

15.42

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

January 23, 1974

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

Dear Mr. St. Clair:

This letter deals with our discussion on the morning of January 22nd regarding the availability of the President's testimony for the benefit of the grand jury. You stated that you wanted us to consider having the President answer written interrogatories propounded by this office and thereafter, if I chose to do so, that I talk with the President about the matters covered by the interrogatories. I suggested as an alternative having the grand jury come to the White House so that the President's testimony could be given to the members of the grand jury in as helpful and as meaningful a manner as is true in the case of other witnesses. I gathered from your comment that you considered my suggestion unacceptable.

As a lawyer experienced in conducting examinations to develop facts, you are aware of course of the inadequate and unsatisfactory nature of interrogations by means of written questions. The very inability of the party submitting the questions to follow-up adequately on the answers that are given, itself renders such an interrogation of little value. It is for this reason that I cannot view your suggestion as an acceptable substitute for appearance before the grand jury. However, to enable me fully to consider your suggestion and to arrive at a final judgment on this matter, I need your answers to the following questions:

1. Inasmuch as these written interrogatories are being proposed in lieu of grand jury testimony, are the answers to be made under oath?

File

Jaworski

Chron

Ruth/Kreindler/Lacovara/Feldbaum/Ben-Veniste

- 2 -

2. Assuming that the written interrogatories would not require over two or three hours of testimony, how soon, consistent with the President's duties of office, could I expect the answers to be completed and placed in our hands? Do you estimate the time to be two or three days, a week? What I am seeking from you is an expression as to the approximate time-lapse between the delivery to you of the interrogatories, should that course be followed, and the return of the answers.

3. If, in connection with the submission of the interrogatories we ask for the delivery of documents, tapes, dictabelts, memoranda or other items of evidence will the President deliver these to us along with his answers so long as they are germane to the interrogatory and the answer elicited and are relevant to the matters the Special Prosecutor is charged with the duty to investigate? I request that a full answer be given to the inquiry so that I will know whether (a) nothing will be furnished, regardless of relevancy, and (b) assuming relevancy, what exceptions, if any, are still to be imposed?

4. Should interrogatories be propounded and should I decide after receipt of the answers to accept your offer to talk with the President, whom do you contemplate to have present other than the President and the Special Prosecutor?

Thanking you for an early response to these questions so that I can give further consideration to your suggestion, I am

Sincerely yours,

LEON JAWORSKI
Special Prosecutor

~~H.R.~~

THE WHITE HOUSE
WASHINGTON

January 25, 1974

The Honorable Leon Jaworski
Special Prosecutor
Watergate Special Prosecution Force
1425 K Street NW.
Washington, D. C.

Dear Mr. Jaworski:

Thank you for your prompt response of January 23rd to my suggestion of January 22nd that I would be willing to recommend to the President that he respond to appropriate written interrogatories submitted by you followed by an interview by you of the President relating to the matters covered thereby if you felt it necessary.

I am sorry that you cannot view my suggestion favorably at least for the time being.

In response to your inquiries, however, if you felt it would be important I would of course recommend that the answers to interrogatories be under oath. As to the time required for answer this would of course depend on the precision of the questions and the President's availability in light of his duties in office but in principle no useful purpose would be gained by prolonged delays either in submitting the questions or responding thereto.

As for documentation production; you know the President has already made available to you not only the subpoenaed material found to be relevant by the court but also substantial additional tapes and other documentation not called for in the subpoena. Accordingly, I would not view the procedure as a substitute for requests for further documentation. On the other hand it may

The Honorable Leon Jaworski
January 25, 1974
Page Two

be appropriate to refer to tapes or other documentation, already voluntarily furnished to you in either an interrogatory or an answer thereto. By the foregoing I do not mean necessarily to foreclose all interrogatory inquiry into other documentation but I believe that the main objective would be to elicit responses to substantive relevant questions. I would assume that we could agree on questions of relevancy and materiality.

As to a possible interview with the President, if you thought one would be appropriate, I would believe it would be most appropriate if you were to meet with the President.

I wish to emphasize as I did at our conference on January 22nd that this proposal for proceeding by written interrogatory was something that I would be willing to recommend to the President if you found it to be acceptable.

I hope that the foregoing suggestions will result in your agreement to this recommendation.

Sincerely,



James D. St. Clair
Special Counsel to the President

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Philip A. Lacovara

January 28, 1974

Richard J. Davis

Interrogatories

There is a substantial question in my mind as to the extent we should include any interrogatories concerning dirty tricks since, in my own mind, it is extraordinarily unlikely that even truthful answers would reveal any criminal knowledge on his part while these events were taking place. Nevertheless, because of the prominence of his activities we should probably ask certain questions about Segretti. I will list possible questions on this subject and, for general consideration, possible questions in other areas:

SEGRETTI

1. Did Mr. Haldeman inform you at any time prior to October, 1972 that there would be or was a prankster operating in connection with the 1972 Presidential campaign who was recruited by people at the White House?
2. Did Mr. Haldeman inform you at any time prior to October, 1972 that there would be or was a prankster operating to disrupt or create any difficulties for Democratic candidates in the 1972 Presidential primary or general elections?
3. Why did Dwight Chapin leave his job at the White House?
4. Was his leaving in any way related to his involvement with Segretti?

5. Who discussed this issue with you and when?
6. Did you ever discuss the Segretti matter with Dwight Chapin?
7. Describe your current personal knowledge as to what Segretti did, what the knowledge of and role in these activities were of Mr. Chapin, Mr. Haldeman and Mr. Strachan?
8. Who is the source of your knowledge?
9. Did you ever discuss the Segretti matter with Mr. Haldeman, Mr. Ehrlichman, Mr. Colson or Mr. Dean.
10. What did these people tell you?

These are generally the type of questions we could ask. Where he indicates a conversation we can also ask for all tapes or documents relating to it. Of the above, the most interesting questions are numbers 1, 2, 6, 7 and 8.

MISCELLANEOUS MATTERS

1. Did you ever discuss with Mr. Colson or anyone else the possibility of assisting, in any way, with an effort to promote a write in campaign for Senator Kennedy in the New Hampshire or any other primary? (Colson took executive privilege when asked about this)
2. Describe these conversations?
3. Are you aware of any role played by any member of the White House Staff, CREP, RNC or any person acting on their behalf in this effort?
4. Describe this role and the source of your knowledge?

5. Do you know whether CREP and/or anyone acting on behalf of your re-election developed ways of getting information from the campaigns of Senators Muskie and McGovern by paying people to relay such information and/or by placing people in these campaigns and/or in any other way apart from electronic surveillance? Such activities included payments by Murray Chotiner to reporters travelling with the McGovern campaign, the sedan chair operations and the use of a cab driver working for Senator Muskie.
6. Describe the state of your knowledge on these subjects, when you learned about these efforts, who you discussed them with and whether you knew such activities would occur prior to or while they were taking place?

cc: Files ✓
Chron
Davis

Memorandum

TO : Task Force Leaders

DATE: January 25, 1974

FROM : Philip A. Lacovara 
Counsel to the Special
ProsecutorSUBJECT: Possible Interrogatories to President

One possible method for obtaining specific information from the President about matters under investigation is to propound written interrogatories to him. In order to determine whether this process would be feasible and productive, the Special Prosecutor needs to have from each task force a draft of the interrogatories that should be considered for inclusion. For obvious reasons, the interrogatories should be confined to the core areas of interest and should not seek to explore every conceivable issue which might be put to a witness in the grand jury room.

Please submit to me by next Tuesday, January 29, proposed questions you might want included. Of course, since this procedure is still very tentative, this process should be kept confidential. Each question should also be coupled with a request for any documentary support that may exist.

cc: Mr. Jaworski
Mr. RuthU R G E N T
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URGENT

WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

Memorandum

TO : Messrs. McBride, Merrill,
Connolly, and Davis

DATE: January 29, 1974

FROM : Philip A. Lacovara *PL*

SUBJECT: Proposed Interrogatories to President

The Special Prosecutor has at least temporarily deferred submission of any written interrogatories to the President. Therefore, there is no further need at the present for any urgency or further work on proposed questions. If you have prepared anything, please submit it to the Special Prosecutor for his information.

cc: Mr. Jaworski
Mr. Ruth
Mr. Ben-Veniste

URGENT

*Memorandum**file*
15. Ja

TO : William Merrill

DATE: January 31, 1974

FROM : Nick Akerman *NAK*

SUBJECT: Interrogatories for the President

- I. A. When, from whom, in what manner, and to what extent, did you obtain any knowledge direct or indirect, of an anti-war demonstration to be led by Daniel Ellsberg and William Kunstler, and/or CRP sponsored counter-demonstration and/or assault ordered by White House and CRP officials, on the west steps of the Capitol on the evening of May 3, 1972.
- B. Did you make any recommendation, issue any order, directive or instructions, or in any way give your approval or authorization, or take any action whatsoever regarding the subject matter of Interrogatory No. 1.
- C. During the first 2 weeks of May 1972, did Charles Colson and/or any member of Mr. Colson's staff, and/or H. R. Haldeman and/or John Ehrlichman, and/or any members of their staffs, inform you of an Ellsberg/Kunstler led anti-war demonstration and/or a CRP sponsored counter-demonstration and/or an assault ordered by White House and CRP officials on the west steps of the Capitol on the evening of May 3, 1972? If your answer is affirmative, please explain fully the nature and extent of each such conversation.
- II. A. When, from whom, in what manner, and to what extent, did you obtain any knowledge of J. Edgar Hoover's funeral and funeral related proceedings which occurred on May 3 and 4, 1972?
- B. Did you make any recommendation, issue any order, directive, or instruction, or in any way give your approval or authorization or take any action whatsoever regarding the subject matter of Interrogatory No. II.

- III. A. When, from whom, in what manner, and to what extent, did you obtain any knowledge of a letter which was sent to Democratic Party Voters in New Hampshire on or about March, 1972, urging a "write-in" vote for U. S. Senator Edward M. Kennedy for President?
- B. Specifically, did you discuss with Charles Colson and/or John Mitchell a letter which was sent to Democratic Party voters in New Hampshire urging them to "write-in" the name of U. S. Senator Edward M. Kennedy for President? If your answer is affirmative, please explain fully the nature and extent of each such conversation.
- C. Did you make any recommendation, issue any orders, or instructions, give your approval or authorization, or take any other action whatsoever, regarding the subject matter of Interrogatory No. II.
- D. Specifically, did you initial, direct, approve, recommend, and/or authorize John Mitchell and/or Charles Colson and/or H. R. Haldeman to send to Democratic Party voters in New Hampshire a letter urging such voters to write in the name of U. S. Senator Edward M. Kennedy for President? If your answer is affirmative, please explain fully the nature and extent of each such action taken.
- IV. A. When, from whom, in what manner, and to what extent, did you obtain any knowledge, direct or indirect, of a break-in at the Chilean Embassy in Washington, D.C., or or about May 13, 1972?
- B. Did you make any recommendation, issue any order, directive, or instructions, in any way give your approval or authorization or take any action whatsoever regarding the subject matter of Interrogatory No. III.
- V. A. When, from whom, in what manner, and to what extent, did you obtain any knowledge, direct or indirect, of the practice of White House advancemen excluding, and/or ejecting and/or detaining demonstrators and/or individuals opposed to the Administration at Presidential appearances?
- B. Did you make any recommendation, issue any order, directive or instruction, or in anyway give your approval or authorization to take any action whatsoever regarding the subject matter of Interrogatory No. IV.

