

**The original documents are located in Box 30, folder “Nixon - Papers Court Cases - U.S. v. Mitchell” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

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THE WHITE HOUSE

WASHINGTON

August 23, 1974

MEMORANDUM FOR: PHILIP BUCHEN

FROM: JEAN STAUDT *Jean Staudt*  
Attorney, Office of the Special Counsel

SUBJECT: Trial of September 30th, 1974  
(Cover-up trial)

I have been requested by the Honorable Judge John J. Sirica to attend a pretrial conference in chambers on Wednesday, August 28th, at 10:00 a.m. with the Special Prosecutor and all defendants involved in the upcoming trial of September 30th, 1974. Although there appears to be very few matters which directly or indirectly will involve the White House, the Judge has particularly requested I inform him at that time of the White House policy concerning the defendants' request for access to their personal files if at all possible. If you feel that it is appropriate for me to attend in order to respond to this and any other procedural issues which may be raised, I would appreciate meeting with you at your convenience to discuss these matters.

As to the January 5th, 1973 tape that we briefly discussed by telephone on August 22nd, 1974, the Judge has delayed his decision until Monday, August 26th, 1974. I will apprise you of that decision as soon as I hear from the court.



United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

September 6, 1974

Dr. Richard H. Bolt  
Bolt, Beranek & Newman, Inc.  
50 Moulton Street  
Cambridge, Massachusetts 02138

Dear Dr. Bolt:

The Court has determined that the Advisory Panel on White House Tapes, on which you have served, will be disbanded effective this date. This action releases you from any further obligation to the Court and from any restrictions placed upon you by the Court during the course of your service. However, for the sake of caution, the Court urges that you refrain from public comment about the Panel's work until after a jury has been sequestered in the "Watergate cover-up case." The Court and Administrative Office of the United States Courts are released from further financial or other obligations to members of the Panel or their agents. I am advised by the Administrative Office that it will attempt to satisfy the unpaid invoices now in hand.

The Court expresses its appreciation to you for your work on the Panel and for your willingness to make the personal sacrifices that this assignment has entailed.

With kindest regards and best wishes,

Sincerely yours,

*John J. Sirica*

Sincerely,

cc: Philip W. Buchen, Esq.  
Leon Jaworski, Esq.  
Mr. Edward V. Garabedian,  
Administrative Office of the  
United States Courts



United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

September 6, 1974

Dr. Thomas G. Stockham, Jr.  
MEB - 3160  
University of Utah  
Salt Lake City, Utah 84108

Dear Dr. Stockham:

The Court has determined that the Advisory Panel on White House Tapes, on which you have served, will be disbanded effective this date. This action releases you from any further obligation to the Court and from any restrictions placed upon you by the Court during the course of your service. However, for the sake of caution, the Court urges that you refrain from public comment about the Panel's work until after a jury has been sequestered in the "Watergate cover-up case." The Court and Administrative Office of the United States Courts are released from further financial or other obligations to members of the Panel or their agents. I am advised by the Administrative Office that it will attempt to satisfy the unpaid invoices now in hand.

The Court expresses its appreciation to you for your work on the Panel and for your willingness to make the personal sacrifices that this assignment has entailed.

With kindest regards and best wishes,

Sincerely yours,

*John J. Sirica*

Sincerely yours,

*[Signature]*

cc: Philip W. Buchen, Esq.  
Leon Jaworski, Esq.  
Mr. Edward V. Garabedian,  
Administrative Office of the  
United States Courts



United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

September 6, 1974

Mr. John G. McKnight  
1109 Stafford Drive  
Cupertino, California 95014

Dear Mr. McKnight:

The Court has determined that the Advisory Panel on White House Tapes, on which you have served, will be disbanded effective this date. This action releases you from any further obligation to the Court and from any restrictions placed upon you by the Court during the course of your service. However, for the sake of caution, the Court urges that you refrain from public comment about the Panel's work until after a jury has been sequestered in the "Watergate cover-up case." The Court and Administrative Office of the United States Courts are released from further financial or other obligations to members of the Panel or their agents. I am advised by the Administrative Office that it will attempt to satisfy the unpaid invoices now in hand.

