action against him to obtain evidence, or differently stated, he contends that I cannot take the President to court. Acceptance of his contention would sharply limit the independence that I consider essential if I am to fulfill my responsibilities as contemplated by the charter establishing this office.

... The position thus taken by the President's counsel contravenes the express agreement made with me by General Alexander Haig, after consulting with the President, that if I accepted the position of Special Prosecutor, I would have the right to press legal proceedings against the President if I concluded it was necessary to do so. I so testified in the House Judiciary Committee hearing and in the hearings conducted by your Committee. Thereafter, at the suggestion of members of your Committee, I sent a copy of my testimony on this point to counsel for the President, Mr. J. Fred Buzhardt, who acknowledged its receipt without questioning my testimony. I should add that when my appointment was announced by Acting Attorney General Bork on November 1, 1973, he stated that as a part of my agreement to serve, it was "absolutely clear" that I was "free to go to court to press for additional tapes or Presidential papers," if I deemed it necessary.

You will recall, Mr. Chairman, that when I testified at the session of your Committee on the Special Prosecutor bill, the following exchange took place between us:

"The Chairman. You are absolutely free to prosecute anyone; is that correct?

Mr. Jaworski. That is correct. And that is my intention.

The Chairman. And that includes the President of the United States?

Mr. Jaworski. It includes the President of the United States.

The Chairman. And you are proceeding that way?

Mr. Jaworski. I am proceeding that way."
Senator McClellan put the question to me this way:

"May I ask you now, do you feel that with your understanding with the White House that you do have the right, irrespective of the legal issues that may be involved -- that you have an understanding with them that gives you the right to go to court if you determine that they have documents you want or materials that you feel are essential and necessary in the performance of your duties, and in conducting a thorough investigation and following up with prosecution thereon, you have the right to go to court to raise the issue against the President and against any of his staff with respect to such documents or materials and to contest the question of privilege.

Mr. Jaworski. I have been assured that right and I intend to exercise it if necessary."

(Part 2, page 573)

Senator Hruska also examined me on this point as is shown by the following questions and answers:

"Senator Hruska. And it was agreed that there would be no restrictions or limitations, that even as to those items on the tapes, whether they were asked for or not, you would be given access to them.

However, if there would occur an impasse on that point on the availability of any material, that there was expressly, without qualification, reserved to you the right to go to the courts. So that it would be at a time when General Haig, acting on behalf of the President, or in his stead, would say no to this particular paper, I don't feel that you should have it, this has high national security and other characteristics, and if you felt constrained to differ with him at that point, you could go to court, and there would be no limitation in that regard?"
"Mr. Jaworski. That is a correct statement.

Senator K ruska. That is your testimony?

Mr. Jaworski. Yes, sir.

Senator K ruska. So that by the charter and by your agreement and your discussions you are not to be denied access to the courts..."

(Part 2, page 500)

When my Deputy, Henry S. Ruth, Jr., was testifying in connection with the Special Prosecutor bill, Senator Scott asked him the following question:

"Senator Scott. I imagine it may be clear that he has no doubt of his right to bring action in the courts against the Executive if he so deems it to be proper?

Mr. Ruth. Well, Senator, he understands his instructions are to pursue all of the evidence he needs, including to go to court if the evidence is not forthcoming."

(Part 2, page 518)

At the time of the Saxbe nomination hearings, Senator Byrd exacted the assurance from me that I would "follow the evidence wherever it goes, and if it goes to the Oval Office and to the President himself, I would pursue it with all my vigor." And at the same time, he obtained the assurance from Mr. Saxbe that he would give me full support in matters that were within the performance of my duty even if "there are allegations involving the President" (page 22 of the hearings before the Committee on the nomination of William B. Saxbe, December 12 and 13, 1973).

Of course, I am sure you understand, Mr. Chairman, that I am not for a moment suggesting that the President
does not have the right to raise any defenses, such as confidential communications, executive privilege, or the like. It is up to the court, after hearing, to determine whether his defense is sound. But any claim raised by White House counsel on behalf of the President that challenges my right to invoke the judicial process against the President, as I am doing in an effort to obtain these tapes for use at the trial in U.S. v. Mitchell, et al. would make a farce of the Special Prosecutor's charter and is in contravention of the understanding I had and the members of your Committee apparently had at the time of my appointment.

In a letter to me from Mr. St. Clair, counsel for the President, Mr. St. Clair undertakes to circumvent the clear and unmistakable assurance given me by the President by contending that: "The fact that the President has chosen to resolve this issue by judicial determination and not by a unilateral exercise of his constitutional powers, is evidence of the President's good faith." Of course, under Mr. St. Clair's approach, this would make the assurance of the right to take the President to Court an idle and empty one. Counsel to the President, by asserting that ultimately I am subject to the President's direction in these matters, is attempting to undercut the independence carefully set forth in the guidelines, which were reissued upon my appointment with the express consent of the President. It is clear to me that you and the members of your Committee who were familiar with the public announcements of the President and the Acting Attorney General, did not construe them in so meaningless a manner (as is evident by the above referred to statements in questions that were propounded to me), and neither did I. To adopt Mr. St. Clair's version would give rise to this anomaly - "the President has no objection to the Special Prosecutor filing his action against him but once filed, the President will stop the Special Prosecutor from proceeding with it by having his counsel move to dismiss on the ground that the Special Prosecutor cannot sue him."

Judge Sirica in overruling this contention of the President in an opinion made public by the Court this afternoon, pointedly said:
The Special Prosecutor's independence has been affirmed and reaffirmed by the President and his representatives, and a unique guarantee of unfettered operation accorded him. "the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress [the leaders of both Houses and the respective Committees on the Judiciary] and ascertaining that their consensus is in accord with his proposed action." The President not having so consulted, to the Court's knowledge, his attempt to abridge the Special Prosecutor's independence with the argument that he cannot seek evidence from the President by court process is a nullity and does not defeat the Court's jurisdiction.

Because the members of your Committee exacted from me the promise at the hearings that I would report a development of this nature, I am submitting this letter. 