3.

- VI. A. When, from whom, in what manner, and to what extent did you obtain any knowledge, direct or indirect, of White House advancemen using "reserve rally squads" and/or other means to tear down or destroy anti-Administration signs which appeared along the Presidential motorcades and/or within the vicinity of Presidential appearances?
- B. Did you make any recommendation, issue any orders directive or instruction in any way give your approval or authorization or take any action whatsoever regarding the subject matter of Interrogatory No. IV.?

cc:

Chron
File
Akerman Chron File

2103
Memorandum

TO : Leon Jaworski

DATE: Sept. 3, 1974

FROM : Henry Ruth

SUBJECT: Mr. Nixon

The following matters are still under investigation in this Office and may prove to have some direct connection to activities in which Mr. Nixon is personally involved:

1. Tax deductions relating to the gift of pre-Presidential papers.
2. The Colson obstruction of justice plea in the Ellsberg matter.
3. The transfer of the national security wire tap records from the FBI to the White House.
4. The initiating of wire tapping of John Sears.
5. Misuse of IRS information.
6. Misuse of IRS through attempted initiation of audits as to "enemies."
7. The dairy industry pledge and its relationship to the price support change.
8. Filing of a challenge to the Washington Post ownership of two Florida television stations.
9. False and evasive testimony at the Kleindienst confirmation hearings as to White House participation in Department of Justice decisions about ITT.
10. The handling of campaign contributions by Mr. Rebozo for the personal benefit of Mr. Nixon.

Memorandum

TO : James F. Neal

DATE: September 18, 1974

FROM : Peter F. Rient
PFRSUBJECT: Deposing Mr. Nixon Pursuant to 18 U.S.C. 3503.

I have been asked to research the question whether the provisions of 18 U.S.C. 3503 permit the Government to take the deposition of former President Nixon for possible use at the trial of United States v. Mitchell, et al. My conclusion is that, given the exceptional circumstances of this case and the liberal construction afforded Section 3503 by the courts, we should be permitted to take Mr. Nixon's deposition for possible use at trial.

I. Statutory Requirements for Taking and Use of Depositions by Government.

18 U.S.C. 3503(a) and (f) provide for the taking of depositions by the Government and for their use at trial. In pertinent part, these sections read as follows:

(a) Whenever due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after the filing of an indictment or information may upon motion of such party and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place....A motion by the Government to obtain an order

under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.

* * *

(f) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts. (Emphasis added.)

In order to take a deposition for use at trial, therefore, the Government must move for an order permitting the taking of such a deposition and must support the motion with a showing of "exceptional circumstances" and a certification that the proceeding is against a person who is believed to have participated in an organized criminal activity. In order to use such a deposition at trial, the Government must show that at the time of trial the witness deposed is dead, is too ill to attend, refuses to testify, or cannot be compelled by subpoena to appear

II. Judicial Construction of the Statutory Requirements.

Whether the Government may take a deposition pursuant to Section 3503 depends on its ability to show the existence of "exceptional circumstances" and to make the "organized criminal activity" certification. The only cases which I have found that deal with these issues are Second Circuit cases, United States v. Singleton, 460 F.2d 1148 (2d Cir. 1972), cert. denied, 410 U.S. 984 (1973) and United States v. Carter, 493 F.2d 704 (2d Cir. 1974). Both cases treat these issues favorably to the Government and provide substantial support for the argument that we should be permitted to take Mr. Nixon's deposition in United States v. Mitchell, et al.

A. "Exceptional Circumstances" Requirement.

The Singleton case was a prosecution for the sale of narcotics to a Government agent in which the Government was permitted to take the deposition of one Morris, an informer who helped to arrange the sale and acted as an intermediary in many of the dealings. The trial court granted the Government's motion to depose Morris upon a showing that he was too ill with leukemia to leave his home in Alabama to attend the scheduled trial in New York. On appeal, defendant Singleton challenged the trial court's finding of "exceptional circumstances" which justified taking the deposition "in the interest of justice." The Court

of Appeals rejected this challenge, saying:

The House Judiciary Committee Report . . . indicates that motions under § 3503(a) are to be granted for the same reasons permitted defendants by Fed. Rules of Crim.P., Rule 15(a), which provides for depositions, "[i]f it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice . . ." This test is quite adequate, and we adopt it here for the purpose of defining "exceptional circumstances." Morris' situation fits it squarely. (United States v. Singleton, supra, at 1154).^{1/}

Similarly, the lower court in United States v. Carter, supra, found the existence of "exceptional circumstances" upon representations by the Government, supported by a doctor's affidavit, that a critical Government witnesses had suffered a serious heart attack and could not be expected to travel from his home in Seattle to appear for trial in New York for several months. See United States v. Podell, 369 F. Supp. 151, 152-53 (S.D. N.Y. 1974). Nevertheless, the district court refused to order a deposition on the ground that the crimes charged (conspiracy to defraud the United States, bribery, conflict of interest, making false statements and perjury) did not constitute

^{1/} Although Singleton was decided by a 2-1 majority, there is nothing in the dissenting opinion which casts doubt on the validity of test adopted by the majority in defining "exceptional circumstances."

"organized criminal activity" when engaged in by a congressman, a lawyer and a businessman.

In granting the Government's petition for a writ of mandamus, the Court of Appeals endorsed the lower court's finding of "exceptional circumstances" in language which appears to expand the test adopted in Singleton. The court stated:

In view of the circumstances set forth here, we believe the issuance of the extraordinary writ is fully justified. The Government's case, if not terminated, is at least jeopardized if the deposition of the witness Kinsey is not permitted. Counsel for the defendants and the defendants have been invited to attend the deposition. See 18 U.S.C. § 3503(b). The crimes charged here are serious and a cloud of suspicion hangs over the heads of those not usually suspect. The court below commendably urged the parties to seek an early review and resolution of the present dispute by this court in view of the importance and significance of the question. We believe that justice dictates, both for the Government and the defendants, that all the evidence which is relevant be ascertained and presented in this case, and we therefore grant the writ requested by the Government and direct the court below to issue the order permitting the deposition of the witness Kinsey. (United States v. Carter, supra, at 709.) (Emphasis added.) 2/

Applying the principles of these cases to the situation at hand, it appears that we can make a sufficient showing that "exceptional circumstances" exist which justify deposing Mr.

2/ Although Carter was a unanimous decision, one of the three judges concurred only in the result. However, his concurring opinion does not question the validity of the "exceptional circumstances" test applied in either Singleton or Carter.

Nixon "in the interest of justice." Certainly, it appears at this time that Mr. Nixon, because of his health, may be unable to attend the trial and that his testimony would be material. The harder question is "whether it is necessary to take his deposition in order to prevent a failure of justice." Rule 15(a), F.R.Cr.P.; United States v. Singleton, supra, at 1154. On this question, we can make a two-pronged argument. First, Mr. Nixon's testimony may be essential to establish the foundation for the introduction of certain Presidential tape recordings at trial. Second, Mr. Nixon will not be a defendant at the trial even though the proof will show that he was a ringleader and the chief beneficiary of the conspiracy charged in the indictment. Under these circumstances, it can fairly be said that the Government's case will be jeopardized if the deposition is not permitted and that justice dictates that all relevant evidence be ascertained and presented in this case. Cf., United States v. Carter, supra, at 709.

B. "Organized Criminal Activity" Certification.

As noted above, a motion by the Government to take a deposition pursuant to 18 U.S.C. 3503 must be accompanied by a certification that "the legal proceeding is against a person believed to have participated in an organized criminal activity. This requirement raises three questions: (1) what constitutes "organized criminal activity;" (2) under what circumstances

will the court look behind the Government's certification;" and (3) who is the appropriate person to make such a certification in this case?

(1) Definition of "Organized Criminal Activity":

The term "organized criminal activity" is not defined in the statute itself. However, Congressman Poff, in describing Section 3503 to members of the House of Representatives, stated that the term "is broader in scope than the concept of organized crime; it is meant to include any criminal activity collectively undertaken..." 116 Cong. Rec. 35293 (Oct. 7, 1970). And Senator Hruska, a co-sponsor of the bill, advised the Senate that the term included all criminal activity that was "not an isolated offense by an isolated offender." 116 Cong. Rec. 36294 (Oct. 12, 1970) According to Congressman Poff, the purpose for allowing the taking of depositions in such cases is to prevent intimidation or bribery of witnesses by persons with "access to collective criminal power." 116 Cong. Rec. 35293 (Oct. 7, 1970).

The most definitive judicial construction of "organized criminal activity" appears in United States v. Carter, supra. There, the trial court refused to permit the taking of a deposition in a case involving white collar defendants charged with conspiracy to defraud the United States, bribery and perjury, construing the term "organized criminal activity"

narrowly to mean "gangsterism, racketeering and syndicate activity of clandestine criminal groups."^{3/} The Court of Appeals, granting the Government's petition for a writ of mandamus, rejected this narrow construction, saying:

Even if we were free to question the determination of the Attorney General, we could not accept the proposition that the Congress did not intend to include corruption, obstruction of justice and perjury within the purview of the statute. [footnote omitted] While crimes of violence engineered by gangs of thugs are of course repulsive and clearly within the concept of organized criminal activity, the concerted corruption charged here is equally odious. The fact that the alleged perpetrators are presumably respectable and entrusted with responsibility by an electorate or a profession or by stockholders does not suggest, in our view, that they are incapable of engaging in organized criminal activity. We all stand equal before the bar of criminal justice, and the wearing of a white collar, even though it is starched, does not preclude the organized pursuit of unlawful profit. (United States v. Carter, supra, at 708.) (Emphasis added.)

On the ^{basis of the} legislative history of Section 3503 and the opinion in Carter, it appears that we can make a substantial argument that the case of United States v. Mitchell, et al. involves "organized criminal activity" within the meaning of the statute. To begin with the crimes involved in our case are

^{3/} This was essentially the position adopted by the dissenting judge in Singleton and by the concurring judge in Carter.

virtually identical to those in Carter, albeit that pecuniary gain does not appear to have motivated the major conspirators in our case. Second, the criminal activities in our case were plainly organized, rather than isolated or sporadic. Finally, the activities engaged in by the defendants here were designed to achieve the very purpose which the "organized criminal activity" requirement was intended to meet, to wit, influencing witnesses through the exertion of organized criminal power. Taken together, all of these factors support a certification that the case of United States v. Mitchell, et al. involves "organized criminal activity."

