LAW OFFICES
MILLER, CASSIDY, LARROCA & LEWIN
1320 19TH STREET, N.W. - SUITE 500
WASHINGTON, D. C. 20036

AREA CODE 202
TELEPHONE 293-6400

HERBERT J. MILLER, JR.
JOHN JOSEPH CASSIDY
RAYMOND G. LARROCA
NATHAN LEWIN
MARTIN D. MINSKER
WILLIAM H. JEFFRESS, JR.
THOMAS D. ROWE, JR.
A. RAYMOND RANDOLPH, JR.
R. STAN MORTENSON

JOSEPH S. McCARTHY
COURTNEY A. EVANS
OF COUNSEL

September 4, 1974

Leon Jaworski, Esquire
Watergate Special Prosecution Force
United States Department of Justice
1425 K Street, N.W.
Washington, D. C. 20005

Dear Mr. Jaworski:

Enclosed is a memorandum which specifies certain facts and legal authority upon which the undersigned relies to demonstrate conclusively that former President Nixon could not obtain a fair trial. I truly hope that your office will give consideration to the issues raised in the enclosed memorandum prior to making a determination as to what course of conduct to follow. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

Herbert J. Miller, Jr.

Enclosure
HJM/psb

9/5/74: Copy furnished Ruth, Neal, Lacovara & Kreindler stating L.J. requests this be kept confidential.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 1

Memorandum to the

Special Prosecutor

on behalf of

Richard M. Nixon

This memorandum is submitted on behalf of Richard M. Nixon to bring to the attention of the Special Prosecutor facts and supporting legal authority which, we submit, warrant a decision not to seek indictment of the former President. We wish to emphasize that this memorandum focuses specifically on issues of law rather than policy. In so limiting this presentation we do not wish to imply that all other considerations are irrelevant or inappropriate. Indeed, we believe it is highly desirable and proper for the Special Prosecutor to weigh in his judgment the possible impact of such an indictment on the domestic spirit and on

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 2

international relations, as well as the more traditional policy considerations entrusted to prosecutorial discretion. */ However, the purpose of this memorandum is solely to demonstrate that one -- and probably the most crucial -- legal prerequisite to indicting and prosecuting Mr. Nixon does not exist: the ability of this government to assure him a fair trial in accordance with the demands of the Due Process Clause of the Fifth Amendment and the right to trial by an impartial jury guaranteed by the Sixth Amendment.

---

*/ Such intangible but none-the-less critical factors as domestic and international relations certainly fall within the ambit of the prosecutor's discretion as expressed in the Standards Relating to The Prosecution Function and The Defense Function, ABA Project on Standards for Criminal Justice, March 1971, where it is stated that

> ". . . The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction. ABA Standards § 3.9(b).

A decision to forego prosecution because of overriding concerns of the national interest is in keeping with similar prosecutorial decisions to forego prosecution rather than disclose confidential national security or law-enforcement information required as evidence. United States v. Andolchek, 142 F.2d 503 (2d Cir. 1944); United States v. Beekman, 155 F.2d 580 (2d Cir. 1946); Christoffel v. United States, 200 F.2d 734 (D.C. Cir. 1952).

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 3

I. The Events and Publicity Surrounding Watergate have Destroyed the Possibility of a Trial Consistent with Due Process Requirements.

Recent events have completely and irrevocably eliminated, with respect to Richard M. Nixon, the necessary premise of our system of criminal justice -- that, in the words of Justice Holmes, ". . . the conclusions to be reached in a case will be induced only by evidence and argument in open court, not by any outside influence, whether of private talk or public print." Patterson v. Colorado, 205 U.S. 454, 462 (1907). As reiterated by the Court in Turner v. Louisiana, 379 U.S. 466, 472 (1965):

> "The requirement that a jury's verdict 'must be based upon the evidence developed at trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury."

Never before in the history of this country have a person's activities relating to possible criminal violations been subjected to such massive public scrutiny, analysis and debate. The events of the past two years and the media coverage they received need not be detailed here, for we are sure the Special Prosecutor is fully aware of the nature of the media exposure generated. The simple fact is that the

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 4

national debate and two-year fixation of the media on Watergate has left indelible impressions on the citizenry, so pervasive that the government can no longer assure Mr. Nixon that any indictment sworn against him will produce "a charge fairly made and fairly tried in a public tribunal free of prejudice, passion [and] excitement . . ." Chambers v. Florida, 309 U.S. 227, 236-37, (1940).

Of all the events prejudicial to Mr. Nixon's right to a fair trial, the most damaging have been the impeachment proceedings of the House Judiciary Committee. In those proceedings neither the definition of the "offense," the standard of proof, the rules of evidence, nor the nature of the fact-finding body, were compatible with our system of criminal justice. Yet the entire country witnessed the proceedings, with their all-pervasive, multi-media coverage and commentary. And all who watched were repeatedly made aware that a committee of their elected Representatives, all lawyers, had determined upon solemn reflection to render an overwhelming verdict against the President, a verdict on charges time and again emphasized as constituting "high crimes and misdemeanors" for which criminal indictments could be justified.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 5

All of this standing alone would have caused even those most critical of Mr. Nixon to doubt his chances of subsequently receiving a trial free from preconceived judgments of guilt. But the devastating culmination of the proceedings eliminated whatever room for doubt might still have remained as the entire country viewed those among their own Representatives who had been the most avid and vociferous defenders of the President (and who had insisted on the most exacting standards of proof) publicly abandon his defense and join those who would impeach him for "high crimes and misdemeanors."