Respectfully yours,

LEON JAWORSKI
Special Prosecutor

cc: Members of the Senate Committee on the Judiciary

Hon. John J. Sirica
United States District Judge

Hon. William B. Saxbe
Attorney General

Hon. Robert H. Bork
Solicitor General

General Alexander M. Haig, Jr.
Assistant to the President

James D. St. Clair, Esq.
Special Counsel to the President
96. On May 22, 1974 the President informed House Judiciary Committee Chairman Rodino that he declined to produce the tapes and documents covered by the Committee's subpoenas of May 15, 1974. The President asserted that the Committee had the full story of Watergate insofar as it related to Presidential knowledge and Presidential actions.

96.1 Letter from President Nixon to Chairman Rodino, May 22, 1974.
Dear Mr. Chairman:

This letter is in response to two subpoenas of the House of Representatives dated May 15, 1974, one calling for the production of tapes of additional Presidential conversations and the other calling for the production of my daily diary for extended periods of time in 1972 and 1973. Neither subpoena specifies in any way the subject matters into which the Committee seeks to inquire. I can only presume that the material sought must be thought to relate in some unspecified way to what has generally been known as "Watergate."

On April 30, 1974, in response to a subpoena of the House of Representatives dated April 11, 1974, I submitted transcripts not only of all the recorded Presidential conversations that took place that were called for in the subpoena, but also of a number of additional Presidential conversations that had not been subpoenaed. I did this so that the record of my knowledge and actions in the Watergate matter would be fully disclosed, once and for all.

Even while my response to this original subpoena was being prepared, on April 19, 1974, my counsel received a request from the Judiciary Committee's counsel for the production of tapes of more than 140 additional Presidential conversations -- of which 76 were alleged to relate to Watergate -- together with a request for additional Presidential diaries for extended periods of time in 1972 and 1973.

The subpoenas dated May 15 call for the tapes of the first 11 of the conversations that were requested on April 19, and for all of the diaries that were requested on April 19. My
counsel has informed me that the intention of the Committee is to also issue a series of subpoenas covering all 76 of the conversations requested on April 19 that are thought to relate to Watergate. It is obvious that the subpoenaed diaries are intended to be used to identify even more Presidential conversations, as a basis for yet additional subpoenas.

Thus, it is clear that the continued succession of demands for additional Presidential conversations has become a never-ending process, and that to continue providing these conversations in response to the constantly escalating requests would constitute such a massive invasion into the confidentiality of Presidential conversations that the institution of the Presidency itself would be fatally compromised.

The Committee has the full story of Watergate, in so far as it relates to Presidential knowledge and Presidential actions. Production of these additional conversations would merely prolong the inquiry without yielding significant additional evidence. More fundamentally, continuing ad infinitum the process of yielding up additional conversations in response to an endless series of demands would fatally weaken this office not only in this Administration but for future Presidencies as well.

Accordingly, I respectfully decline to produce the tapes of Presidential conversations and Presidential diaries referred to in your request of April 19, 1974, that are called for in part in the subpoenas dated May 15, 1974, and those allegedly dealing with Watergate that may be called for in such further subpoenas as may hereafter be issued.

However, I again remind you that if the Committee desires further information from me about any of these conversations
or other matters related to its inquiry, I stand ready to answer, under oath, pertinent written interrogatories, and to be interviewed under oath by you and the ranking Minority Member at the White House.

Sincerely,

[Signature]

The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C.
97. On May 30, 1974 the House Judiciary Committee issued a subpoena to the President to produce documents and tape recordings of specified conversations involving the President and Haldeman, Ehrlichman, Dean, Colson and Petersen.

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule, to be and appear before the Committee on the Judiciary of the House of Representatives of the United States, of which the Hon. Peter W. Rodino, Jr. is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof, in their chamber in the city of Washington, on June 10, 1974, at the hour of 10:00 A.M. produce and deliver said things to said Committee, or their duly authorized representative, in connection with the Committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974. Herein fail not, and make return of this summons.

Witnes my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 30th day of May, 1974.

Peter W. Rodino, Jr. Chairman.

Attest:

Clerk.
SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA OF THE COMMITTEE ON THE JUDICIARY

A. All tapes, dictabelts, other electronic and mechanical recordings, transcripts, memoranda, notes and other writings and things relating to the following conversations:

1. Meeting on the morning of November 15, 1972 among or between Mr. Haldeman, Mr. Ehrlichman and Mr. Dean in the President's office at Camp David.

2. Conversation in which the President participated after December 8, 1972 (the date Mr. Hunt's wife died) during which there was a discussion that a commutation of the sentence for Mr. Hunt could be considered on the basis of Mr. Hunt's wife's death.

3. Meeting and telephone conversation on January 5, 1973 between the President and Mr. Colson from 12:02 to 1:02 p.m. and from 7:38 to 7:58 p.m. respectively.

4. Meetings between the President and Mr. Colson on February 13, 1973 from 9:48 to 10:52 a.m. and on February 14, 1973 from 10:13 to 10:49 a.m.

5. Meeting between the President and Mr. Dean on February 27, 1973 from 3:55 to 4:20 p.m.

6. Conversations on March 1, 1973 between the President and Mr. Dean, as follows:

   9:18 - 9:46 a.m.  Meeting between the President and Mr. Dean

   10:36 - 10:44 a.m.  Meeting between the President and Mr. Dean (Mr. Kissinger was present until 10:37 a.m.)

   1:06 - 1:14 p.m.  Meeting between the President and Mr. Dean

7. Meeting between the President and Mr. Dean on March 6, 1973 from 11:49 a.m. to 12:00 p.m.
8. Telephone conversations between the President and Mr. Colson on March 16, 1973, from 7:53 to 8:12 p.m., and on March 19, 1973, from 8:34 to 8:58 p.m.

9. Conversations on March 20, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:

10:47 a.m. - 12:10 p.m. Meeting between the President and Mr. Haldeman (Mr. Ehrlichman present from 11:40 a.m. - 12:10 p.m.)