As a caveat to this conclusion, however, it should be pointed out that the panels of the Second Circuit in Singleton and Carter were each composed of a district court judge sitting by designation, and that in each case the two circuit court judges took opposite sides on the proper interpretation of the term "organized criminal activity." Thus, it is entirely possible that if the issue arises in the Second Circuit again the court, en banc, may adopt the narrow view of the dissenting judge in Singleton and the concurring judge in Carter.^{4/} At the moment, however, the law is in our favor.

^{4/} It should be noted that the trial of United States v. Podell, the prosecution which gave rise to the Carter case, began on September 17, 1974.

(2) Conclusiveness of Certification.

In the Singleton case, the court made it clear that the Government's certification that the prosecution "is against a person who is believed to have participated in an organized criminal activity" is not subject to challenge except upon a showing by the defendant of "bad faith" by the Government.

The Court stated:

This limitation on the use of § 3503 depositions is one to be exercised by the Government, and the decision whether or not a proceeding is against a person believed to have participated in organized criminal activity is to be made by the Attorney General or his designee and not by the court. The defendant's analogy to the necessity for a court to find probable cause under the Fourth Amendment is not apt because the wording of § 3503(a) indicates that Congress did not intend for the organized crime certification to be subjected to a judicial determination. [Footnote omitted.]

Congress' choice of the Attorney General or his designee to make the certification may have been to insure political accountability, see United States v. Robinson (5 Cir. Jan. 12, 1972) (No. 71-1058), or to centralize decision making, cf. United States v. St. Regis Paper Co., 355 F.2d 688, 693 (2 Cir. 1966), or because the Attorney General is in the best position to know, but for whatever reason, the trial court is not to make a de novo determination of whether or not the proceeding is against a person believed to have participated in an organized criminal activity. Unless the defendant shows bad faith on the part of the Government, the court is only to ascertain whether or not there has been a proper certification as required by statute. (United States v. Singleton, supra, at 1154.) (Emphasis added.)

The court reaffirmed these principles in the following language in the Carter case:

The court below found that while the crimes charged in the indictment here were heinous, they were not properly characterized as organized criminal activity. The certification was, for this reason, determined to be without a basis in fact and therefore made in "bad faith." While purporting to follow Singleton, the Court below was plainly disregarding it. The determination of whether or not the defendants were engaging in organized criminal activity is to be made by the Attorney General or by his designee and not by the court. This is what Singleton held. It cannot be circumvented by a finding that the Assistant Attorney General was acting in "bad faith" because the court here disagreed with the Government's determination that the defendants were believed to have participated in organized criminal activity. Under Singleton, the burden is upon the defendant to establish bad faith on the part of the Government and there is not a scintilla of evidence of bad faith in the record before us and, in fact, no such evidence is suggested in the opinion below. Presumably, the Attorney General had information at his disposal upon which the certification could be made. (United States v. Carter, supra, at 707-08) (Emphasis added.)

In view of the opinions in Singleton and Carter (subject to the caveat mentioned above), and the circumstances showing "organized criminal activity" in this case, it seems that the Government can provide the requisite certification here without fear of a judicial determination of "bad faith."

(3) Appropriate Person to Make Certification.

Section 3503 requires a certification "by the Attorney General or his designee." In both Singleton and Carter,

a certification from Assistant Attorney General Henry Petersen, pursuant to the authority conferred on him by 28 C.F.R. 0.59(b) was found to be sufficient.^{5/} Since the regulation does not require certification by a specific individual, it would appear that the authority to certify could be delegated to the Special Prosecutor. See United States v. Giordano, 42 U.S.L.W. 4642 (May 13, 1974). This being the case, the question is whether such authority has, in fact, been delegated to the Special Prosecutor. The Special Prosecutor's charter provides:

In particular, the Special Prosecutor shall have full authority...for:

* * *

-- determining whether or not application should be made to any Federal court for a grant of immunity...or other court orders;

* * *

-- initiating and conducting prosecutions...and handling all aspects of cases within his jurisdiction...

These provisions would appear to give the Special Prosecutor the authority to submit to the court the required certificate and, in any event, any doubt about the matter could be dispelled by a specific designation of authority by the Attorney General.

^{5/} The cited regulation confers upon the Assistant Attorney General, or any Deputy Assistant Attorney General, of the Criminal Division authority to make the certification required by Section 3503.

Memorandum

TO : Henry S. Ruth
Special Prosecutor

DATE: March 3, 1975

FROM : Jill Wine Volner *JWV*

SUBJECT: 18-1/2 Minute Gap

Before closing the investigation of the 18-1/2 minute gap in the Presidential tape recording for June 20, 1972, I recommend calling Richard M. Nixon before the grand jury. He is the only witness with potential evidence who has not yet been questioned.

If you agree with this suggestion, I will be glad to take responsibility for implementing it.

WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

Memorandum

15.42

TO : Jill Volner

DATE: March 4, 1975

98 FROM : Henry S. Ruth, Jr.

SUBJECT: Your memo of 3/3/75 on 18-1/2 minute gap.

I appreciate your offer to handle the grand jury interrogation of Mr. Nixon as to the 18-1/2 minute gap. //

The matter of Mr. Nixon's testimony is an office-wide problem. Each task force, of course, has their own needs in this regard. I have previously asked Richie Davis to visit each task force head and compile a list of every issue as to which Nixon testimony would be desirable, and also an estimate of time needed for each issue. When that is completed, I will then consider the timing of such testimony. I believe that it is necessary to await our receipt of documents from the White House in order to make such testimony complete. //

I am sure that Richie will be visiting you about this.

cc: Mr. Davis
Mr. Kreindler

✓ File
Ruth
CHRON

WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

Memorandum

TO : Files

DATE: April 7, 1975

FROM : Henry Ruth

SUBJECT: Meeting with Jack Miller

Following the Mortenson-Miller meeting with Ruth-Davis-Geller on Wednesday, April 2, Miller asked to see me alone. He brought up the following two topics:

1. Ronald Ziegler was having trouble interesting any prospective employer in talking with him until the end of all Watergate investigations. Miller asked if we had any kind of clearance system whereby we told people if they were under investigation any longer. I told Miller that on many occasions members of this Office had informed prospective employers that a named person was not the subject of investigation by this Office. Miller asked if we could give Ziegler any kind of a letter. I said I preferred to talk with employers because so-called "clearance" letters were misused sometimes and I was especially concerned about that in Ziegler's case. I also said that we had to talk with Ziegler about the "Bluebook" investigation. Miller said he would tell Ziegler what I had said. I assured him that we were just as concerned about the fairness issues about persons allegedly involved in "Watergate" as we were about ensuring the completeness of our investigations. I told him that Ziegler was not a candidate for indictment at this time.

2. Miller said he was very concerned about possible grand jury testimony by Nixon. He said that with all of Nixon's health and other problems, Miller had no way of knowing that Nixon would have sufficient concentration, acuteness and preparation to guarantee that he would not inadvertently misspeak himself in the grand jury. Miller said he was concerned as a lawyer that he might be voluntarily giving up many documents that in turn provide a rich basis for our questioning of Nixon. I said that we were reviewing the problem of Nixon testimony, that our investigations were now so well along that the matter of some extra documents probably would not make a difference in our determinations about grand jury testimony and that we were considering the various options of interview, sworn statements of various kinds and grand jury testimony. Miller said that he knew

I could not give an answer now and that he did not expect one now. He said he merely wanted to express one of his concerns as they debated the issue of turning over the so-called "non-designated" documents.

cc:

Mr. Kreindler
Mr. Davis
Mr. Geller

file
chron
Ruth (2)

Memorandum

15.42

TO : Henry S. Ruth, Jr.

DATE: May 15, 1975

FROM : Nick Akerman

HSR note: After meeting with NA, PK, RD, JH and me, all parties agreed the "office interview" format on both issues was appropriate request. Not grand jury because of other priorities and the legal ~~xxxx~~ problems present.

SUBJECT: Nixon Grand Jury Testimony

If former President Richard M. Nixon is subpoenaed before the grand jury he should be questioned about his knowledge of the assault on antiwar demonstrators on May 3, 1972, and his knowledge of the facts leading up to Richard Moore's grand jury and Senate testimony on the La Costa meeting.

Assault on Demonstrators

With respect to the assault, there is overwhelming evidence in an April 25th, 1973, White House tape to indicate that Nixon was knowledgeable about this incident either through direct conversations with Charles Colson or others. This tape of a Nixon, Ehrlichman, Haldeman conversation in the Oval Office contains two separate references to facts surrounding this assault including Ehrlichman's statement to the President about "bringing the Cubans up to rough-up the demonstrators." In this connection the involvement of Colson, Rhatigan, and Howard, Colson's administrative assistant, is briefly discussed in terms of what past incidents might come to plague the President in the future.

There is also evidence that the President may have instigated this assault. Magruder has testified that Colson told him that the President wanted the pro-Administration presence at the antiwar demonstration. Although it was a relatively common practice for White House aides to request action in the name of the President when in fact the President made no such requests, Colson was one of the few aides who actually had constant access to the President during this period of time. Indeed, Colson had a number of meetings with the President between May 1, and May 3, 1972. Rhatigan has also testified that Colson would have likely had contact with the President on this project.

c: Files
Chron
Ruth (2)
Horowitz
Davis
Akerman
Akerman Chron

b6
b7c

There are two reasons why the former President should be questioned about this matter. First, he might be able to provide valuable evidence against Colson or [REDACTED]. The evidence is conclusive that Colson lied when questioned before the grand jury on facts highly material to the assault. But as the evidence now stands a perjury charge against Colson is significantly weakened since our evidence does not relate directly to orders to assault demonstrators, but is muddled by the fact that Colson simultaneously organized a lawful pro-Administration counterdemonstration. Also, there is no proof of Colson's motive for committing perjury. One can conjecture that he lied to protect the President from being impeached and [REDACTED] [REDACTED] from being indicted, but there is no evidence to prove this highly plausible theory. Nixon could provide extremely relevant testimony on the assault and on Colson's motive either through his conversations with Colson or others or by directing us to relevant conversations which might have been tape recorded.

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The fact that Nixon might not be cooperative and forthcoming on this investigation should not be a deterrent to questioning him. Colson's perjury was committed when he had agreed with this Office that his ". . . disposition will not bar prosecution for any false or misleading testimony given hereafter." To refrain from pursuing this matter at least to the point of questioning all potential witnesses would make our agreement with Colson hollow and meaningless.