None of this is to say, or even to imply, that the impeachment inquiry was improper, in either its inception or its conduct. The point here is that the impeachment process having taken place in the manner in which it did, the conditions necessary for a fair determination of the criminal responsibility of its subject under our principles of law no longer exist, and cannot be restored.

Even though the unique televised congressional proceedings looking to the possible impeachment of a President leave us without close precedents to guide our judgments con-

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 6

cerning their impact on subsequent criminal prosecutions, one court has grappled with the issue on a much more limited scale and concluded that any subsequent trial must at minimum await the tempering of prejudice created by the media coverage of such events.

In Delaney v. United States, 199 F.2d 107 (1st Cir. 1952), a District Collector of Internal Revenue was indicted for receiving bribes. Prior to the trial a subcommittee of the House of Representatives conducted public hearings into his conduct and related matters. The hearings generated massive publicity, particularly in the Boston area, including motion picture films and sound recordings, all of which "afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial." 199 F.2d at 110. Moreover, the publicized testimony "ranged far beyond matters relevant to the pending indictments." 199 F.2d at 110. Delaney was tried ten weeks after the close of these hearings and was convicted by a jury. The Court of Appeals reversed, holding that Delaney had been denied his Sixth Amendment right to an impartial jury by being forced to "stand trial while the damaging effect of all that hostile publicity may reasonably be thought not to have been erased from the public mind." Id. 114.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 7

The Court of Appeals did not suggest that the hearings were themselves improper. Indeed, the court emphatically stated that ". . . [i]t was for the Committee to decide whether considerations of public interest demanded at that time a full-dress public investigation . . ." Id. 114 (emphasis added). But the court continued,

> "If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the United States must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed."

The principle expounded by the court in Delaney is applicable here. Faced with allegations that the Watergate events involved actions by the President, the House of Representatives determined that not only was an impeachment inquiry required, but that the inquiry must be open to the public so that the charges and evidence in support thereof could be viewed and analyzed by the American people. We need not fault Congress in that decision. Perhaps -- in the interest of the country -- there was no other choice. But having pursued a

course purposely designed to permit the widest dissemination of and exposure to the issues and evidence involved, the government must now abide by that decision which produced the very environment which forecloses a fair trial for the subject of their inquiry.

The foregoing view is not at all incompatible with the Constitution, which permits the trial of a President following impeachment -- and therefore, some might argue, condones his trial after his leaving office. Nothing in the Constitution withholds from a former President the same individual rights afforded others. Therefore, if developments in means of communication have reached a level at which their use by Congress in the course of impeachment proceedings forever taints the public's mind, then the choice must be to forego their use or forego indictment following impeachment. Here, the choice has been made.

Further demonstration of the wholly unique nature of this matter appears in the public discussion of a pardon for the former President -- which discussion adds to the atmosphere in which a trial consistent with due process is impossible.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 9

Since the resignation of Mr. Nixon, the news media has been filled with commentary and debate on the issue of whether the former President should be pardoned if charged with offenses relating to Watergate. As with nearly every other controversial topic arising from the Watergate events, the media has sought out the opinions of both public officials and private citizens, even conducting public opinion polls on the question. A recurring theme expressed by many has been that Mr. Nixon has suffered enough and should not be subjected to further punishment, certainly not imprisonment.

Without regard to the merits of that view, the fact that there exists a public sentiment in favor of pardoning the former President in itself prejudices the possibility of Mr. Nixon's receiving a fair trial. Despite the most fervent disclaimers, any juror who is aware of the general public's disposition will undoubtedly be influenced in his judgment, thinking that it is highly probable that a vote of guilty will not result in Mr. Nixon's imprisonment. Indeed, the impact of the public debate on this issue will undoubtedly fall not only on the jury but also on the grand jury and the Special Prosecutor, lifting some of the constraints which might otherwise have militated in favor of a decision not to prosecute. Human nature could not be otherwise.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 10

We raise this point not to suggest that the decision of whether to prosecute in this case cannot be reached fairly, but rather to emphasize that this matter -- like none other before it and probably after it -- has been so thoroughly subjected to extraneous and highly unusual forces that any prosecution of Mr. Nixon could not fairly withstand detached evaluation as complying with due process.

II. The Nationwide Public Exposure to Watergate Precludes the Impaneling of an Impartial Jury

The Sixth Amendment guarantees a defendant trial by jury, a guarantee that has consistently been held to mean that each juror impaneled -- in the often quoted language of Lord Coke -- will be "indifferent as he stands unsworn." Co. Litt. 155b. See Irvin v. Dowd, 366 U.S. 717 (1961); Turner v. Louisiana, 379 U.S. 472 (1965). The very nature of the Watergate events and the massive public discussion of Mr. Nixon's relationship to them have made it impossible to find any array of jurymen who can meet the Sixth Amendment standard.