4:26 - 5:39 p.m. Meeting between the President and Mr. Ehrlichman

6:00 - 7:10 p.m. Meeting between the President and Mr. Haldeman

10. Conversations on March 21, 1973 between the President and Mr. Ehrlichman and the President and Mr. Colson, as follows:

9:15 - 10:12 a.m. Meeting between the President and Mr. Ehrlichman

7:53 - 8:24 p.m. Telephone conversation between the President and Mr. Colson

11. Meeting between the President and Mr. Haldeman on March 22, 1973 from 9:11 to 10:35 a.m.

12. Telephone conversation between the President and Mr. Colson on April 12, 1973 from 7:31 to 7:48 p.m.

13. Two telephone conversations between Mr. Ehrlichman and Mr. Gray on April 15, 1973 between 10:16 and 11:15 p.m.

14. Telephone conversation between the President and Mr. Dean on April 17, 1973 from 9:19 to 9:25 a.m.

15. Conversations on April 18, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:
12:05 - 12:20 a.m.  Telephone conversation between the President and Mr. Haldeman
3:05 - 3:23 p.m.  Meeting between the President and Mr. Ehrlichman
6:30 - 8:05 p.m.  Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

16. Conversations on April 19, 1973 among or between the President, Mr. Haldeman, Mr. Ehrlichman and Mr. Petersen as follows:

9:31 - 10:12 a.m.  Meeting among the President, Mr. Haldeman and Mr. Ehrlichman
10:12 - 11:07 a.m.  Meeting between the President and Mr. Petersen
1:03 - 1:30 p.m.  Meeting between the President and Mr. Ehrlichman
5:15 - 5:45 p.m.  Meeting between the President and Mr. Ehrlichman
9:37 - 9:53 p.m.  Telephone conversation between the President and Mr. Haldeman
10:54 - 11:04 p.m.  Telephone conversation between the President and Mr. Ehrlichman

17. Conversations on April 20, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:

11:07 - 11:23 a.m.  Meeting between the President and Mr. Haldeman
12:15 - 12:34 p.m.  Meeting among the President, Mr. Haldeman and Mr. Ehrlichman (Mr. Kissinger was present until 12:16 p.m.)

18. Conversations on April 25, 1973 among or between the President, Mr. Haldeman, Mr. Ehrlichman, Mr. Wilson and Mr. Strickler, as follows:
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>9:25 - 10:45 a.m.</td>
<td>Meeting among the President, Mr. Wilson and Mr. Strickler</td>
</tr>
<tr>
<td>11:06 a.m. - 1:55 p.m.</td>
<td>Meeting among the President, Mr. Haldeman and Mr. Ehrlichman</td>
</tr>
<tr>
<td>4:40 - 5:35 p.m.</td>
<td>Meeting between the President and Mr. Haldeman (Mr. Hart present from 5:30 to 5:32 p.m.)</td>
</tr>
<tr>
<td>6:57 - 7:14 p.m.</td>
<td>Telephone conversation between the President and Mr. Haldeman</td>
</tr>
<tr>
<td>7:17 - 7:19 p.m.</td>
<td>Telephone conversation between the President and Mr. Ehrlichman</td>
</tr>
<tr>
<td>7:25 - 7:39 p.m.</td>
<td>Telephone conversation between the President and Mr. Ehrlichman</td>
</tr>
<tr>
<td>7:46 - 7:53 p.m.</td>
<td>Telephone conversation between the President and Mr. Haldeman</td>
</tr>
</tbody>
</table>

19. Conversations on April 26, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:55 - 10:24 a.m.</td>
<td>Meeting between the President and Mr. Haldeman</td>
</tr>
<tr>
<td>3:59 - 9:03 p.m.</td>
<td>Meeting between the President and Mr. Haldeman (Mr. Ehrlichman was present from 5:57 to 7:14 p.m.)</td>
</tr>
</tbody>
</table>

20. Telephone conversations on June 4, 1973 between the President and Mr. Haldeman from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m.

B. All papers and things (including recordings) prepared by, sent to, received by or at any time contained in the files of, H. R. Haldeman, John D. Ehrlichman, Charles W. Colson, John Dean, III and Gordon Strachan to the extent that such papers or things relate or refer directly or indirectly to the break-in and electronic surveillance of the Democratic National Committee Headquarters in the Watergate office building during May and June of 1972 or the investigations of that break-in by the Department of Justice, the Senate Select Committee on Presidential Campaign Activities, or any other legislative, judicial, executive or administrative body, including members of the White House staff.
98. On May 31, 1974 the court-appointed panel of experts filed their final report on the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report concluded that: (i) the erasing and recording producing the buzz on the tape were done on the examined tape, which was probably the original tape, (ii) the Uher 5000 recorder machine used by Woods for transcription probably produced the buzz, (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and, on at least five occasions, required hand operation of the controls of the Uher 5000 recorder to produce the erasures and recording, and (iv) the erased portion of the tape originally contained speech which, because of the erasures and rerecording, could not be recovered. The panel stated that in making its final report it had considered suggestions and alternative interpretations that differed markedly from the panel's and had discussed the material with technical advisors employed by counsel for the President.

98.1 NOTE: See The EOB Tape of June 20, 1972, pages 35-51, which has been distributed separately to Committee members.
99. On May 31, 1974 the President filed a claim of constitutional privilege with respect to a grand jury subpoena issued February 20, 1974 seeking the production of correspondence between the President and former FCRP Chairman Maurice Stans regarding selections and nominations for government offices including ambassadorships. The President asserted that, excluding the records relating to four named individuals as to whom he waived the privilege, it would be inconsistent with the public interest to produce the records.


Court to Study Stans Data Sought in Jaworski Inquiry

BY BEN A. FRANKLIN

WASHINGTON, May 17 — President Nixon asserted the doctrine of executive privilege again today in an effort to block a Government subpoena for correspondence between himself or his White House aides and Maurice H. Stans, who was his chief fund raiser in the 1972 campaign.