The Court expresses its appreciation to you for your work on the Panel and for your willingness to make the personal sacrifices that this assignment has entailed.

With kindest regards and best wishes,

Sincerely yours,

*John J. Sirica*

cc: Philip W. Buchen, Esq.  
Leon Jaworski, Esq.  
Mr. Edward V. Garabedian,  
Administrative Office of the  
United States Courts



United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

September 6, 1974

Dr. James L. Flanagan  
Acoustics Research Department  
Bell Laboratories  
600 Mountain Avenue  
Murray Hill, New Jersey 07974

Dear Dr. Flanagan:

The Court has determined that the Advisory Panel on White House Tapes, on which you have served, will be disbanded effective this date. This action releases you from any further obligation to the Court and from any restrictions placed upon you by the Court during the course of your service. However, for the sake of caution, the Court urges that you refrain from public comment about the Panel's work until after a jury has been sequestered in the "Watergate cover-up case." The Court and Administrative Office of the United States Courts are released from further financial or other obligations to members of the Panel or their agents. I am advised by the Administrative Office that it will attempt to satisfy the unpaid invoices now in hand.

The Court expresses its appreciation to you for your work on the Panel and for your willingness to make the personal sacrifices that this assignment has entailed.

With kindest regards and best wishes,

Sincerely yours,

*John J. Sirica*

cc: Philip W. Buchen, Esq.  
Leon Jaworski, Esq.  
Mr. Edward V. Garabedian,  
Administrative Office of the  
United States Courts

United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

September 6, 1974

Dr. Franklin Cooper  
Haskins Laboratories  
270 Crown Street  
New Haven, Connecticut 06510

Dear Dr. Cooper:

The Court has determined that the Advisory Panel on White House Tapes, on which you have served, will be disbanded effective this date. This action releases you from any further obligation to the Court and from any restrictions placed upon you by the Court during the course of your service. However, for the sake of caution, the Court urges that you refrain from public comment about the Panel's work until after a jury has been sequestered in the "Watergate cover-up case." The Court and Administrative Office of the United States Courts are released from further financial or other obligations to members of the Panel or their agents. I am advised by the Administrative Office that it will attempt to satisfy the unpaid invoices now in hand.

The Court expresses its appreciation to you for your work on the Panel and for your willingness to make the personal sacrifices that this assignment has entailed.

With kindest regards and best wishes,

Sincerely yours,

*John J. Sirica*

cc: Philip W. Buchen, Esq.  
Leon Jaworski, Esq.  
Mr. Edward V. Garabedian,  
Administrative Office of the  
United States Courts



United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

September 6, 1974

Mr. Mark Weiss  
Nicolet Scientific Corporation  
245 Livingston Street  
Northvale, New Jersey 07647

Dear Mr. Weiss:

The Court has determined that the Advisory Panel on White House Tapes, on which you have served, will be disbanded effective this date. This action releases you from any further obligation to the Court and from any restrictions placed upon you by the Court during the course of your service. However, for the sake of caution, the Court urges that you refrain from public comment about the Panel's work until after a jury has been sequestered in the "Watergate cover-up case." The Court and Administrative Office of the United States Courts are released from further financial or other obligations to members of the Panel or their agents. I am advised by the Administrative Office that it will attempt to satisfy the unpaid invoices now in hand.

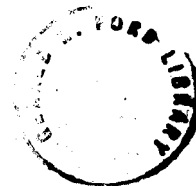
The Court expresses its appreciation to you for your work on the Panel and for your willingness to make the personal sacrifices that this assignment has entailed.