On numerous occasions the Supreme Court has held that the nature of the publicity surrounding a case was such that jurors exposed to it could not possibly have rendered a

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 11

verdict based on the evidence. See Sheppard v. Maxwell, 384 U.S. 333 (1966); Rideau v. Louisiana, 373 U.S. 723 (1963); Irvin v. Dowd, supra; Marshall v. United States, 360 U.S. 310 (1959). The most memorable of these was Sheppard v. Maxwell, in which the Court, describing the publicity in the Cleveland metropolitan area, referred time and again to media techniques employed there -- which in the Watergate case have been utilized on a nationwide scale and for a much longer period of time. The following excerpts from the Court's opinion are exemplary:

> "Throughout this period the newspapers emphasized evidence that tended to incriminate Sheppard and pointed out discrepancies in his statements to authorities." p. 340.
>
> * * *
>
> "On the sidewalk and steps in front of the courthouse, television and newsreel cameras were occasionally used to take motion pictures of the participants in the trial, including the jury and the judge. Indeed, one television broadcast carried a staged interview of the judge as he entered the courthouse. In the corridors outside the courtroom there was a host of photographers and television personnel with flash cameras, portable lights and motion picture cameras. This group photographed the prospective jurors during selection of the jury. After the trial opened, the witnesses, counsel, and jurors were photographed and televised whenever they entered or left the courtroom." pp. 343-44.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 12

* * *

> "The daily record of the proceedings was made available to the newspapers and the testimony of each witness was printed verbatim in the local editions, along with objections of counsel, and rulings by the judge. Pictures of Sheppard, the judge, counsel, pertinent witnesses, and the jury often accompanied the daily newspaper and television accounts. At times the newspapers published photographs of exhibits introduced at the trial, and the rooms of Sheppard's house were featured along with relevant testimony." pp. 344-45.

* * *

> "On the second day of voir dire examination a debate was staged and broadcast live over WHK radio. The participants, newspaper reporters, accused Sheppard's counsel of throwing roadblocks in the way of the prosecution and asserted that Sheppard conceded his guilt by hiring a prominent criminal lawyer." p. 346.*

The Sheppard murder was sensational news and the media reacted accordingly. In the course they destroyed the state's ability to afford Sheppard a fair trial.

The sensation of Watergate is a hundredfold that of the Sheppard murder. But the media techniques remain the

---

*/ The prejudicial publicity in Sheppard commenced well before trial, even before charges were brought, and continued throughout the duration of the prosecution. Although Mr. Nixon has not been criminally tried, the press coverage of the impeachment proceedings and Watergate related criminal trials reflect obvious similarities to the Sheppard coverage.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 13

same and the destruction of an environment for a trial consistent with due process has been nationwide. The Supreme Court should not -- upon an appeal by Mr. Nixon -- have to recount for history the unending litany of prejudicial publicity which served to deprive the President of the rights afforded others.

The bar against prosecution raised by the publicity in this case defies remedy by the now common techniques of delaying indictment or trial, changing venue, or scrupulously screening prospective jurors. Although the court in Delaney, supra, could not envision a case in which the prejudice from publicity would be "so permanent and irradicable" that as a matter of law there could be no trial within the foreseeable future, 199 F.2d, at 112, it also could not have envisioned the national Watergate saturation of the past two years.

Unlike others accused of involvement in the Watergate events, Mr. Nixon has been the subject of unending public efforts "to make the case" against him. The question of Mr. Nixon's responsibility for the events has been the central political issue of the era. As each piece of new evidence became public it invariably was analyzed from the viewpoint of whether it brought the Watergate events closer to "the

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 14

Oval Office" or as to "what the President knew and when he knew it." The focus on others was at most indirect.

In short, no delay in trial, no change of venue, and no screening of prospective jurors could assure that the passions arroused by Watergate, the impeachment proceedings, and the President's resignation would dissipate to the point where Mr. Nixon could receive the fair trial to which he is entitled. The reasons are clear. As the Supreme Court stated in Rideau v. Louisiana, 373 U.S. 717, 726 (1963):

> For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was . . . [the] trial . . . Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.

Not only has the media coverage of Watergate been pervasive and overwhelmingly adverse to Mr. Nixon, but nearly every member of Congress and political commentator has rendered a public opinion on his guilt or innocence. Indeed for nearly two years sophisticated public opinion polls have surveyed the people as to their opinion on Mr. Nixon's involvement in Watergate and whether he should be impeached. Now the polls ask whether Mr. Nixon should be indicted. Under such conditions, few Americans can have failed to have formed an opinion

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 15

as to Mr. Nixon's guilt of the charges made against him. Few, if any, could -- even under the most careful instructions from a court -- expunge such an opinion from their minds so as to serve as fair and impartial jurors. "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." Irvin v. Dowd, 366 U.S. 717, 727 (1961). And as Justice Robert Jackson once observed, "The naive assumption that prejudicial effects can be overcome by instructions to the jury, . . . all practicing lawyers know to be unmitigated fiction." Krulewitch v. United States, 336 U.S. 440, 453 (1949) (concurring opinion). See also Delaney v. United States, 199 F.2d 107, 112-113 (1st Cir. 1952).