There were repeated indications, however, that United States District Judge George L. Hart Jr. might overrule the latest attempt to withhold evidence from the office of the special Watergate prosecutor, Leon Jaworski.

Judge Hart said he would review the letters himself next week, and would then probably apply a recent decision by Judge John J. Sirica that overruled such claims of privilege.

Lawyers from Mr. Jaworski’s staff told Judge Hart that they were seeking evidence for a Federal Grand jury here that has been investigating Mr. Stans of Newport Beach, Calif., Stans’s activities as chairman of the Finance Committee to select the President, the principal fund-raising organization of Mr. Nixon’s 1972 campaign.

Evidence of Deals

Thomas F. McBride, one of the lawyers, said the prosecutors were looking for evidence of any quid pro quo offers of diplomatic or other Government posts or favors in return for contributions solicited by Mr. Stans.

Asked outside the courtroom whether the disputed letters contained any such references to “quid pro quo” arrangements with Nixon contributors, John M. TaccCCI, one of Mr. Stans’s lawyers, replied, “I don’t have any comment on that.”

The assertion of privilege was contained in a letter from the A. M. Stans to the senator.

President that Robert W. Barkley, another Stans lawyer, handed Judge Hart today during a hearing on the special prosecutor’s three-month attempt to enforce a subpoena for files and documents kept by Mr. Stans at the campaign Finance Committee office.

The subpoena for the files of Mr. Stans, Mr. Nixon’s former Secretary of Commerce, was first served by the special prosecutor’s office last Feb. 23.

Testimony at today’s hearing disclosed that immediately on learning of the subpoena, Mr. Stans’s lawyers sent for the keys to filing cabinets in which the subpoenaed papers were kept, and that Mr. Stans then asserted that the files were “personal” and therefore protected by his Fifth Amendment right not to incriminate himself.

Assistant Subpoenad

The person named in the affidavit Mr. Stans’s lawyers February subpoena as a special prosecutor was in fact a Stans assistant who was not on such lists, serving as treasurer of the campaign finance committee, later “ambassador list” had been appeared before the grand jury — but without the documents, saying that they were no longer in his custody.

In an attempt today to persuade Judge Hart that the Stans documents are, indeed, “official” papers subject to subpoena, Mr. McBride and Charles F. C. Ruff, Jaworski’s lawyers, questioned several witnesses under oath, including Herbert W. Kalmbach of Newport Beach, Calif., Mr. Stans’s activities as chairman of the Finance Committee to select the President, the principal fund-raising organization of Mr. Nixon’s 1972 campaign.

Mr. Kalmbach’s plea for his assistance “in seeing that the commitment [the ambassadorship] was met.”

Mr. Stans was acquitted on April 23 of joining in a conspiracy with former Attorney General John N. Mitchell to obtain favorable treatment for Robert Vesco, a secret contributor.

Papers Turned Up

On Mr. Stans’s behalf, Mr. Barkley asserted repeatedly today that several of the documents described by Mr. Kalmbach and other witnesses today no longer existed. He also told the court that other material among Mr. Stans’s “personal” papers had been "accidentally" torn up, and later patched together with Scotch tape.

The Government subpoena, covering his files dating from 1971, seeks Mr. Stans’s telephone book, appointment calendars, "ambassador list" and other special contributor lists recommending appointments to Government posts, "political files" and a so-called "S list" of noncontributors.

Mr. McBride told Judge Hart that the list was "a list of persons solicited who either failed to contribute or failed to contribute enough."
FORMAL CLAIM OF PRIVILEGE

I, Richard Nixon, President of the United States, hereby represent to the Court that materials covered by the subpoena issued February 20, 1974, are within the constitutional privilege of the President to refuse to disclose confidential information when disclosure would be contrary to the public interest.

The items sought include communications containing recommendations to the President with respect to personnel selections and nominations. Accordingly, I have determined that it would be inconsistent with the public interest to produce these items.

As a result of certain unusual circumstances, I am waiving privilege in connection with advise and recommendations relating to four specific candidates for nomination for ambassadors: Mrs. Ruth Farcas, Mr. Vincent DeRolet, Mr. C. V. Whitney and Mr. Fye Symington.

Respectfully submitted,

RICHARD NIXON
President of the United States
John Doar, Esquire
Special Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear John:

Pursuant to the request you made in our meeting on March 7, I am enclosing a list of those materials that the President has refused to provide this office in connection with our investigations. (This list does not include requests still pending.)

We recognize, of course, that the information enclosed would be subject to subpoena, and, accordingly, we see no reason to require the Committee to follow that course. We should add, however, that in our view this information can be provided without violating any legal constraints or the appropriate limits of the separation of powers.

Also, I trust that the enclosed list will be handled by the Committee and its staff in accordance with the rules and procedures adopted by the Committee on February 22, 1974.

Sincerely,

LEON JAWORSKI
Special Prosecutor

Enclosure
SCHEDULE OF MATERIALS REQUESTED BY
THE SPECIAL PROSECUTOR FROM THE
WHITE HOUSE IN CONNECTION WITH GRAND
JURY INVESTIGATIONS AND REFUSED AS
OF MARCH 11, 1974

A. INVESTIGATION INTO THE ALLEGED WATERGATE
COVER-UP CONSPIRACY

Tape recordings of the following conversations:

1. Telephone conversation on June 20, 1972,
between the President and Mr. Colson from 11:33 p.m.
to 12:05 a.m. of June 21, 1972.

2. Three meetings on June 23, 1972, between the
President and Mr. Haldeman from 10:04 to 10:39 a.m.,
from 1:04 to 1:13 p.m., and from 2:20 to 2:45 p.m.

3. Meetings between the President and Mr. Colson
on February 13, 1973, from 9:48 to 10:52 a.m. and on
February 14, 1973, from 10:13 to 10:49 a.m.

4. Meetings between the President and Mr. Haldeman
on March 20, 1973, from 10:47 a.m. to 12:10 p.m. and
from 6:00 to 7:10 p.m.