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b7c

[REDACTED]

The second reason for questioning Nixon about this assault is simply the fact that he does have knowledge of a highly significant crime insofar as it involves an act of violence perpetrated by the same people, i.e. Liddy, Hunt, and the Cuban-Americans who burglarized Dr. Fielding's office and the Democratic National Committee Headquarters. Indeed, when we have overwhelming evidence

that the former President of the United States has significant knowledge of this incident, it would be totally negligent for us not to take his testimony before the grand jury.

Richard Moore

As we have discussed previously, there is evidence that Richard Moore committed perjury before the grand jury and the Watergate Senate Committee when he was questioned about the discussion of funds for the Watergate burglars at the La Costa meeting with Dean, Ehrlichman, and Haldeman. Evidence of this perjury which is presently insufficient to convict Moore consists of John Dean's testimony and a tape of an Oval Office meeting between Moore and Nixon on April 19, 1973. The strongest evidence contained in this tape is that portion of the conversation in which Moore agrees to Nixon's request to be "damn hazy" about his recollection of the La Costa meeting.

Nixon's testimony could establish a perjury case against Moore. Nixon's testimony could clear up some of the ambiguities in the April 19th tape, most significantly, what Nixon believed was Moore's understanding when he was asked to be "damn hazy." There is reason to believe from Nixon's subsequent taped conversations with Ehrlichman and Haldeman (all of which would be inadmissible in a perjury case against Moore) that Nixon clearly expected Moore to lie to the prosecutors. Nixon also would be able to testify to the substance of any other relevant conversations with Moore about La Costa subsequent to April 19th up to the time Moore testified in the Watergate grand jury. There is evidence that at least two such conversations or meetings occurred -- one on April 20, 1973, and another on May 8, 1973.

The likelihood of Nixon testifying against an old friend should not be a factor in deciding whether to question Nixon about this matter in the grand jury. There is overwhelming evidence that Nixon could provide highly relevant evidence, and on that basis alone we would be negligent in not pursuing his testimony.

Memorandum

TO : Jay Horowitz

DATE: May 15, 1975

FROM : Frank Martin SUBJECT: Questioning Nixon

The following is an outline of events which Nixon should be questioned about with regard to the Gray and wiretap investigation.

1. April 25, 1969, meeting with Kissinger, Hoover, and Mitchell. Did Nixon order a program of wiretapping? Did Kissinger specifically suggest that wiretapping be used to track down leaks?

2. Why were all the wiretaps discontinued on February 10, 1971?

3. Hoover-Boggs-Kleindienst controversy early April, 1971. Did Hoover threaten to reveal the wiretaps? Did Nixon, or anyone to Nixon's knowledge, discuss with Kleindienst the wiretaps on the fact that Hoover might reveal the wiretaps?

4. Pentagon Papers -- Did Nixon instruct or was he aware of anyone in the White House, Department of Justice, or FBI reviewing the wiretap letters and/or logs with regard to the Pentagon Papers leak or the SALT leak? Was Nixon aware that Ellsberg had been overheard? Same question on Sheehan, Smith, Beecher, Halperin, Warnke, Gelb. Also, was any wiretapping done by the FBI or anyone else with regard to the Pentagon Papers leak?

5. When and from whom did Nixon first learn, prior to the July 12, 1971, meeting, that there was a "problem" with regard to the wiretaps and their possible revelation in connection with the Pentagon Papers litigation?

cc: Files
Chron
Ruth (2)
Davis
Martin
Martin Chron

6. What was the full substance of Nixon's conversation with Ehrlichman on July 10, 1971. Ehrlichman's notes reflect -- "Re: Grand Jury, don't worry re: taps on discovery."

7. What was the full substance of July 12, 1971, meeting with Mardian? ("Overhearings would be disclosed.") With whom did Nixon later discuss the "overhear" problem -- Kissinger, Haig, Mitchell, Moore, Kleindienst, others? Did Nixon make any dictabelt recording of his recollection of this meeting or later meetings on the subject?

8. When, where and from whom did Nixon later receive reports on what had been done as a result of his July 12, 1971, order to destroy the logs? Why were the logs and other records not destroyed?

9. Did Hoover, in early August, 1971, or at any time in the Summer or Fall of 1971, indicate that he might reveal the existence of these wiretaps? If so, did this threat in any way relate to the Pentagon Papers case or other "leak" cases? Did Nixon during this time period ever discuss the wiretaps, Pentagon Papers or other leak cases with Hoover? With whom did Nixon discuss the Hoover threat (Haldeman, Ehrlichman, Kissinger, Haig, Mitchell, Mardian, Kleindienst, Moore, others)?

10. Why were the wiretap records given to Ehrlichman by Mardian? Did anyone other than Ehrlichman have access to those records?

11. Was any attempt ever made to force Hoover to retire? If not, did this decision have anything to do with the Hoover threat?

12. In the Fall of 1971, consideration was given to replacing Hoover with Pat Gray. Did anyone brief Gray on the wiretaps or the Hoover threat?

13. At or about the time of Gray's appointment, May 3, 1972, did anyone discuss with Gray the Radford wiretaps (then in operation) or the NSC wiretaps?

14. With whom did Nixon discuss the discontinuance of the Radford wiretaps? (January 20, 1972). Did anyone discuss this with Gray?

15. At or about the time of Gray's nomination, February 16, 1973, did anyone discuss with Gray the Radford or NSC wiretaps?

16. With whom did Nixon discuss the February 26, 1972, Time article? Did anyone discuss it with Gray? Did Nixon, or anyone else, receive assurances that Gray would deny the Time allegations?

17. Did anyone inform Nixon that Gray would and/or had testified that there were "no records" of the wiretaps alleged by Time?

18. In May, 1973, Ruckelshaus recovered the wiretap records from the White House files of Ehrlichman. With whom did Nixon discuss the Ruckelshaus investigation, and/or the fact that Ellsberg had been overheard on the wiretaps, and/or the fact that the wiretaps somehow related to the Pentagon Papers investigation? What was discussed at Nixon's May 11, 1973, meeting with Haldeman and Haig?

19. Were any of the following individuals aware of the Radford and/or NSC wiretaps: L. Patrick Gray, Richard Kleindienst, Richard Moore?

20. Were any of the following individuals aware that Ellsberg had been overheard and/or that the NSC wiretaps somehow related to the Pentagon Papers investigation: Haldeman, Ehrlichman, Kissinger, Haig, Mitchell, Kleindienst, Mardian, Sullivan, Gray, Moore?

Memorandum

TO : Files

DATE: May 19, 1975

FROM : Peter M. Kreindler *PMK*SUBJECT: Nixon Testimony

Stan Mortenson called this morning to ask whether we would delay issuing the subpoena until Wednesday. I stated that I would have to confer with Mr. Ruth, but that in no event would we delay issuance if it would mean that we would have to change the return date or that in a motion to quash, it would be argued that they had been given less notice. After conferring with Mr. Ruth and Mr. Davis, it was decided that we would agree not to issue the subpoena until Wednesday, and I called Mr. Mortenson, telling him that we expected to hear from him ~~at~~ *by* noon, Wednesday.

cc: Mr. Ruth
Mr. Davis
Mr. Geller

Memorandum

TO : Henry S. Ruth, Jr.

DATE: May 22, 1975

FROM : Nick Akerman

SUBJECT: Questions For Former President Nixon

Set forth below are the questions for former President Nixon relating to (1) the assault on demonstrators on May 3, 1972, (2) Richard Moore's Senate and grand jury testimony on the February 13-15, 1972, La Costa meeting; (3) the use of the Post Office Department to obtain information on Presidential candidate George McGovern's campaign contributions, and (4) the 1971 May Day demonstrations.

Assault on Demonstrators

On or about May 3, 1972, did you have any conversations with Charles Colson about an antiwar demonstration, a counterdemonstration or an assault on demonstrators all of which took place on the Capitol steps on the evening of May 3, 1972, when J. Edgar Hoover's body was lying in state in the Rotunda?

In a June 28, 1972, article in the New York Times, it was first reported that the Miamians involved in the Watergate break-in had confronted antiwar demonstrators "outside the Capitol while the body of J. Edgar Hoover lay in state." On or about the time that article was published, did you discuss this incident with Charles Colson or anyone else?

In an April 25, 1973, conversation with Haldeman and Ehrlichman in the Oval Office, there is a discussion about "bringing the Cubans up to rough-up the demonstrators." Who first informed you about this incident?

cc: Files
Chron
Akerman Chron
~~Ruth~~ (2)
Davis

Was it Colson? Specifically, you state that "Dick Howard gets involved with the money." Who told you that? What did you understand to be Colson's and Rhatigan's role in this incident?

Richard Moore

Subsequent to April 19, 1973, did you have any further discussion with Richard Moore about the February 13-15, 1973, meeting at La Costa or about his testimony on this meeting before the Senate Committee or the Watergate grand jury?

Specifically, did your conversations with Mr. Moore on April 20, 1973, and May 8, 1973, relate to these topics?

Post Office

In a discussion about McGovern's campaign contributions, in the September 15, 1972, tape Haldeman and Nixon engage in the following interchange:

* * *

PRESIDENT: . . . He may have some big angels. I don't think he is getting a hell of a lot of small money. I don't think so. I don't believe this crap. I mean if he -- Have you had your Post Office check yet?

HALDEMAN: That John was going to do. I don't know.

PRESIDENT: That's an interesting thing to check.

HALDEMAN: Yeah.

* * *

When did you first learn about this project to monitor McGovern's mail?

When did this project start?

How often was it done?

Did the purpose and scope of this project extend beyond checking the volume of mail to McGovern?

The 1971 May Day Demonstrations

In a May 5, 1971, conversation with Haldeman, Haldeman and Nixon talk about good(squads being recruited by Colson and Chapin to beat up demonstrators. It will first be necessary to transcribe this tape before I can formulate questions. The questioning, however, will focus on Nixon's knowledge of such goon squads.

WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

Memorandum

TO : Rich Davis

DATE: May 22, 1975

FROM : Henry L. Hecht ^{HLH}

SUBJECT: Provision of documents to Herbert J. Miller for
interview re: IRS investigation of Larry O'Brien

The following documents should be used by Herbert J. Miller in preparing his client to be interviewed concerning allegations of White House attempts to use the IRS to harass Larry O'Brien.

1. D-99 3/27/75
2. D-100 3/27/75
3. C-181 4/16/75
4. C-182 4/16/75
5. D-55 3/7/75
6. D-113 4/4/75

I have attached for his use the following:

1. Transcript of a recording of a meeting among the President, H.R. Haldeman and John Dean on September 15, 1972 at 5:27 to 6:17 p.m. (First Installment)
2. Transcript of a recording of a meeting among the President, H.R. Haldeman and John Dean on September 15, 1972 at 5:27 to 6:17 p.m. (Second Installment)
3. Notes of H.R. Haldeman concerning the meeting described in Items 1 and 2.
4. A list of approximately 500 members of McGovern campaign staff and campaign contributors.