CONCLUSION

The media accounts of Watergate, the political columnists' debates, the daily televised proceedings of the House Judiciary Committee, the public opinion polls, the televised dramatizations of Oval Office conversations, the newspaper cartoons, the "talk-show" discussions, the letters-to-the-editor, the privately placed commercial ads, even

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 16

bumper stickers, have totally saturated the American people with Watergate. In the process the citizens of this country -- in uncalculable numbers -- from whom a jury would be drawn have formulated opinions as to the culpability of Mr. Nixon. Those opinions undoubtedly reflect both political and philosophical judgments totally divorced from the facts of Watergate. Some are assuredly reaffirmations of personal likes and dislikes. But few indeed are premised only on the facts. And absolutely none rests solely on evidence admissible at a criminal trial. Consequently, any effort to prosecute Mr. Nixon would require something no other trial has ever required -- the eradication from the conscious and subconscious of every juror the opinions formulated over a period of at least two years, during which time the juror has been subjected to a day-by-day presentation of the Watergate case as it unfolded in both the judicial and political arena.

Under the circumstances, it is inconceivable that the government could produce a jury free from <u>actual</u> bias. But the standard is higher than that, for the events of the past two years have created such an overwhelming likelihood

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 17

of prejudice that the absence of due process would be inherent in any trial of Mr. Nixon. */ It would be forever regrettable if history were to record that this country -- in its desire to maintain the appearance of equality under law -- saw fit to deny to the former President the right of a fair trial so jealously preserved to others through the constitutional requirements of due process of law and of trial by impartial jury.

Herbert J. Miller, Jr.

MILLER, CASSIDY, LARROCA & LEWIN
1320 19th Street, N.W., Suite 500
Washington, D. C. 20036
(202) 293-6400

Of Counsel
William H. Jeffress, Jr.
R. Stan Mortenson

*/ "It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a [procedure] employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." Estes v. Texas, 381 U.S. 532, (1965).

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 18

HSR:bes

IND - Nixon

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

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 19

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)

RD/ca

file

May 16, 1975

Herbert J. Miller, Esquire
2555 M Street, N. W.
Suite 500
Washington, D. C. 20037

Dear Mr. Miller:

RJD

As we have indicated in the past, this office has been evaluating its need to question your client, Richard M. Nixon, in connection with various investigations being conducted by us. It has now been decided that it is necessary to do so. After consulting with the Grand Jury, we have determined that his testimony is required in connection with certain areas of continuing inquiry. Accordingly, we plan to issue a subpoena on May 19, 1975 requiring your client's presence before the Grand Jury on May 29, 1975.

We expect that we will be able to cover the areas of inquiry before the Grand Jury in eight hours of questioning, spread over a two-day period. During that time we plan on covering questions in the following general areas:

1. The circumstances surrounding an 18 1/2 minute gap in the tape of a meeting between Mr. Nixon and Mr. Haldeman on June 20, 1972.

2. Any receipt of large amounts of cash by Charles G. Rebozo or Rosemary Woods on Mr. Nixon's behalf and financial transactions between Mr. Nixon and Mr. Rebozo.

3. Attempts to prevent the disclosure of the existence of the National Security Council wiretap program through removal of the records from the FBI, the dealing with any threats to reveal their existence, and the testimony of L. Patrick Gray at his confirmation hearings.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 21

4. Any relationship between campaign contributions and the consideration for Ambassadorships for Ruth Farkas, J. Fife Symington, Jr., Vincent deRoulet, Cornelius V. Whitney and Kingdon Gould, Jr.

5. The obtaining and/or release of information by the White House concerning Lawrence O'Brien through use of the Internal Revenue Service.

In each of these inquiries, the attorney principally involved in the investigation is prepared, prior to Mr. Nixon's appearance, to discuss with you in more detail the subject matter that your client will be questioned about, to make available any transcripts we have of pertinent tapes, and to identify the principal documents which will be used in the Grand Jury. Additionally, we stand ready to consider any reasonable request you may make aimed at preserving the normal confidentiality of a Grand Jury appearance and at avoiding any unnecessary inconvenience to Mr. Nixon. As we already have told you, if necessary, we are prepared to seek permission to convene the Grand Jury in another secure place in the District of Columbia other than the courthouse. Also, as we discussed with you on May 13th, if Mr. Nixon is prepared to voluntarily appear in the Grand Jury, we would be willing to postpone the date of that appearance to sometime in June.

There are also a small number of subject matters about which we would like to question Mr. Nixon, but for which a Grand Jury appearance will not be necessary. We are, of course, willing to provide you with the same detail about these subjects as we are about those proposed for Grand Jury questioning.