5. Meeting on March 21, 1973, between the President
and Mr. Ehrlichman from 9:15 a.m. to 10:12 a.m.

6. Telephone conversation between the President
and Mr. Colson on March 21, 1973, from 7:53 to 8:24 p.m.

7. Meeting on March 22, 1973, between the President
and Mr. Haldeman from 9:11 to 10:35 a.m.

8. Meeting on March 27, 1973, from 11:10 a.m. to
1:30 p.m. between Mr. Ehrlichman and the President,
with Mr. Haldeman present from 11:35 a.m. on.

9. Meeting on March 30, 1973, from 12:02 to 12:18 p.m.
between Mr. Ehrlichman and the President. Mr. Ziegler
may also have been present.

10. Telephone conversation on April 12, 1973, from
7:31 to 7:45 p.m. between the President and Mr. Colson.

11. Meeting on April 14, 1973, from 8:55 to 11:31 a.m.
between Mr. Ehrlichman and the President in the President's
EOB office. The President's daily diary shows that
Mr. Haldeman was present from 9:00 to 11:30 a.m.
12. Meeting on April 14, 1973, from 2:24 to 3:55 p.m. between Messrs. Ehrlichman and Haldeman and the President in the Oval Office.

13. Meeting on April 14, 1973, from 5:15 to 6:45 p.m. between Messrs. Ehrlichman and Haldeman and the President in the President's EOB office.

14. Telephone call on April 14, 1973, between the President and Mr. Ehrlichman from 11:22 to 11:53 p.m.

15. Meeting on April 15, 1973, from 1:12 to 2:22 p.m. between Mr. Kleindienst and the President in the President's EOB office.

16. Two telephone conversations on April 15, 1973, between 10:16 and 11:15 p.m. between Mr. Ehrlichman and Mr. Gray.

17. Two meetings between Messrs. Haldeman and Ehrlichman (or each) with the President on April 16, 1973, the first from 9:50 to 9:59 a.m., and the second from 10:50 to 11:04 a.m.

18. Meeting on April 19, 1973, from 8:26 to 9:32 p.m. between the President, Mr. John J. Wilson, and Mr. Frank H. Strickler in the President's EOB office.

19. Telephone conversation on April 19, 1973, from 9:37 to 9:53 p.m. between the President and Mr. Haldeman.

20. Telephone conversation on April 19, 1973, from 10:54 to 11:04 p.m. between the President and Mr. Ehrlichman.

21. Two telephone calls between the President and Mr. Haldeman on June 4, 1973, from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m.

B. INVESTIGATION INTO THE DAIRY INDUSTRY CONTRIBUTIONS

1. Any tape recordings, transcripts, memoranda, notes, or other writings relating to conversations between the President and Secretary Connally during the period February 15, 1971, to March 25, 1971. Information developed by this office indicates that in addition to the March 23, 1971, conversations between Secretary Connally and the President, Secretary Connally spoke to the President on March 11 (twice), March 16, March 18, and March 25, 1971.
2. All documents, memoranda, and correspondence in the files of Murray M. Chotiner relating to:

(a) Political contributions received or expected to be received from the Associated Milk Producers, Inc., the Trust for Agricultural Political Education, the Mid-America Dairymen, Agricultural and Dairy Educational Political Trust, Dairymen, Inc.; and the Trust for Special Political Agricultural Community Education;

(b) The Section 22 Tariff Commission Recommendations proposed by the Tariff Commission on September 21, 1970, relating to dairy products;

(c) The milk price support level announced on March 12, 1971, and March 25, 1971; and

(d) The antitrust suit filed by the United States on February 1, 1972, against the Associated Milk Producers, Inc.

3. Any tape recordings, transcripts, memoranda, notes, and other writings relating to a meeting between Attorney General John Mitchell, Mr. Lee Nunn, and the President held on May 5, 1971.

C. INVESTIGATION INTO CAMPAIGN CONTRIBUTIONS IN CONNECTION WITH APPOINTMENT TO GOVERNMENT OFFICE

1. All letters, memoranda, or lists sent by Maurice H. Stans to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to a list of recommendations sent during or soon after the 1972 campaign and election period, and letters or memoranda addressed to Frederic V. Malek, which are believed to be in the files of the White House Personnel Office, similar communications sent by Mr. Stans to Peter M. Flanigan, which are believed to be in Mr. Flanigan's files or the Personnel Office files, and similar communications sent by Mr. Stans to Harry R. Haldeman, which are believed to be in Mr. Haldeman's files in Room 522 of the White House.
2. All letters, memoranda, or lists sent by Herbert W. Kalmbach to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to those sent to Mr. Haldeman, Mr. Flanigan, Mr. Malek, and others in the Personnel Office.

3. All correspondence, memoranda, documents, or other writings pertaining to the consideration for Presidential appointment, appointment, reappointment, or transfer of J. Fife Symington, Jr., Vincent W. deRoulet, Dr. Ruth Farkas, Cornelius V. Whitney, John Safer, Daniel Terra, Kingdon Gould, Jr., Florenz Ourisman, Dr. Jacob O. Kamm, and Martin Seretean.

4. A list of recommendations, similar to that described in paragraph 1 above, prepared by Mr. Stans during or soon after the 1968 campaign and election period, access to which is necessary because of its relevance both as background to a complete investigation of this matter and to certain actual or proposed Presidential appointments in 1970 or 1971.

D. INVESTIGATION INTO BREAK-IN AT OFFICE OF DR. FIELDING

Access to the files of John D. Ehrlichman.
100. On June 3, 1974 Charles Colson pleaded guilty by negotiated plea to a one-count information charging obstruction of justice in connection with the trial of the Ellsberg case by devising and implementing a scheme to defame and destroy the public image and credibility of Ellsberg and his defense counsel with intent to influence, obstruct and impede the conduct and outcome of the trial. Colson agreed to provide statements under oath and to produce all relevant documents in his possession upon request of the Special Prosecutor and testify as a witness for the United States in any and all cases with respect to which he may have information. In return the Special Prosecutor agreed to dismiss all charges against Colson in United States v. Mitchell and United States v. Ehrlichman.