Insert

2

insert

- *5. 1. Memorandum of Interview of Lawrence O'Brien, Sr. on August 17, 1972 (a 6 page version, a 3 page summary, and a 1 page summary.)
- *6. 2. A memorandum prepared by the IRS concerning the Howard Hughes Project as it relates to Lawrence O'Brien, dated 8/28/72. (the third exhibit has not been included as it refers to numerous taxpayers unrelated to this investigation).
- *7. 3. Memorandum prepared by the IRS concerning the Hughes Project as it relates to Lawrence O'Brien, undated, but believed to have been prepared on or about 8/30/72.
- *8. 4. Memorandum prepared by the IRS concerning the Hughes Project as it relates to Lawrence O'Brien dated 9/1/72 but believed to have been revised on or about 9/5/72.

With respect to the last 4 items which are marked with an asterisk (*), it is important to point out to Mr. Miller that these documents contain tax information and should not be copied or used for any other purposes other than preparing his client.

Attachments

- cc: Chron
- Files
- Horowitz
- Hecht
- Ruth (2)

Memorandum

TO : Henry S. Ruth, Jr.

DATE: May 27, 1975

FROM : Nick Akerman SUBJECT: White House Goon Squads For Demonstrations

I have listened to the May 5, 1971, conversation between Nixon and Haldeman in which they discussed, among other things, the 1971 May Day demonstration and demonstrations in general. There are two significant items mentioned on this tape. First, Haldeman tells the President that Dwight Chapin has a friend, known only to Chapin, a "real conspirator type," who was organizing a group to "tear things up" at demonstrations. Haldeman states that this fellow had been responsible for the Nixon signs when Muskie was in New Hampshire. There are also references to Rhon Walker, the head of the White House Advance Operation for Presidential appearances, and the advancements, but it is difficult to figure out how they relate to Chapin's unnamed friend other than the fact that Chapin was Walker's boss. Second, Haldeman told Nixon that he (Haldeman) had suggested to Colson that he (Colson) contact Fitzsimmons of the Teamsters to get his (Fitzsimmons') paid thugs to "beat the shit out of" anti-Administration demonstrators.

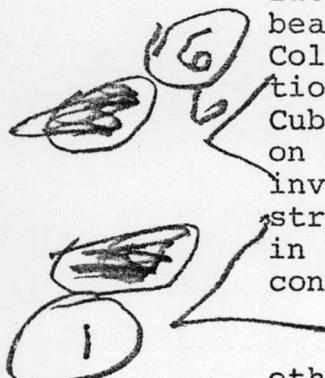
In addition to this tape, we have also received Haldeman's notes of July 24, 1970, written nearly a year prior to the May 5th conversation, which relate to using goon squads to beat up demonstrators. The notes read as follows:

get a goon squad to start roughing up demo's
VFW or Legion -- no insult to P
use hard hats

It should also be noted that a reference to Dwight Chapin's ability to recruit thugs in late 1971 is found in John Dean's statement to the Senate Watergate Committee. Dean stated:

cc: Files
Chron
Ruth (2)
Horowitz
Akerman (2)

I was made aware of the President's strong feelings about even the smallest of demonstrations during the late Winter of 1971, when the President happened to look out the windows of the residence of the White House and saw a lone man with a large 10-foot sign stretched out in front of Lafayette Park. Mr. Higby called me to his office to tell me of the President's displeasure with the sign in the park and told me that Mr. Haldeman said the sign had to come down. When I came out of Mr. Higby's office, I ran into Mr. Dwight Chapin who said that he was going to get some "thugs" to remove that man from Lafayette Park. He said it would take him a few hours to get them, but they could do the job. I told him I didn't believe that was necessary. (Emphasis Added)



This Office has received only two allegations relating to White House officials directing goon squads to beat up demonstrators. Both incidents involved Charles Colson and do not relate to the May 5th taped conversation or Haldeman's notes. One is the use of Hunt's Cuban-American friends to assault anti-war demonstrators on May 3, 1972. The other incident which has not been investigated by this Office was the beating up of demonstrators by hard hats on Wall Street in New York City in May, 1970, a year prior to the Nixon-Haldeman taped conversation of May 5, 1971.

If the White House did in fact use Teamsters or some other group to beat up demonstrators on any particular occasion, it is entirely conceivable that this type of incident would not have come to our attention simply because there would have been no reason for anyone to believe that it was linked to the White House.

Memo to Davis and Kreindler from HR re: Health Status of GJ Witness

Stan Mortenson called Friday evening, May 23, to give us an oral report of Dr. Lundgren's findings.

Mr. Nixon's health has improved substantially since his operation last Fall, and his blood pressure has now stabilized. There are no active blood clots and the patient could travel to Washington, D.C. However, Dr. Lundgren states that there is a clear additional risk, which cannot be quantified, to the advent of ~~health~~ health problems through the combination of travel, the pressures of grand jury testimony and preparation and the possible "Roman circus" atmosphere surrounding Mr. Nixon's first trip ~~##~~ for any purpose, let alone for testimony. ~~Blood~~ Blood pressure will certainly rise and the need for anti-coagulants increase the health risk if any clot or other health change should occur. For this reason, Dr. Lundgren has recommended no travel until the end of 1975 and Mr. Nixon has agreed. Dr. Lundgren states ~~##~~ that the ~~##~~ effects of the stress on mental, emotional and physical factors - all in combination - cannot be predicted on a quantified basis and he has advised Mr. Nixon not to come to D.C. for testimony in order to negate these possibly substantial risks to health.

Mr. Nixon would give a sworn deposition in California but will not come to Washington for testimony unless ordered by a court to do so after his attorneys have pursued all available legal remedies. Mr. Nixon fears travel and stress as a health risk and does not wish this at his stage of life.

I told Mortenson we would see him Monday. Jack Miller has not yet approved Stan's original proposal to have two grand jury members present in California. I said that we would also have to discuss their position on their presence at a deposition and the place and conditions thereof.

I said finally that we would have to go to the grand jury Thursday and formulate our own recommendation to them as to grand jury testimony vs. California deposition. Stan also agreed that the May 29 return date still stood firm until further discussions.

Memorandum

TO : Henry Ruth

DATE: May 28, 1975

FROM : Kenneth Geller *KS*SUBJECT: Nixon Grand Jury Appearance

I have not been involved in any of the recent negotiations with Jack Miller concerning Nixon's grand jury appearance, and I therefore have only hearsay knowledge of Nixon's pending offer in lieu of such an appearance. Nevertheless, in my view we should reject what has been proposed and litigate, if necessary, the grand jury's right to Nixon's in person testimony.

1. First, I think our chances of prevailing in litigation are not insignificant. I assume we could make a compelling showing that we have reason to believe that Nixon has first-hand, noncumulative information relevant to several ongoing grand jury investigations. Moreover, from what I have been told of Nixon's doctor's report, his health claim is weaker than we expected. Executive privilege would not prevent his being called to testify although, like any other privilege, it may allow him to refuse to answer a specific question.

2. I'm not as pessimistic as everyone else that we couldn't get a definitive district court ruling by July 7. An order by Chief Judge Hart that Nixon appear would not be appealable, so he would either have to comply or be held in contempt.

3. I believe firmly that we would not come out of a litigation any worse than we would be under Nixon's current proposal -- *i.e.*, that he testify under oath in California with his attorney present. Indeed, it would not surprise me if Hart tried to force some compromise along these lines, and we might end up being allowed to depose Nixon on the West Coast without Miller being present. (For example, we might point out to Hart during the course of such compromise discussions that Miller represents many other clients whom we want to ask Nixon about).

4. Even if the subpoena were to be quashed in its entirety, I don't think we suffer substantially. There

seems to be universal agreement within the office that Nixon will divulge nothing useful. Anyway, we would never use him as a witness even if he did tell us something of significance. Of course, he might give us a lead to evidence which we could use in court, but the chances of this in my opinion are not strong enough to convince me that we truly gain anything by compromise at this point. If the court quashes the subpoena, at least we will be perceived by the public and by history as having tried to do our job impartially. The dissatisfaction, if there be any, will be with Judge Hart, whose reputation for fairness is questioned by many people anyway. I have long been motivated by the feeling that when the details of a Nixon "deposition" come out -- as they surely will if we agree to such a deal -- we will be criticized (perhaps unfairly but nevertheless vociferously) for the "special treatment" we gave Nixon. Compare the outcry when it was learned that Silbert allowed Stans not to appear before the grand jury.

5. The opinions noted above, which have earned me a reputation as a "hard liner," have been motivated by the firm belief that our bargaining position with Miller has always been stronger than we have been willing to admit to ourselves. Nixon is up to his ears in civil litigation -- Dobrovir has made it clear he intends to seek to depose him -- and is also concerned with salvaging what he can of his place in history. I cannot believe that Nixon desires a public confrontation with our office over the extent of his continuing "cover-up," nor can I believe that Nixon wants (with civil depositions on the horizon) to test his medical claim in its weakest posture -- to avoid a grand jury subpoena. His expected attack upon the new legislation is also dependent in part upon his cooperation with us. In sum, I truly believe that Nixon wants to avoid a confrontation with us at all costs and that with the exception of his coming to Washington, D. C. -- which Nixon is probably paranoid about -- he will give in on everything else in order to avoid such a confrontation. Once before when we called Miller's bluff he backed down and made us an offer which was a significant advance from his previous position. I would not be surprised if Miller were to back down again and would accept a deposition under oath outside of his presence if he were told that the alternative was litigation in public over the whole ball of wax. In any event, as I noted earlier, the downside risk to us from a litigation is slight in my opinion, and well worth the gamble.

*R
or Telle*
Nixon testimony
Memorandum

TO : Peter Kreindler

DATE: May 30, 1975

FROM : Kenneth Geller *KG*SUBJECT: Administration of oath to Richard Nixon

Here are my preliminary findings on the question of who would be authorized to administer an oath to Richard Nixon in the proposed deposition in California.

Statutes of the United States authorize various officers to administer oaths in certain types of proceedings. The only statutes which would appear applicable to this situation are the following:

1. United States magistrates. 28 U.S.C. § 636(a)(2).
2. Justices and judges of the United States. 28 U.S.C. 459.
3. Each federal clerk of court and his deputies. 28 U.S.C. § 959.
4. The Vice President of the United States. 5 U.S.C. § 2903(c)(1).
5. "An individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered." 5 U.S.C. § 2903(c)(2). I have not yet checked California law but I would assume this category would include California judges and notaries public.

Several other provisions which would be nice to use do not seem applicable. Rule 6(c) of the Criminal Rules authorizes the foreman of a grand jury to administer oaths, but I would assume that is limited to actual grand jury proceedings and not proceedings ancillary to a grand jury. Similarly, Rule 28(a) of the Civil Rules provides that "the court in which [an] action is pending" may appoint a person to administer oaths in a deposition, but this obviously is not a deposition being taken pursuant to the Federal Rules of Civil Procedure. Finally,

5 U.S.C. § 303 provides:

An employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation.