It also may be necessary to ask Mr. Nixon some questions concerning the deletion of specified material from the submission of transcripts of Presidential conversations to the House Judiciary Committee on April 30, 1974. If your client is willing, we are prepared to discuss this with him in an interview. If, however, he declines to be interviewed on this subject, then we would also include this in the areas of Grand Jury inquiry. I should add, however, that it may be unnecessary to speak with Mr. Nixon about this matter if we are able to ask Mr. Buzhardt and Mr. St. Clair a limited number of questions.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 22

As mentioned above, we will be issuing a subpoena on May 19th. Since we assume that you would like this subpoena to be served with a minimum of inconvenience to your client or publicity, we will contact you at that time to discuss the procedure for service.

Sincerely,

HENRY S. RUTH, JR.
Special Prosecutor

cc: file
chron
Mr. Ruth
Mr. Kreindler
Mr. Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 23

RJD:HSR:bas

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

May 23, 1975

Herbert J. Miller, Jr., Esq.
Miller, Cassidy, Larroca & Lewin
2555 M Street NW.
Suite 500
Washington, D.C. 20037

Dear Mr. Miller:

At our meeting with you and Mr. Mortenson on May 20, and with Mr. Mortenson on May 21, we detailed at length the areas in which we intend to seek the grand jury testimony of your client, Richard Nixon. As we indicated at these sessions, we are willing to supply the principal documents which would be used during questioning and which should be helpful in refreshing your client's recollection about the pertinent events in which the grand jury is interested.

We are enclosing copies of the principal documents which will be used in connection with the inquiry into the selection of certain ambassadors and the use of the Internal Revenue Service with respect to Lawrence O'Brien. In those instances where you already have the document involved, we are only identifying on the attached list the document number and package date in which it can be located. In the O'Brien area, there are also a few documents that should remain in our custody. But we would certainly consent to the examination of these documents by you or your designated associate in this office.

As we assemble documents in other areas, we will make them available to you. In addition, as we receive further documents or continue to review our files, other pertinent materials may come to our attention. When and if this occurs, we will advise you of any significant materials.

file ✓
chron
Ruth (2)
Davis
Kreindler

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 24

I understand from Mr. Mortenson that by Monday, May 26, you will provide us a medical report on the current status of your client's health and his ability to travel to Washington, D.C., for testimony. I also understand that you want to talk further about the date and place of the proposed testimony. On that basis, we have not yet served a grand jury subpoena; but if it becomes necessary to serve such a subpoena, we intend, as you agreed, to make the subpoena returnable on May 29. Of course, voluntary testimony would be postponed until sometime in the middle of June 1975.

Sincerely,

HENRY S. RUTH, JR.
Special Prosecutor

Enclosure

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 25

MISS STAGNARO AND MISS CAMPBELL COMPARED THIS DRAFT WITH MAY 23 LTR TO MILLER AND BELIEVE IT TO BE A DRAFT OF LETTER AS REVISED...AND DOCUMENTS REFERRED TO IN DRAFT WERE ENCLOSURES TO LETTER AS SENT.

D R A F T
5/22/75

Dear Mr. Miller:

In my letter to you of May 16, 1975 we indicated our intention to proceed to obtain the testimony of your client, Richard M. Nixon, concerning certain defined areas of investigation being conducted by this office. Since that time we have provided you and Mr. Mortenson with extensive information relating to each of these areas and repeated our willingness to supply you with the principal documents which will be used in the testimony and helpful in refreshing your client's recollection about the pertinent events in which the Grand Jury is interested.

Whether this questioning takes place physically before the Grand Jury, as we now intend, or in California, as you desire, it seems advisable to begin providing you with these documents as soon as possible. We are therefore enclosing copies of the principal documents which will be used in connection with the inquiry into the selection of certain Ambassadors and the use of the Internal Revenue Service to affect Lawrence O'Brien, as those matters have already been ~~explained to~~ defined for you. In those instances where you already have the document involved, we are only identifying on the attached list, the document ~~and~~ number and package date in which it can be located. Insofar as the following documents

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 26

only are concerned we request that no copies be made of them and that they be returned to us following the completion of the questioning.

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.)
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).
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.
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.

As we assemble documents in other areas we will similarly make them available to you. We should point out, however, that as we continue to review our files as well as receive additional documents, other pertinent materials may come to our attention. As this takes place we will, of course,

advise you of those materials which are significant. [We believe that by making these materials available, you and your client will be able to prepare for this examination by the date it takes place.].

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 28

RJD/bm

May 26, 1975

Herbert J. Miller, Jr., Esq.
Miller, Cassidy, Larroca & Lewin
2555 M Street, N. W.
Suite 500
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed are materials pertinent to what has been previously described as the "Wiretap" and "Gray" investigations.