100.1 United States v. Colson, Information, June 3, 1974.

100.2 Letter from Leon Jaworski to David Shapiro, May 31, 1974.
WATERGATE SPECIAL PROSECUTION FORCE
1425 K STREET N.W.
WASHINGTON, D.C. 20005

FOR IMMEDIATE RELEASE
June 3, 1974

THE FOLLOWING INFORMATION WAS FILED IN
U.S. DISTRICT COURT, WASHINGTON, D.C.,
TODAY:

NAME: CHARLES W. COLSON
AGE: 42
ADDRESS: McLean, Virginia

CHARGE: One Count. Obstruction of Justice.
[18 USC Section 1503]

PENALTY: Violation of 18 USC Section 1503
carries a maximum penalty of five
years imprisonment or a fine of
$5,000, or both.

A COPY OF THE INFORMATION IS ATTACHED TO
THIS FACT SHEET.
INFORMATION

The United States of America, by its Attorney, the Special Prosecutor, Watergate Special Prosecution Force, charges:

1. At all times material herein, up to on or about March 10, 1973, CHARLES W. COLSON, the DEFENDANT, was acting in the capacity of an officer and employee of the United States Government, as Special Counsel to the President of the United States, Richard M. Nixon.

2. On or about June 28, 1971, and for a period of time thereafter, in the District of Columbia and elsewhere, CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal trial of Daniel Ellsberg under indictment in the case of United States v. Russo, Criminal Case No. 9373, United States District Court, Central District of California, by devising and implementing a scheme to defame and destroy the public image and credibility of Daniel Ellsberg and those engaged in the legal
defense of Daniel Ellsberg, with the intent to influence, obstruct, and impede the conduct and outcome of the criminal prosecution then being conducted in the United States District Court for the Central District of California.

3. The aforesaid scheme by which CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal prosecution of Daniel Ellsberg consisted of the following acts:

   (1) In July and August 1971, the DEFENDANT, and others unnamed herein, endeavored to and did release defamatory and derogatory allegations concerning one of the attorneys engaged in the legal defense of Daniel Ellsberg for the purpose of publicly disseminating said allegations, the known and probable consequences of which would be to influence, obstruct, and impede the conduct and outcome of the criminal prosecution of Daniel Ellsberg.

   (2) In July and August 1971, the DEFENDANT, and others unnamed herein, endeavored to obtain, receive and release confidential and derogatory information concerning Daniel Ellsberg, including information from the psychiatric files of Daniel Ellsberg, for the purpose of publicly disseminating said information, the known and probable consequences of which would be to influence, obstruct, and impede the conduct and outcome of the criminal prosecution of Daniel Ellsberg.
(In violation of Title 18, United States Code Section 1503.)

Respectfully submitted,

[Signature]
Leon Jaworski
Special Prosecutor
Watergate Special Prosecution Force
1425 K Street, N.W.
Washington, D.C. 20005
Attorney for the United States

DATED: June 3, 1974
On the understandings specified below, the United States will accept a guilty plea from your client, Charles W. Colson, to a one-count information charging him with obstructing justice in connection with the criminal prosecution of Daniel Ellsberg, in violation of Title 18, United States Code, Section 1503. This will dispose of all pending charges in the cases of United States v. Ehrlichman, et al., Criminal No. 74-116, and United States v. Mitchell, et al., Criminal No. 74-110. It will also dispose of all potential charges against your client which might otherwise arise out of those matters which are or have been under active investigation by the Watergate Special Prosecution Force.

This disposition is predicated on the understanding that the United States will move for leave to file a dismissal of all pending charges against Mr. Colson as set forth in the indictment filed March 1, 1974, Criminal No. 74-116, charging Mr. Colson, among others, with conspiracy and obstructing justice, and the indictment filed March 7, 1974, Criminal No. 74-116, charging Mr. Colson, among others, with conspiracy against rights of citizens. This disposition will not bar prosecution for any false or misleading testimony given hereafter.

This understanding is also predicated upon the fact that Mr. Colson will immediately provide statements under oath and will produce all relevant documents in his possession upon the request of the Watergate Special Prosecution Force. He may be required to testify as a witness for the United States in any and all cases with respect to which he may have relevant information.
The United States will make no recommendation concerning Mr. Colson's sentencing but will bring to the attention of the probation authorities and the Court information concerning Mr. Colson relating to those cases in which Mr. Colson is presently charged. The United States will join with you in urging that Mr. Colson be permitted to remain on recognizance pending sentencing. The United States, if requested, will provide to any investigative, disciplinary or fact-finding body information concerning Mr. Colson.

Sincerely,

LEON JAWORSKI
Special Prosecutor
101. On June 10, 1974 the President's counsel informed the House Judiciary Committee that the President declined to furnish the material called for in the Committee's subpoena of May 30, 1974. In a separate letter of the same date, the President responded to Chairman Rodino's letter of May 30, 1974 for the Committee respecting the refusal of the President expressed in his May 22, 1974 letter to the Committee declining to produce Presidential tapes and diaries called for in the Committee's subpoenas of May 15, 1974.

101.1 Letter from James St. Clair to Chairman Rodino, June 10, 1974.

101.2 Letter from President Nixon to Chairman Rodino, June 10, 1974.

101.3 Letter from Chairman Rodino to President Nixon, May 30, 1974.

101.4 Letter from President Nixon to Chairman Rodino, May 22, 1974.
THE WHITE HOUSE
WASHINGTON

June 10, 1974

Dear Mr. Chairman:

In response to the subpoena of the House of Representatives directed to Richard M. Nixon, President of the United States, dated May 30, 1974, and returnable at 10:00 A.M. June 10, 1974, I am directed by the President to advise you that he must respectfully decline to furnish the material called for therein.

His reasons for this are stated in a separate letter addressed to you, dated June 9, 1974, and delivered to you herewith.