More work must be done on this section, but I have tentatively concluded that our subjects of inquiry would not fall within those enumerated. Indeed, the only reported decision construing section 303 viewed the statute quite narrowly and reversed a perjury conviction. United States v. Doshen, 133 F.2d 757 (3d Cir. 1943).

My tentative conclusion, therefore, is that we use the services of a United States magistrate who, of the categories of persons listed above, can probably be depended upon to be most discreet.

More to come.

cc: Mr. Ruth

Memorandum

TO : Files

DATE: May 30, 1975

FROM : Richard Davis *RD*SUBJECT: Richard Nixon

On May 29, 1975 Henry Ruth, Peter Kreindler, Richard Davis and Thomas McBride met with the Grand Jury. At that time the Grand Jury approved accepting Mr. Nixon's offer to voluntarily submit to being questioned in California by the Special Prosecutor's office. The questioning would be ancillary to the Grand Jury, under oath, subject to the penalties of perjury, in the presence of two Grand Jury members as observers who could request the Prosecutors to ask additional questions and would cover those areas enumerated in the May 16, 1975 letter to Mr. Miller previously approved by the Grand Jury. We told the Grand Jury that Mr. Miller insisted on being present during the questioning as a condition to his agreeing to the procedure, although he agreed not to interrupt the proceedings and to limit his role to consulting his client. The Grand Jury was also advised that if this proposal was agreed to, Mr. Nixon would waive any executive privilege he might have and respond to questions in the enumerated areas.

The Grand Jury was also told that we would continue to negotiate with Mr. Miller on the issue of his presence, but that we favored accepting the plan whether he was present or not. During the discussion we told the Grand Jury that if they rejected the proposal we would proceed to issue a subpoena and the result would be litigation for an unknown period of time. We also advised them of the information supplied to us concerning Mr. Nixon's health. Also, during the discussion in our presence, in which we answered questions, no one expressed opposition to the proposal. The Grand Jury then approved it.

We had told the Grand Jury that we suggested that the Foreman and one other juror selected by them by either lot or election be designated as their representatives at this deposition. They decided to proceed by lot and the name selected in that manner was [REDACTED] [REDACTED] was then selected by a second drawing as the alternate.

b6

b6

cc: file
chron
Ruth
Davis
Kreindler
McBride

Memorandum

TO : Henry S. Ruth

DATE: June 3, 1975

FROM : Frank M. Tuerkheimer *FTM*SUBJECT: Interview of Richard M. Nixon on Milk

There are basically two areas Nixon should be questioned on in the connection with dairy contributions and the decision-making process: (1) knowledge of the \$2 million commitment; and (2) his involvement in attempting to insure execution of that commitment around the time of the price support decision. In this connection, the White House release on milk and a knowledge of its weaknesses is essential to a thorough examination.

A. Knowledge of Commitment

Proof that Nixon knew of the commitment is strong. The attached memo was sent to him by Colson on September 9, 1970 prior to a meeting Nixon had with Nelson and Parr. Before seeing the memo, Colson thought he did not discuss the \$2 million commitment with Nixon; after seeing it he said he must have. This is strong evidence that Nixon was aware of the commitment and should be seen in the context of his own statements, which I cannot presently locate, to the effect that he made it a matter of policy to avoid discussing contributions.

Nixon ought also to be asked about his knowledge of the Hillings' letter. The White House paper denies only that he ever saw it, not that he was unaware of its contents. This in turn may lead to questions about the entirety of Haldeman's relation to dairy moneys, a complex and lengthy story.

B. Nixon Role in Securing Reaffirmation of the Commitment

Our general theory as to what happened in March of 1971 is concisely as follows:

The Administration was forced to increase the price support level because of political pressure from Congress and decided to use inevitable fact of the increase as a

means of solidifying the \$2 million commitment by making it appear to Nelson that the two events were related when in fact they were not. As we also have said, the picture is incomplete; Nixon's recollection may fill in part of the incompleteness, or he may prove it inaccurate.

In any event there are three fact areas involving Nixon which form the basis of potential questioning:

1. His acknowledgment on the March 23 tape that "Colson was dealing . . ." followed by a switch of gears to the statement that in any event there was a good game plan, found at page 37 of the attached transcript. The most likely and probably accurate guess derived from the transcript is that Nixon knew that Colson was instrumental in arranging the Kalmbach/Nelson/Chotiner meeting at which the commitment was to be reaffirmed but that he realized that he had better not spell it out;

2. The last two minutes of the March 23 meeting, as reflected by our transcript of the Nixon/Connally conversation, reveals that Connally spoke about a "substantial allocation of oil in Texas" at Nixon's discretion. Our view is that perhaps because of the presence of a waiter, Connally did not use the word "cash." The milk producers, of course, were headquartered in San Antonio, Texas. In addition, Nixon told Connally that the whole thing was cold political deal;

3. Haldeman's notes show that on March 26, 1971, Nixon told Haldeman to tell Connally who to give the milk money to. Haldeman's check-marks indicate that this was done.

cc: Files ✓
Chron
Ruth
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Memorandum

TO : Rich Davis

DATE: June 6, 1975

FROM : Judy Denny *Jd*SUBJECT: Proposed Outline for Use in Questioning
Richard Nixon About the 18 1/2 Minute GapI. BackgroundA. The Announcement

Fred Buzhardt, Counsel to the President, announced on November 21, 1973, first in Sirica's chambers and then in open court, that an 18 1/2 minute buzz was discovered the week before on the subpoenaed June 20, 1972 tape of a Nixon-Haldeman conversation.

B. The Materiality of the Conversation

The June 20, 1972 morning meetings that Nixon had with Haldeman and Ehrlichman were the first meetings that occurred between these men after the DNC break-in on June 17. The conversations were pinpointed by Haldeman and Ehrlichman's logs and later more precisely by the Presidential Daily Diaries. [Tabs 1 and 2]

Haldeman's notes of this meeting on June 20, 1972 [Tab 3] show that the conversation dealt with several subjects, including the break-in and the proposed public relations "counterattack" by the White House. The 18 1/2 minute buzz obliterates only the Watergate related portion of the conversation.

C. The Experts' Report

The Court appointed a panel of experts in acoustics and sound engineering to study the obliterated subpoenaed tape and determine the method of erasure, on what kind of machine it was erased and the possibility of recovering the

cc: Files ✓
Chron
Denny

obliterated conversation. Their report of January 15, 1974 [Tab 4] shows that the erasure required at least five hand operations of the tape recorder. The machine was a Uher 5000 and was probably the one Woods used. Recovering the conversation was not possible.

D. Access to the Tape

1. Secret Service Custody

The June 20, 1972 tape with the 18 1/2 minute gap, (tape box labeled EOB 6/12/72-6/20/72) was not removed from the vault in which the tapes were kept during the time of Secret Service custody according to access records kept by the Secret Service.

The Presidential taping system was such a closely held secret that the Secret Service never set up a procedure for "checking out" tapes. When Bull first asked Sims and Zumwalt for a group of tapes on April 25, 1973, Zumwalt merely made hasty notes on a sheet of paper as to which tapes were being taken out.

While custody remained with the Secret Service, there were only four more requests for tapes: June 4, June 25 and July 10 and 11. On each of these occasions, Zumwalt made notes on whatever was handy and left the note in the safe with the tapes. Although some of the notes were on small pieces of paper bags, there is no evidence that any tape checked out was not recorded in some manner. There is also no evidence (in fact there is evidence to the contrary) that there was any other way to get access to tapes other than through Sims or Zumwalt.

2. General Bennett's Custody

On July 18, 1973, the taping system was removed and the custody of the tapes was transferred to General John Bennett, an aide to General Haig. Bennett made extensive handwritten notes about any movement at all of the tapes. The few mistakes that can be found in his records are due to transcribing data from the backs of the tape boxes either inconsistently or inaccurately. There is no evidence that any of these minor mistakes affected the June 20 tape.

Bennett's notes and receipts show the following movement of EOB 6/12/72-6/20/72:

- July 18, 1973 - Custody of all tapes transferred from Secret Service to Bennett (tapes remain in vault). [Tab 5]
- September 28, 1973 - Bennett removes tape (with others) in Bull's presence and leaves in his (Bennett's) office safe. [Tab 6]
- September 29, 1973 - Bull removes tape (with others) and takes to Camp David. Bull cues the tape to the correct conversation and gives it to Rose Woods. [Bull, Woods, G.J.]
- September 30, 1973 - Bull helps Rose bring several tapes back to D.C. EOB 6/12/72-6/20/72 is one of those tapes that Woods retains custody of and puts in her safe in her office in the White House. [Tab 7 and Bull and Woods G.J.]
- November 13, 1973 - Woods returns tape (with others) to Bennett. [Tab 8] Bennett takes tape (with others) to NSA for duping process. Bennett returns the tapes to his office safe that night. [Tabs 9, 10]
- November 14, 1973 - Bennett takes tape (with others) back to NSA. After all copies are made, it and the others are sealed for delivery to the Court. [Tabs 9, 10] Copy #1 of the tape is given to Buzhardt and Powers. The 18 1/2 minute gap is discovered that afternoon. [Tab 11]

II. Conversations Nixon Had About the Subpoena [Tabs 12, 13]

A. Item 1a - the June 20, 1972 Tape Which Includes the Haldeman-Nixon Conversation with the 18 1/2 Minute Buzz

During his November 28, 1973 testimony at the tape hearings, Buzhardt volunteers that he had a conversation about item 1a of the subpoena earlier than September 28 or 29, 1973 when he told Haig that the Haldeman conversation was not included in the subpoena. (Hearings 1463, 1469) [Tab 14]

Buzhardt says that this discussion was with Nixon and that it was "not too long after the subpoena was issued," (Hearings 1471) perhaps July and probably before the end of August. (Hearings 1472) Nixon asked Buzhardt at that time what his opinion was as to why certain items of the subpoena were included. (Hearings 1473) [Tab 14]

B. Item 1b - the June 20, 1972 Telephone Conversation Between Nixon and Mitchell

From the following testimony by Bull, it is apparent that either Nixon was displaying a remarkable memory or that he had carefully studied and researched the subpoena. Bull says that on September 29, when he and Rose Woods were at Camp David, Nixon came into their cabin where they were working on the tapes. Bull tells Nixon that he has three problems with locating subpoenaed conversations. One of those problems is the June 20, 1972 telephone conversation between Nixon and Mitchell (item 1b). Nixon immediately replies that that phone call took place on an untapped phone. (Bull G.J. February 1, 1974, 79-80) [Tab 15]

III. Camp David - September 29-30, 1973

Bull testifies that he called Al Haig when he realized that there was no Haldeman, Ehrlichman, Nixon meeting on the morning of June 20, 1972, as called for in the subpoena. This was the first taped conversation that Bull looked for so the call was placed soon after Bull and Woods arrived at Camp David (probably 9:00-9:30 a.m.).