Very truly yours,

Richard J. Davis
Assistant Special Prosecutor

Enclosures

cc: Files
Chron
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 29

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

May 28, 1975

Herbert Miller, Esquire
Suite 500
2555 M Street, N. W.
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed are materials pertinent to the investigations into the causes of the 18 1/2 minute gap in the tape of a conversation recorded on June 20, 1972, and into certain unreported campaign funds (UCF). Additionally, we are enclosing transcripts of various recorded conversations relevant to the "Gray" and "wiretap" investigations. In those instances in which we are supplying transcripts not used at the trial of United States v. Mitchell, et al, we caution you that these are preliminary drafts and do not necessarily constitute complete transcriptions of all that is on these various recordings. We believe, however, that they are sufficiently precise to assist your client in refreshing his recollection on these subjects. We are in the process of completing several other transcripts and these will be supplied to you shortly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Richard J. Davis

Richard J. Davis
Assistant Special Prosecutor

Enclosures

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 30

RD/ca

June 3, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N. W.
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed are two transcripts of recorded conversations relevant to the "wiretap" investigation. As we have previously advised you, these transcripts are preliminary drafts.

If you have any questions please do not hesitate to contact me.

Very truly yours,

RICHARD J. DAVIS
Assistant Special Prosecutor

Enclosure

cc: file
chron
Ruth
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 31

RJD/bm

June 4, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N. W.
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed are materials relevant to our investigation relating to the decision to increase the milk price support in March, 1971. If you have any questions please do not hesitate to contact me.

Very truly yours,

Richard J. Davis
Assistant Special Prosecutor

Enclosure

cc: Files
Chron
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 32

RJD:RLH:les

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

June 4, 1975

HJW

Herbert J. Miller, Esquire
2555 M Street, N. W.
Washington, D. C.

Dear Mr. Miller:

I am enclosing copies of some additional documents which are relevant to our inquiry concerning the Internal Revenue Service's investigation of Lawrence F. O'Brien, Sr:

(1) 4/25/75 (notes dated 8/26/72 (SC))
(2) E-380 4/25/75
(3) E-382 4/25/75
(4) E-383 4/25/75
(5) A-34 4/25/75

Of course, if you have any questions, please do not hesitate to contact me.

Sincerely,

Richard J. Davis
Assistant Special Prosecutor

Enclosures

cc: Files
Chron
Hecht
Horowitz
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 33

RJD/bm

June 4, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N. W.
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed is a draft transcript of a May 5, 1971 meeting between Mr. Nixon and Mr. Haldeman and excerpts from a transcript of a conversation including Mr. Nixon, Mr. Haldeman and Mr. Ehrlichman on April 25, 1973.

Very truly yours,

Richard J. Davis
Assistant Special Prosecutor

Enclosure

cc: Files
Chron
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 34

RD/ca

June 10, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N. W.
Suite 500
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed is a draft transcript of a conversation between Mr. Nixon and Richard Moore on April 19, 1973 and some background materials pertinent to our investigation into the decision to adjust the milk price support in March, 1971.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

RICHARD J. DAVIS
Assistant Special Prosecutor

cc: file
chron
Ruth
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 35

T.McB/RR

Davis

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

June 17, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N.W.
Suite 500
Washington, D.C.

Dear Mr. Miller:

As discussed in our meeting yesterday, I would like to obtain unexcerpted copies of certain documents relating to the consideration of persons for ambassadorial appointments. Those documents are:

Group I.
E-137 (PMF/RN 4/29/71)
B-275 (Duplicate)

B-77 (PMF & FM/RN 12/16/72)

J-55 (PMF & FM/RN 1/4/73)
C-160 (Duplicate)

J-45 (11/24/71 PMF/RN)

J-47 (PMF/RN 6/26/72)
F-117 (Duplicate)

E-129 (Memo of PMF/Irwin/Macomber Meeting 6/28/72)

D-141 (PMF/RN 8/9/71)

F-123 (McD/PMF 7/24/72)

Group II.
C-11 (HRH/AG Talking Paper 6/30/71)

F-11 (HRH/PMF 6/15/71)

F-122 (PMF/HK 7/11/72)

E-37 (H Notes 5/26/71)

J-52 (MS/PMF 11/28/72)

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 36

J-51 (11/15/72)

C-132 (11/10/72)

C-133 (undated)

F-124 (Haig/PMF 8/7/72)

Group I covers documents which were directed to, may have been seen by, or may reflect comments or actions of your client.

Group II covers documents not particularly related to any conversation or action by your client, but where full investigation of other aspects of this matter requires us to see the entire, unexcerpted, document.

In addition, we need the "Haldeman notes" which apparently were attached to document D-41, (Room 522, Container No. 12/3). According to the document the originals of Haldeman notes were attached as "Tab A."

We would like to either have copies, or review unexcerpted copies, of these documents by the end of this week.

Sincerely,

Thomas F. McBride

THOMAS F. McBRIDE
Associate Special Prosecutor

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 37

RD/ca

June 18, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N. W.
Suite 500
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed are additional documents pertinent to our investigations into the removal of the wiretap records from the FBI, the March 1971 milk price support decision and the Internal Revenue Service's inquiry into the affairs of Lawrence O'Brien.

If you have any questions, please feel free to contact me.