With kindest regards and best wishes,

Sincerely yours,

*John J. Sirica*

cc: Philip W. Buchen, Esq.  
Leon Jaworski, Esq.  
Mr. Edward V. Garabedian,  
Administrative Office of the  
United States Courts





9/11/74  
Sent to  
Ship

United States District Court  
for the District of Columbia

Chambers of  
Judge John J. Sirica

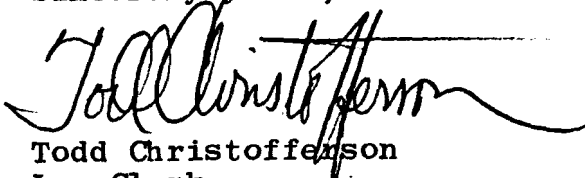
September 6, 1974

Philip W. Buchen, Esq.  
Counsel to the President  
The White House  
Washington, D.C.

Dear Mr. Buchen:

Enclosed please find for your files copies of the final three invoices submitted by the Court Advisory Panel on White House Tapes. The originals have been forwarded to the Special Prosecutor for approval, and should be received in your office in the near future for approval.

Sincerely yours,

  
Todd Christofferson  
Law Clerk

Enc.



to: Hon. Philip Buchen

Department  
of the Treasury

room: \_\_\_\_\_ date: 9/13/74

Office of the  
General Counsel



A handwritten signature in black ink, appearing to read "RRA".

General Counsel  
Richard R. Albrecht

room 3000

ext. 2093



THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D.C. 20220

*File with my case file*

September 13, 1974

Re: U.S. v. Mitchell, et al,  
United States District Court  
for the District of Columbia  
No. 74-110

Dear Mr. Jaworski:

I understand that the subpoena in the above matter served on H. S. Knight, Director, United States Secret Service, on September 4, 1974, has been referred to your office for action. This letter will constitute your authorization to represent Mr. Knight in connection with the subpoena and to make an appropriate motion to quash the subpoena.

Sincerely yours,

(Signed) Richard R. Albrecht

Richard R. Albrecht

Mr. Leon Jaworski  
Watergate Special Prosecutor  
1425 K Street, N. W.  
9th Floor  
Washington, D. C. 20005

ATTN: Mr. Philip Lacovara



ROGER J. WHITEFORD 1896-1965  
RINGGOLD HART 1886-1965  
JOHN J. CARMODY 1901-1972  
JOHN J. WILSON  
HARRY L. RYAN, JR.  
JO V. MORGAN, JR.  
FRANK H. STRICKLER  
WILLIAM E. ROLLOW  
CHARLES J. STEELE  
JOHN J. CARMODY, JR.  
JAMES EDWARD ABLARD  
KEVIN W. CARMODY

COUNSEL  
DONALD L. HERSKOVITZ

LAW OFFICES  
**WHITEFORD, HART, CARMODY & WILSON**  
815 FIFTEENTH STREET, NORTHWEST  
WASHINGTON, D. C. 20005

202-638-0465  
CABLE ADDRESS  
WHITEHART WASHINGTON

MARYLAND OFFICE  
7401 WISCONSIN AVENUE  
BETHESDA, MARYLAND 20014  
301-656-5700

JO V. MORGAN, JR.  
FRANK H. STRICKLER  
WILLIAM E. ROLLOW  
CHARLES J. STEELE

September 27, 1974

BY HAND

Hon. Philip W. Buchen  
Counsel to the President  
The White House  
Washington, D.C.

Re: U.S. v. Mitchell, et al.  
Criminal No. 74-110

Dear Mr. Buchen:

Now that it appears quite certain that the "Watergate" trial will begin next week, we would like to have some relaxation of the current rules for Mr. Haldeman to inspect documents in the EOB, as follows:

1. That Mr. Haldeman will be permitted to make notes.
2. That one of his attorneys may accompany him there and likewise make notes.

Of course, Secret Service surveillance would continue as heretofore.

I give you my personal and professional assurance that what we may inspect will not be tampered with in any way.

I have in mind that we may be permitted to visit the EOB for the purpose of such inspection and copying on more than one occasion as necessity requires. Of course, each time we would make prior arrangements with Mr. Casselman, or anyone else whom you may designate.