Haig calls back and gives Woods the message that only the Ehrlichman portion is called for by the subpoena. After the Tape Hearings begin, Woods finds the time of the call (10:10 a.m.) and puts it on her typed message. [Tab 16]

Nixon has met with Haig from 9:35-9:50 a.m. [Tab 17]

Bull and Woods both testify in the Tape Hearings and in the Grand Jury that Nixon visited Dogwood Cabin in the afternoon of September 29, 1973 when they were working on the tapes. They say that Nixon put on earphones and listened to several portions of the tape. The Presidential Daily Diary confirms that Nixon did visit Dogwood Cabin from 1:58-2:05 p.m. [Tab 17]

Later in the day, Nixon spoke with Haig (2:09-2:21 p.m.), Ziegler (4:46-4:49 p.m.), Woods (meeting from 6:19-6:50 p.m.), Haig (6:42-6:53 p.m.), Buzhardt (6:54-7:02 p.m.), and Woods (meeting from 7:30-7:35 p.m.) [Tab 17]

IV. October 1, 1973

Bull and Woods both testify that Woods requested and received a tape recorder which had smaller earphones and a footpedal on the morning of October 1, 1973. A Secret Service purchase order confirms that a Uher 5000 was purchased and delivered to Woods.

Woods testifies that she finished transcribing the "gist" of the Ehrlichman conversation on the new Uher 5000 machine and began the Haldeman conversation (in order to establish that the Ehrlichman conversation which she had been requested to do was in fact finished). She was interrupted from working on the tape by a phone call which she estimates lasted no more than five minutes. When she returned to her work on the tape, she discovered a loud buzz. She only listened a minute or two and then she went to see Nixon at her first opportunity. She explained to Nixon that she may have accidentally erased a portion of the tape by keeping her foot on the footpedal while she was talking on the phone. She was assured by Nixon that there was no harm done since this was a part of the tape that was not included in the subpoena.

The Daily Diaries show that Nixon met with Rose Woods alone from 2:10-2:15 p.m. that day. [Tab 18]

V. Key Biscayne - October 4-7, 1973

Bull and Woods took all of the tapes in Woods' possession (including EOB 6/12/72-6/20/72) to Key Biscayne even though she may have finished transcribing some of them. Woods is vague about how many of the tapes she had finished by this time and how many she finished while she was there.

Bull ordered a safe for the tapes while they were in Key Biscayne, that was installed by the White House Communications Agency. Secret Service agents were assigned to guard the safe and to limit access to Bull and Woods only. Some unusual early morning activity is shown one day in the access log that was kept by the agents. [Tab 19]

Woods says that she did not discuss the tapes with Nixon on that trip, except perhaps to lament about how hard the job was. Nixon did not visit the place where Woods was staying and working on the tapes. Woods did have Bull deliver a package to Nixon late the first night that they were in Key Biscayne (the same night as the unusual activity with the safe). Woods explains that it was merely some routine correspondence and other normal business matters.

IV. October 7-November 13, 1973

Woods estimates that she probably finished transcribing all of the tapes around October 21-23. There is no other testimony about this period other than Woods saying that she kept the tapes locked in her safe at all times.

The Court of Appeals upheld the District Court's decision to force Nixon to comply with the subpoena on October 12, 1973.

Cox was fired on October 20, 1973.

The Tape Hearings to determine the facts around two of the subpoenaed tapes not being recorded were begun on October 31, 1973. The hearings were adjourned November 12 to wait for Butterfield's testimony.

Woods testified on November 8, 1973 and did not disclose her "accident" of October 1. She made statements like "I used my head. It's the only one I've got," when asked about her procedure to make sure that the tapes were handled carefully. She also implies that the June 20, 1972 tape includes both the Ehrlichman-Nixon conversation and the Haldeman-Nixon conversation.

Davis

Memorandum

TO : Richard J. Davis

DATE: June 9, 1975

FROM : Henry L. Hecht

SUBJECT: Identification of Documents

The following documents require further identification as to the time, place and participants of the meetings. One document as indicated below is virtually illegible.

I would appreciate receiving the information as soon as possible so that I may use it in questioning of relevant witnesses.

The documents:

- E-380 4/25/75 in packet 4/29/75 appears to be 1/20/72 9:30A TT/E
- E-382 4/25/75 in packet 4/29/75 appears to be 1/5/72 2:30P A/Foms
- E-383 4/25/75 in packet 4/29/75 appears to be 1/4/72 12:15P TT-E
- F-142 4/28/75 (unable to read) in packet 4/29/75 12/1/72 1:30P Aspen
TT-Rizzo, Loh and Ehr.
TT, Schultz, Webster, Ehr.

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Hecht
Horowitz

[Handwritten signature]

[Handwritten initials]

- A-34 4/25/75 in packet 4/29/75 appears to be 8/11/75 9:40 A.M. TT/H/E
- A-36 4/25/75 in packet 4/29/75 appears to be 8/30/72 A/Foms
TT, Ehr, Ziegler
no mention O'Brien, but ref to McGow mail

MISSING ident.

- 4/25/75 in packet 4/29/75 appears to be 8/26/75 San Cl.
11:20 A.M. TT, E

Memorandum

TO The Files

DATE: June 18, 1975

FROM Henry L. Hecht **HLH**SUBJECT Provision of Documents To Jack Miller

I have provided this day to Richard Davis a copy of the first three pages of the House Judiciary transcript of a meeting among President Nixon, Haldeman and Dean on September 15, 1972. These pages (pages 288-290, Book 8, Statement of Facts) represent the initial portion of that conversation prior to Dean's entry.

I have asked Mr. Davis to forward these pages to Mr. Miller in preparation for the questioning of his client concerning the IRS' treatment of Larry O'Brien. Davis was also provided with a copy of C-2, 2/25/75.

cc: Files
Chron
Hecht
Horowitz

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUN 27 1975
JAMES F. DAVEY, Clerk

IN RE JANUARY 7, 1974
GRAND JURY

Misc. No. 75-184

STIPULATION

WHEREAS on June 23 and 24, 1975, Richard M. Nixon voluntarily submitted to an examination under oath at the San Mateo Loran Station, United States Coast Guard, San Diego County, California, said examination conducted by the Watergate Special Prosecution Force on matters subject to pending Grand Jury investigations, said examination ancillary to and with the consent (based on the health of Richard M. Nixon and other legal considerations) of the January 7, 1974 Grand Jury of the United States District Court for the District of Columbia, and said examination attended by two Grand Jurors with the approval of the Chief Judge of this Court; and

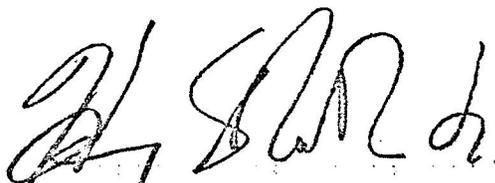
WHEREAS said examination was taken for presentation to and to be made a part of the minutes of the aforesaid Grand Jury; and

WHEREAS Richard M. Nixon, because inquiries have been made concerning this matter, desires that the fact of this proceeding be made public, but only with the consent of the Court; and

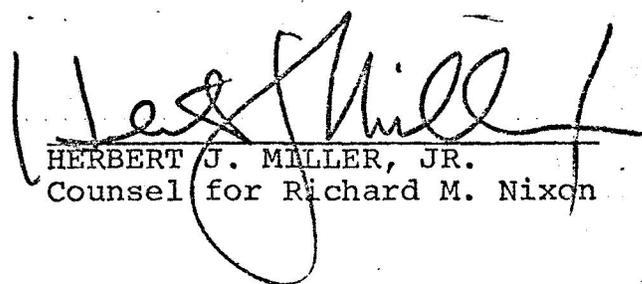
WHEREAS the Special Prosecutor has no objection thereto;

NOW, THEREFORE, counsel for Richard M. Nixon and the Special Prosecutor on this 26th day of June, 1975, hereby stipulate that this statement shall be filed with the Court.

JUL 2 4 29 PM '75

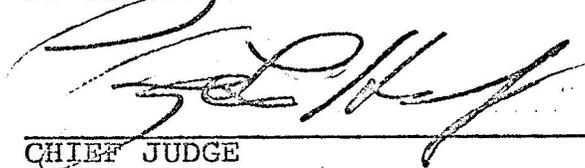


HENRY S. RUTH, JR.
Special Prosecutor



HERBERT J. MILLER, JR.
Counsel for Richard M. Nixon

So ordered:


CHIEF JUDGE

Dated:

6/26/75
8:45 p.m.

Memorandum

TO : ALL STAFF

DATE: June 27, 1975

FROM : Henry S. Ruth, Jr.

SUBJECT:

As some of you know, on Monday and Tuesday of this week, under extreme precautions of confidentiality both preceding and during the two days, members of this Office took sworn testimony from Mr. Nixon about matters pending before Grand Jury III. The attached stipulation was released this morning by Chief Judge Hart at the Courthouse and reflects the only matters about the sworn testimony that are permitted to become public knowledge.

Consequently, no member of this staff shall speak to members of the press, friends, and other persons concerning any aspect relating to the actual occurrence or content of the testimony. As to those who were present during the testimony, no comments shall be made outside the Office concerning any aspect of what he or she saw or heard. In other words, we are treating this, as is our obligation, as we would any other matter involving grand jury testimony. Members of the press may try to reach you at home or in the office at any time of day or night for any scrap of detail. None should be furnished. All calls should be referred to John Barker.

There will be no exceptions to the above ground rules and no violation thereof will be countenanced.

HSR:bas

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Extra

July 3, 1975

Honorable Edward J. Schwartz
Chief Judge
247 United States Courthouse
325 West F Street
San Diego, California 92101

Dear Judge Schwartz:

I want to express my great appreciation to you for your time and effort in travelling to San Mateo to render the oath for the examination of Richard M. Nixon. Your gracious assistance to this Office was a particular help as we endeavored to make the proper arrangements for a judicious, confidential, dignified forum so necessary to any grand jury hearing.

I certainly enjoyed, as well, talking and meeting with you. And again, my thanks to you for your help.

Sincerely,

HENRY S. RUTH, JR.
Special Prosecutor

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Ruth (2)

~~FINAL~~

WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

Memorandum

TO : Files

DATE: July 7, 1975

FROM : Henry Ruth

SUBJECT: Interview of Richard M. Nixon

Following the conclusion of his 2 days of sworn testimony, Richard Nixon was interviewed by Rich Davis and myself on June 24, 1975, at the Coast Guard Station, San Mateo, California, from approximately 1 p.m. to 3 p.m. in the presence of his attorneys, Herbert J. Miller, Jr., and R. San Montenson. Mr. Davis has written a memo on the interview insofar as it pertained to dairy industry matters. This memo covers three areas of questioning in which the questions were asked primarily by Mr. Davis.