Very truly yours,

RICHARD J. DAVIS
Assistant Special Prosecutor

Enc.

cc: file
chron
Mr. Ruth
Mr. Davis

Ruth

PRM:bjr

June 18, 1975

BY HAND

Herbert J. Miller, Esq.
Miller, Cassidy, Larroca & Lewin
1320 19th Street, Northwest
Washington, D. C.

Dear Mr. Miller:

I enclose an "Index to Exhibits" listing every document I intend to show your client during the questioning concerning Unreported Campaign Funds and copies of the following documents which are the only ones on the list which were not previously provided:

(1) Mr. Haldeman's notes of a meeting with Mr. Nixon, August 20, 1970.

(2) Newspaper column "Washington Merry-Go-Round" from Washington Post, August 6, 1971, and a typescript of excerpts therefrom.

(3) Newspaper column "Washington Merry-Go-Round" from Washington Post, January 18, 1973, and a typescript of excerpts therefrom.

Sincerely,

Paul R. Michel
Assistant Special Prosecutor

Enclosures - 4

cc: Ruth (2)
Davis
Michel

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 39

WATERGATE SPECIAL PROSECUTION FORCE DEPARTMENT OF JUSTICE

Memorandum

TO : File DATE: May 20, 1975

FROM : Paul Michel

SUBJECT: Documents for use in Grand Jury Examination of Richard M. Nixon

1. Transcript conversation Nixon, Haldeman and Ehrlichman on April 17, 1973 between 5:20 - 7:14 p.m. (after departure William Rogers) pp. 52-53, 64.

2. Transcript conversation Nixon, Haldeman on April 25, 1973 between 4:40 - 5:30 p.m., p. 31.

3. Transcript conversation Nixon, Haldeman and Ehrlichman April 25, 1973 between 11:06 a.m. and 1:55 p.m., p. 102.

4. Transcript conversation, Nixon, Haldeman and Dean March 21, 1973 between 10:17 - 11:55 a.m., p. 33.

5. Memo from Haldeman to Ehrlichman dated February 17, 1969 re J. Paul Getty.

6. Letter from Rebozo to Kalmbach dated April 28, 1969 re money for "administration-connected costs."

7. Memo from Robert Maheu to Howard Hughes dated July 4, 1969 re Rebozo's discussion with Nixon about A.B.M.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 40

8. Notes by Haldeman of meeting with Nixon on February 19, 1970 re securing Hughes support of Raggio in Nevada.

9. Notes by Haldeman of meeting with Nixon July 20, 1970 re Kalmbach seeking $500,000 from Hughes and Getty, using Rebozo.

10. Notes by Haldeman of meeting with Nixon May 17, 1971 re Rebozo wanting a review of the Dodd tax case.

11. Notes by Ehrlichman of meeting with Nixon July 12, 1971, re (1) Gilbert Straub and Donald A. Nixon and (2) "holding out 300" for library.

12. Memorandum from Ehrlichman to Helms dated December 2, 1971 re [redacted]

b3
CIA Act

PRM:bjr DRAFT

WATERGATE SPECIAL PROSECUTION FORCE DEPARTMENT OF JUSTICE

Memorandum

TO : Files DATE: May 20, 1975

FROM : Paul R. Michel

SUBJECT: Matters and Transactions for Grand Jury Examination of Richard M. Nixon Concerning Unreported Campaign Funds

1. References in taped conversation of April 17, 1973

   (a) offer to Haldeman and Ehrlichman of $2-300,000 cash for legal fees

   (b) size of fund "very substantial"

   (c) Rebozo used fund to "get things ... paid for in check."

   (d) Questions to include:

      (1) Who contributed?

      (2) Where was the money kept?

      (3) How much was there?

      (4) What did Rebozo pay for?

      (5) What favors?

      (6) What was the purpose of the money?

(Documents 1, 3, 4, 6, 9, and 10)

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 42

2. Hughes' $100,000 in cash delivered to Rebozo 1969-70.

(a) Why held back for '70 races, CREP and Key Biscayne Bank account?

(b) When did Nixon learn of deliveries?

(c) How decided to return funds?

(d) What was the purpose of asking Herbert W. Kalmbach?

3. Hughes' solicitation by Rebozo March-April 1972.

Who asked Rebozo to call Danner?

4. Communications, directly or through others, between Mr. Nixon and Mr. Hughes re

(a) ~~ABM controversy (Document 7)~~

(b) ~~Candidate Raggio in Nevada (Document 8)~~

(c) ~~Dunes Hotel~~

5. Davis' $50,000 in cash delivered to Rebozo, April 5, 1972.

Why did Rebozo hold back until October?

6. Andreas' $100,000 in cash delivered to Woods, 1971.

(a) Why not used?

(b) Why not reported to Stans?

(Document 2)

~~7. Moncrief cash received periodically by Woods.~~

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 43

Safe deposit boxes held by Rebozo and Woods, February 1968 to April 1970 in New York City at Manufacturers Hanover Trust and held by Rebozo 1970-73 at Key Biscayne Bank and Trust Company and used for storage of campaign funds, including Hughes' $100,000.