Sincerely,

James D. St. Clair
Special Counsel to the President

[11935]
Dear Mr. Chairman:

In your letter of May 30, you describe as "a grave matter" my refusal to comply with the Committee's subpoenas of May 15. You state that "under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment," and add that "Committee members will be free to consider whether your refusals warrant the drawing of adverse inferences concerning the substance of the materials..."

The question of the respective rights and responsibilities of the Executive and Legislative branches is one of the cardinal questions raised by a proceeding such as the one the Committee is now conducting. I believe, therefore, that I should point out certain considerations which I believe are compelling.

First, it is quite clear that this is not a case of "the President conducting an inquiry into his own impeachment." The Committee is conducting its inquiry; the Committee has had extensive and unprecedented cooperation from the White House. The question at issue is not who conducts the inquiry, but where the line is to be drawn on an apparently endlessly escalating spiral of demands for confidential Presidential tapes and documents. The Committee asserts that it should be the sole judge of Presidential confidentiality. I cannot accept such a doctrine; no President could accept such a doctrine, which has never before been seriously asserted.

What is commonly referred to now as "executive privilege" is part and parcel of the basic doctrine of separation of powers -- the establishment, by the Constitution, of three separate and co-equal branches of Government. While many functions of Government require the concurrence or interaction of two or more branches, each branch historically has been steadfast in maintaining its own independence by turning back attempts of the others, whenever made, to assert an authority to invade, without consent, the privacy of its own deliberations.

Thus each house of the Congress has always maintained that it alone shall decide what should be provided, if anything, and in what form, in response to a judicial subpoena. This standing doctrine was summed up in a resolution adopted by the Senate on March 6, 1962, in connection with subpoenas issued by a Federal court in the trial of James Hoffa, which read: "Resolved, that by the privileges of the Senate of the United States 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 the control or possession, but by its permission...". More recently, in the case of Lt. William Calley, the chairman of the House Armed Services subcommittee refused to make available for the court-martial proceeding testimony that had been given before the subcommittee in executive session -- testimony which Lt. Calley claimed would be exculpatory. In refusing, the subcommittee chairman, Representative Weber, explained that the Congress is "an independent branch of the Government, separate from but equal to the Executive and Judicial branches," and that accordingly only Congress can direct the disclosure of legislative records.

Equally, the Judicial branch has always held sacrosanct the privacy of judicial deliberations, and has always held that neither of the other branches may invade Judicial privacy or encroach on Judicial independence. In 1953, in refusing to respond to a subpoena from the House Un-American Activities Committee, Justice Tom C. Clark cited the fact that the independence of the three branches of our Government is the cardinal principle on which our Constitutional system is founded. This complete independence of the judiciary is necessary to the proper administration of justice." In 1971, Chief Justice Burger analogized the confidentiality of the Court to that of the Executive, and said: "No statute gives this Court express power to establish and enforce the utmost security measures for the secrecy of our deliberations and records. Yet I have little doubt as to the inherent power of the Court to protect the confidentiality of its internal operations by whatever judicial means may be required."

These positions of the Courts and the Congress are not lightly taken; they are essential to maintaining the balances among the three branches of Government. Equal firmness by the Executive is no less essential to maintaining that balance.

The general applicability of the basic principle was summed up in 1962 by Senator Stennis, in a ruling upholding President Kennedy's refusal to provide information sought by a Senate subcommittee. Senator Stennis held: "We are now come face to face and are in direct conflict with the established doctrine of separation of powers...I know of no case where the Court has ever made the Senate or the House surrender records from its files, or where the Executive has made the Legislative Branch surrender records from its files -- and I do not think either one of them could. So the rule works three ways. Each is supreme within its field, and each is responsible within its field."

If the institution of an impeachment inquiry against a President were permitted to override all restraints of separation of powers, this would spell the end of the doctrine of separation of powers; it would be an open invitation to future Congresses to use an impeachment inquiry, however frivolously, as a device to assert their own supremacy over the Executive, and to reduce Executive confidentiality to a nullity.

My refusal to comply with further subpoenas with respect to Watergate is based, essentially, on two considerations.

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First, preserving the principle of separation of powers -- and of the Executive as a co-equal branch -- requires that the Executive, no less than the Legislative or Judicial branches, must be immune from unlimited search and seizure by the other co-equal branches.

Second, the voluminous body of materials that the Committee already has -- and which I have voluntarily provided, partly in response to Committee requests and partly in an effort to round out the record -- does give the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions. The way to resolve whatever ambiguities the Committee may feel still exist is not to pursue the chimera of additional evidence from additional tapes, but rather to call live witnesses who can place the existing evidence in perspective, and subject them to cross-examination under oath. Simply multiplying the tapes and transcripts would extend the proceedings interminably, while adding nothing substantial to the evidence the Committee already has.

Once embarked on a process of continually demanding additional tapes whenever those the Committee already has fail to turn up evidence of guilt, there would be no end unless a line were drawn somewhere by someone. Since it is clear that the Committee will not draw such a line, I have done so.

One example should serve to illustrate my point. In issuing its subpoena of May 15, the Committee rested its argument for the necessity of these additional tapes most heavily on the first of the additional conversations subpoenaed. This was a meeting that I held on April 4, 1972, in the Oval Office, with then Attorney General Mitchell and H.R. Haldeman. The Committee insisted that this was necessary because it was the first meeting following the one in Key Biscayne between Mr. Mitchell and his aides, in which, according to testimony, he allegedly approved the intelligence plan that led to the Watergate break-in; and because, according to other testimony, an intelligence plan was mentioned in a briefing paper prepared for Mr. Haldeman for the April 4 meeting. Committee members made clear their belief that the record of this meeting, therefore, would be crucial to a determination of whether the President had advance information of the intelligence activities that included the break-in.

As it happens, there also was testimony that the ITT matter had been discussed at that April 4 meeting, and the Committee therefore also requested the April 4 conversation in connection with its ITT investigation. On June 5, 1974, a complete transcript was provided to the Committee for the purposes of the ITT probe, together with an invitation to verify the transcript against the actual tape. This transcript shows that not a word was spoken in that meeting about intelligence plans, or about anything remotely related to Watergate -- as the Committee can verify.