1. Richard Moore's Testimony as to the La Costa Meeting:

Mr. Davis read to Mr. Nixon from the April 19, 1973, transcript of the Moore-Nixon conversation about La Costa, particularly the section at the top of page 50. Mr. Nixon stated that he had no independent recollection of ever discussing Moore's testimony either at the Senate Select Committee or at the grand jury; and the transcript did not refresh his recollection. Nixon stated that he made it a practice not to discuss such testimony with White House witnesses. He did recall, however, that Leon Jaworski at some point had informed a White House lawyer that Richard Moore was not a target of our investigation.

2. Alleged Assaults on Demonstrators:

Mr. Nixon was reminded of the "goons" discussion on the May 5, 1971, tape transcript involving Haldeman and Nixon. The witness stated that, sure, there was plenty of discussion as to how to deal with demonstrators. He said that with 300,000 demonstrators on your doorstep, with an inability to sleep because of all the noise and with vandalism rampant, such as piercing of automobile tires, the witness and others talked many times of various things that could be done about the demonstrators. They probably did talk about some of the drastic things mentioned on the tapes, but they never did anything, to his knowledge, that involved violence. There was no follow through with Fitzsimmons of the Teamsters, there was no roughing up of people, there was nothing involving violence and recruitment of the hardhats. They would urge people to get the hardhats

out to do their own demonstrations about what they felt was the right course of action and Colson may well have talked to Gleason or Brennan (probably Brennan) about that, but not about causing any violence. Chapin's man, as mentioned on pages 10-11 of the transcript, is not something known directly by Mr. Nixon, but he thought that it was Segretti. The witness then referred to the violence he encountered in his 1972 campaign.

As for the April 25, 1973, tape and the reference to the Cubans, Mr. Nixon stated that he knew nothing that might have been coming up during the Hoover services in May 1972 or the anti-war demonstration conducted at the Capitol at the same time. When asked about the Miamians being paid to come up from Florida for that occasion, the witness said he knew nothing about that and he asked: if we had goonsquads and roughnecks and hoodlums doing our work in the Washington, D.C., area, why would we go to the trouble of paying people to come up from Miami? When asked specifically whether or not anyone, including Colson, had ever promised to, or did get, him a Vietcong flag, Mr. Nixon stated that if anyone had ever done so, he would have been turned down outright or the flag would have been burned by Nixon himself. No one had so offered or delivered to him. He does not remember the name "Bill Rhatigan," or such a person, and as to Dick Howard, he does not remember who Howard was. When told that Howard worked for Colson, that stirred some recollection that there was a Dick Howard in the White House, but Nixon does not recall any discussions about Dick Howard controlling or having anything to do with money for demonstrators, counter-demonstrators or the May 3, 1972, incident.

3. The "Bluebook" and Its Transmission to House Judiciary:

In general, the witness stated that he did not want any partial submissions submitted piece-by-piece to the House because of selective leaks that would result, such as the "gol-darn-wop" story in the New York Times. So, he decided that the Watergate tapes should be transcribed all at once, put together in one book and released to the public as well as to the House Committee. He does not know who authored the phrase "material unrelated to Presidential action." The Bluebook was all done in a great hurry and there probably were many mistakes caused by the rush. In fact, one whole tape was omitted by mistake. If there were considered omissions, Buzhardt or St. Clair would have come to RN for decision. Diane Sawyer and Frank Gannon did not work on any substance; rather they worked on such matters as paragraphing and expletives deleted.

As to the March 17 tape transcript, wherein the first 20 pages were omitted, the witness had no recollection as to the omission. He wonders if it was a clerical error and does not recall Buzhardt coming to him for advice or orders concerning this, or any other, omission of major proportions. At any rate, said Mr. Nixon, there was no attempt to mislead the House that he recalls in this particular omission or any other omission.

As to the omissions of the discussions on the April 16 and April 17 tape transcripts about what happened on March 21, the witness does not recall that the subject of these omissions was raised with him. If it was raised with him, he very well might have decided to omit these portions as being redundant material in that the March 21 tape spoke for itself.

As to the omissions in the April 17 tape transcript of legal fees and Rebozo discussions, again Mr. Nixon has no independent recollection of dealing with that omission. Again however, he stated that if asked, he would have said that that discussion should have been omitted because the matters discussed were never afterwards actually done and therefore they were not related to any action that occurred. (At this point, Nixon stated that as to any omissions he would have dealt with Buzhardt and not with St. Clair.)

As to the omission in the April 14 tape transcript of the pardon discussion between Nixon and Ehrlichman, the witness has no recollection about this transcript.

Again, in general, Nixon does not know if one or more lawyers in the White House listened to tapes other than those in the Bluebook and he did not tell St. Clair what was in the tapes he (the witness) listened to.

As to the offer to the House that Rodino and Hutchinson could listen to the entire tapes of each conversation covered in the Bluebook, Mr. Nixon said that the offer was made in good faith. They did not know ahead of time whether or not the offer would be accepted and among those in the White House, some were guessing the offer would be accepted and others were guessing in the negative. Nixon told his staff that in doing the Bluebook, the staff should assume that Rodino and Hutchinson either will or might come to listen.

Nixon said that this offer precludes any thought of criminality in the preparation of the Bluebook. As far as he knew, no omissions were deliberate other than within proper ground rules. He recalls no specific instructions that he gave to the lawyers other than the general order that material that was irrelevant, that was embarrassing to outside third parties with no additional understanding of the Watergate issues, and that was redundant need not be included.

Memorandum

TO : Files

DATE: July 16, 1975

FROM : Richard J. Davis

SUBJECT: Interview of Richard M. Nixon

Following the conclusion of his sworn testimony on June 24, 1975 Richard M. Nixon was interviewed by Henry S. Ruth, Jr. and Richard J. Davis in connection with four areas of inquiry being conducted by this office: 1) his knowledge of the \$2 million dairy fund pledge and the relationship between that pledge and his milk price support decision in March, 1971; 2) the submission of the "bluebook" to the House Judiciary Committee; 3) Richard Moore's testimony concerning the La Costa meeting and; 4) references in various transcripts to the use of "goons" and his knowledge of organized assaults on demonstrators. Mr. Ruth was the questioner in the first area and Mr. Davis the principal one in the remaining areas.

Present also at the interview were Herbert J. Miller, Jr. and R. Stan Mortenson, counsel for Mr. Nixon. At the outset Mr. Miller stated that he had not fully reviewed these areas with Mr. Nixon and that if any problem resulted from this in terms of his client's ability to provide information he would undertake to check the facts out further. No such problem was identified to us during the interview.

Mr. Ruth began this section of the interview by reviewing generally the evidence relating to what had taken place in connection with the milk price support decision in March, 1971. During this narration Mr. Nixon noted that he had raised the support to 85%, but Congressional mail favored it being raised to 90%.

Mr. Nixon was shown the September 9, 1970 briefing memorandum and said he had no recollection of it although he might have scanned it. He stated that it was common talk in the White House, involving Colson, Hillings and Chotiner for example, that the milk producers were big contributors and they hoped to get a big "slug" for the campaign. He, Nixon, never talked to the milk producers about money.

Nixon does not know why Colson was involved in obtaining contributions from this group. He also has no recollection of a later discussion with Colson about the commitment, although he does remember being pressured to attend their convention. He did not do so. Nixon was then shown the Hillings letter and said he had no recollection of seeing it or talking to Colson about it. Nor did he talk to Hillings about this subject. He also has no recollection of a knowing about a Colson statement intended for the milk people that giving to both sides is not being on our side. Wilbur Mills, however, has told him that he got milk money and distributed it to others.

Nixon was referred to page 37 of the March 23rd transcript. After noting that it was disjointed and hard to follow he stated that all he knows is that he did "it" in an upright way since Mills and Albert were told about the decision before it became public. The Colson assignment referred to, he thinks, would be to tell the milk people. At this point Mr. Nixon noted that they didn't keep the commitment and didn't give \$2 million. Ruth mentioned that they did give over \$800,000.

Nixon said that he heard nothing about the matter after making the decision on March 23rd and that he had no knowledge of the attempts to have the milk people reaffirm their commitment.

Nixon was shown the transcript of the last two minutes of the March 23rd tape and advised of the dispute as to its accuracy. He stated that his recollection of the conversation was that Connally said the milk people should make a contribution and asked who should handle it, that he (Nixon) said that he should as he wanted Connally to deal with the milk people. He had in mind Democrats for Nixon as a recipient of the money or some of it. He later told Haldeman to tell Connally which contests the money should be used for apart from possibly this group. He believes Connally learned about the milk people's practice of giving money from Leon Jaworski. He has no indication Connally was aware of the commitment.

While he knew the milk producers would contribute, he didn't know how much and doesn't recall who told him this fact. This knowledge had no effect on his decision although he agrees that the 3/26/71, Haldeman note indicates that the subject of money must have come up in this period.

STATEMENT ISSUED BY MR. MILLER'S OFFICE

As appears from the stipulation filed in the United States District Court for the District of Columbia by the Special Prosecutor and the attorney for former President Nixon yesterday, Mr. Nixon on Monday and Tuesday of this week was examined under oath at the Coast Guard station ⁱⁿ and what used to be the Western White House in San Clemente, California. Some members of one of the Watergate grand juries were present. The examination was conducted by several members of the office of the Special Prosecutor and consisted of a total of approximately eleven hours of questioning over the two day period. The examination covered a wide range of subjects.

Mr. Nixon was not under subpoena. His sworn testimony in California for the District of Columbia grand jury was voluntary and responsive to the expressed desires of the office of the Special Prosecutor for his testimony relative to the grand jury's ongoing investigations. It was the former President's desire to cooperate with the office of the Special Prosecutor in the areas which that office desired to interrogate him, and it was Mr. Nixon's feeling in view of the anticipated length of his testimony,

the present state of his health, and the complications inevitably attendant to extended travel, the examination would be most efficiently conducted in California.

Mr. Nixon's decision to testify followed consultation with his medical advisors. The examination itself was conducted on Monday and Tuesday, June 23 and 24, 1975.

SEE RICHARD J. DAVIS FILE UNDER TAB (9)

for notes on meetings with President Nixon's attorneys Herbert J. Miller, Jr.
and Stan Mortenson dated: May 13, 1975, May 20/May 21, 1975;
May 26, 1975; and

Outline of deposition-taking procedure June 23 and June 24, 1976.

FOR RICH DAVIS handwritten notes re June 24, 1976 questioning
of Nixon, see Henry Ruth file under tab (9) re preparation
for grand jury appearance of Richard Nixon.