(a) Why opened?

(b) What was deposited?

(c) What happened to it?

9. Swimming pool and other improvements to President's houses at Key Biscayne in 1969 and 1972 paid for by Rebozo and Abplanalp.

10. Earrings purchased from Winstons, New York City, in June 1972 and paid for by Rebozo with money from a '68 campaign account.

11. Unreported contributions from J. Paul Getty.

(a) Why did Nixon ask Rebozo to get money from Getty?

(b) Why did White House want control?

(c) Purpose of money?

(d) Was any received?

(Document 5)

12. Unreported contributions from Robert L. Vesco (excluding $250,000 to Stans in 1972).

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 44

Armat Street house, Bethesda.

(a) loan by Nixon to Rebozo of $10,000

(b) loan by Precision Valve Corporation to Rebozo of $50,000.

14. Response to IRS request for approval of interview of Rebozo and monitoring of investigation of Rebozo.

(a) What did John D. Ehrlichman tell Nixon about his meeting with Rebozo on March 5, 1973?

(b) What did John D. Ehrlichman tell Nixon about his meeting with Rebozo on April 6, 1973?

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 45

WATERGATE SPECIAL PROSECUTION FORCE DEPARTMENT OF JUSTICE

Memorandum

TO : Files DATE: May 20, 1975

FROM : Paul R. Michel

SUBJECT: Matters and Transactions for Grand Jury Examination of Richard M. Nixon Concerning Unreported Campaign Funds

1. References in taped conversation of April 17, 1973
   (a) offer to Haldeman and Ehrlichman of $2-300,000 for legal fees,
   (b) size of fund "very substantial"
   (c) Rebozo used fund to "get things . . . paid for in check."
   (Documents 1, 3, 4, 6, 9 and 10)

2. Hughes $100,000 in cash delivered to Rebozo 1969-70. (receipt, report, use and return of the money)

3. Andreas $100,000 in cash delivered to Woods, 1971. (Document 2)

4. Davis $50,000 in cash delivered to Rebozo April 5, 1972.

5. Hughes solicitation by Rebozo March-April 1972.

6. Moncrief cash received periodically by Woods.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 46

7. Safe deposit box held by Rebozo and Woods February 1968 to April 1970 in New York City at Manufacturers Hanover Trust.

8. Safe deposit box held by Rebozo 1970-73 at Key Biscayne Bank and Trust Company and used for storage of campaign funds, including Hughes $100,000.

9. Unreported contributions from J. Paul Getty. no evidence (Document 5)

10. Unreported contributions from Robert L. Vesco (excluding $250,000 to Stans in 1972).
(Documents 11 and 12)

11. Swimming Pool and other improvements to President's houses at Key Biscayne in 1969 and 1972 paid for by Rebozo and others. only 1 question

12. Earrings for Mrs. Nixon paid for in June 1972 by Woods and Rebozo. only 1 question

13. Communications, directly or through others, between Mr. Nixon and Mr. Hughes re
    a. ABM controversy (Document 7)
    b. Candidate Raggio in Nevada (Document 8)
    c. Dunes Hotel

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 47

14. Armat Street house, Bethesda

a. loan by Nixon to Rebozo of $10,000

b. loan by Precision Valve Corp. to Rebozo of $50,000.

15. Pendleton site for Nixon library (Document 11).

16. Response to IRS request for approval of interview of Rebozo and monitoring of investigation of Rebozo.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 48

RJD/pr

June 19, 1975

Herbert J. Miller, Jr.
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037

Dear Mr. Miller:

Enclosed are materials related to our investigation into the circumstances surrounding an 18 1/2 minute gap in a recording of a conversation on June 20, 1972 between Mr. Nixon and Mr. Haldeman. The document described as "Safe Access Log" refers to the safe in Rosemary Wood's room in Key Biscayne where she stored the tapes during the weekend of October 4, 1973.

If you have any questions please feel free to contact me.

Very truly yours,

Richard J. Davis

Enclosure

File ✓
Chron
Ruth (2)
Davis

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 49

RD/ca

June 19, 1975

Herbert J. Miller, Jr., Esq.
2555 M Street, N. W.
Suite 500
Washington, D. C. 20037

Dear Mr. Miller:

Enclosed are the following transcripts:

1. March 17, 1973 - Richard Nixon, John Dean and H. R. Haldeman

2. March 27, 1973 - Richard Nixon, H. R. Haldeman, John Ehrlichman and Ronald Ziegler (excerpt)

3. April 17, 1973 (9:47 a.m.) - Richard Nixon and H. R. Haldeman

4. April 17, 1973 (5:20 p.m.) - Richard Nixon, H. R. Haldeman, John Ehrlichman, William Rogers

Very truly yours,

RICHARD J. DAVIS
Assistant Special Prosecutor

4 Encls.

cc: file
ehron
Mr. Ruth
Mr. Davis

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.

FOIA # 58707 & 58708 (URTS 16380) DocId: 70105880 Page 51