I cite this instance because it illustrates clearly -- on the basis of material the Committee already has -- the insubstantiality of the claims being made for additional tapes; and the
fact that a Committee demand for material does not automatically thereby convert the requested material into "evidence."

As for your declaration that an adverse inference could be drawn from my assertion of Executive privilege with regard to those additional materials, such a declaration flies in the face of established law on the assertion of valid claims of privilege. The Supreme Court has pointed out that even allowing comment by a judge or prosecutor on a valid Constitutional claim is "a penalty imposed by courts for exercising a Constitutional privilege," and that "it cuts down on the privilege by making its assertion costly." In its deliberations on the Proposed Federal Rules of Evidence, the House of Representatives -- in its version -- substituted for specific language on the various forms of privilege a blanket rule that these should "be governed by the principles of the Common law as they may be interpreted by the courts of the United States in light of reason and experience...." But as adopted in 1972 by the Supreme Court -- the final arbiter of "the principles of the Common law as...interpreted by the courts," and as codification of those principles -- the Proposed Federal Rules clearly state: "The claim of a privilege, whether in the present proceeding or in a prior occasion, is not the proper subject of comment by judge or counsel. No inference may be drawn therefrom."

Those are legal arguments. The common-sense argument is that a claim of privilege, which is valid under the doctrine of separation of powers and is designed to protect the principle of separation of powers, must be accepted without adverse inference -- or else the privilege itself is undermined, and the separation of powers nullified.

A proceeding such as the present one places a great strain on our Constitutional system, and on the pattern of practice of self-restraint by the three branches that has maintained the balance of that system for nearly two centuries. Whenever one branch attempts to press too hard in intruding on the Constitutional prerogatives of another, that balance is threatened. From the start of these proceedings, I have tried to cooperate as far as I reasonably could in order to avert a Constitutional confrontation. But I am determined to do nothing which, by the precedents it set, would render the Executive branch henceforth and forevermore subservient to the Legislative branch, and would thereby destroy the Constitutional balance. This is the key issue in my insistence that the Executive must remain the final arbiter of demands on its confidentiality, just as the Legislative and Judicial branches must remain the final arbiters of demands on their confidentiality.

Sincerely,

/s/ RICHARD NIXON

The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515
The President
The White House
Washington, D. C.

Dear Mr. President:

The Committee on the Judiciary has authorized and directed me to reply to your letter of May 22 in which you decline to produce the tapes of Presidential conversations and Presidential diaries called for in the Committee's subpoenas served on you on May 15, 1974. You also decline to produce any other material dealing with Watergate that may be called for in any further subpoenas that may be issued by the Committee.

The Committee on the Judiciary regards your refusal to comply with its lawful subpoenas as a grave matter. Under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry. These are matters which, under the Constitution, the House has the sole power to determine.

In meeting their constitutional responsibility, Committee members will be free to consider whether your refusals warrant the drawing of adverse inferences concerning the substance of the materials.
and whether your refusals in and of themselves might constitute a ground for impeachment.

The Committee's decisions on these matters will be contained in the recommendation the Committee will make to the House of Representatives.

Respectfully,

PETER W. RODINO, JR.
Chairman
THE WHITE HOUSE
WASHINGTON

May 22, 1974

Dear Mr. Chairman:

This letter is in response to two subpoenas of the House of Representatives dated May 15, 1974, one calling for the production of tapes of additional Presidential conversations and the other calling for the production of my daily diary for extended periods of time in 1972 and 1973. Neither subpoena specifies in any way the subject matters into which the Committee seeks to inquire. I can only presume that the material sought must be thought to relate in some unspecified way to what has generally been known as "Watergate."

On April 30, 1974, in response to a subpoena of the House of Representatives dated April 11, 1974, I submitted transcripts not only of all the recorded Presidential conversations that took place that were called for in the subpoena, but also of a number of additional Presidential conversations that had not been subpoenaed. I did this so that the record of my knowledge and actions in the Watergate matter would be fully disclosed, once and for all.

Even while my response to this original subpoena was being prepared, on April 19, 1974, my counsel received a request from the Judiciary Committee's counsel for the production of tapes of more than 140 additional Presidential conversations -- of which 76 were alleged to relate to Watergate -- together with a request for additional Presidential diaries for extended periods of time in 1972 and 1973.

The subpoenas dated May 15 call for the tapes of the first 11 of the conversations that were requested on April 19, and for all of the diaries that were requested on April 19. My
counsel has informed me that the intention of the Committee is to also issue a series of subpoenas covering all 76 of the conversations requested on April 19 that are thought to relate to Watergate. It is obvious that the subpoenaed diaries are intended to be used to identify even more Presidential conversations, as a basis for yet additional subpoenas.

Thus, it is clear that the continued succession of demands for additional Presidential conversations has become a never-ending process, and that to continue providing these conversations in response to the constantly escalating requests would constitute such a massive invasion into the confidentiality of Presidential conversations that the institution of the Presidency itself would be fatally compromised.

The Committee has the full story of Watergate, in so far as it relates to Presidential knowledge and Presidential actions. Production of these additional conversations would merely prolong the inquiry without yielding significant additional evidence. More fundamentally, continuing ad infinitum the process of yielding up additional conversations in response to an endless series of demands would fatally weaken this office not only in this Administration but for future Presidencies as well.

Accordingly, I respectfully decline to produce the tapes of Presidential conversations and Presidential diaries referred to in your request of April 19, 1974, that are called for in part in the subpoenas dated May 15, 1974, and those allegedly dealing with Watergate that may be called for in such further subpoenas as may hereafter be issued.

However, I again remind you that if the Committee desires further information from me about any of these conversations
or other matters related to its inquiry, I stand ready to answer, under oath, pertinent written interrogatories, and to be interviewed under oath by you and the ranking Minority Member at the White House.

Sincerely,

[Signature]

The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C.