I hope that you may find it possible to give our request favorable consideration.

With kindest personal regards, I am

Sincerely yours,

  
JOHN J. WILSON



9/27/74

**To:** Mr. Silberman  
Mr. Casselman  
Mr. Buzhardt

**From:** Phil Buchen



NO GOLD HART 1886-1983  
JOHN J. CARMODY 1901-1972  
JOHN J. WILSON  
HARRY L. RYAN, JR.  
JO V. MORGAN, JR.  
FRANK H. STRICKLER  
WILLIAM E. ROLLO  
CHARLES J. STEELE  
JOHN J. CARMODY, JR.  
JAMES EDWARD ABLARD  
DEVIN W. CARMODY  
COUNSEL  
DONALD L. HERSKOVITZ

LAW OFFICES

WHITEFORD, HART, CARMODY & WILSON

815 FIFTEENTH STREET, NORTHWEST

WASHINGTON, D. C. 20005

202-638-0465

CABLE ADDRESS

WHITEHART WASHINGTON

*cc. Casselman  
S. Haldeman*  
MARYLAND OFFICE  
7401 WISCONSIN AVENUE  
BETHESDA, MARYLAND 20014  
301-656-5700

JO V. MORGAN, JR.  
FRANK H. STRICKLER  
WILLIAM E. ROLLO  
CHARLES J. STEELE

September 27, 1974

BY HAND

Hon. Philip W. Buchen  
Counsel to the President  
The White House  
Washington, D.C.

Re: U.S. v. Mitchell, et al.  
Criminal No. 74-110

Dear Mr. Buchen:

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I hope that you may find it possible to give our request favorable consideration.

With kindest personal regards, I am

Sincerely yours,

  
JOHN J. WILSON

Rec'd 10-4-74  
APW

CO-296  
NEW 12/71

Subpoena to Produce Document or Object

Cr. Form No. 21 (Rev. 10-51)

**United States District Court**  
FOR THE  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

No. 74-110

v.

John N. Mitchell, et al

To PHILIP BUCHEN  
The White House  
Washington, D. C.

You are hereby commanded to appear in the United States District Court for the District of Columbia at John Marshall & Constitution, in the city of Washington, on the 1st day of October, 1974 at 9:30 o'clock A.M. to testify in the case of United States v. Mitchell, et al, and bring with you the documents and tapes described on the attached schedule.

This subpoena is issued upon application of the<sup>1</sup> Defendant, John D. Ehrlichman.

September 26, 1974

Andrew C. Hall  
*Attorney for* Defendant Ehrlichman  
Twelfth floor, Concord Building  
66 West Flagler Street  
*Address*  
Miami, Florida 33130

JAMES F. DAVEY

By *Robert S. L...*  
Deputy Clerk.

<sup>1</sup> Insert "United States," or "defendant" as the case may be.

(305) 377-0241

**RETURN**

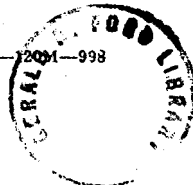
Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mileage allowed by law.<sup>2</sup>

Dated: \_\_\_\_\_

\_\_\_\_\_, 19 \_\_\_\_\_ By \_\_\_\_\_

Service Fees  
Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_  
Total \_\_\_\_\_ \$

<sup>2</sup> Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.



Saturday 10/12/74

3:20 John Wilson called. Said he may need an  
answer to the letter he sent to you on 9/27.

333-0024





9/27/74

**To:** Mr. Silberman  
Mr. Casselman  
Mr. Bushardt

**From:** Phil Buchen



ROGER J. WHITEFORD 1886-1965  
RINGGOLD HART 1886-1965  
JOHN J. CARMODY 1901-1972  
JOHN J. WILSON  
HARRY L. RYAN, JR.  
JO V. MORGAN, JR.  
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WILLIAM E. ROLLOW  
CHARLES J. STEELE  
JOHN J. CARMODY, JR.  
JAMES EDWARD ABLARD  
KEVIN W. CARMODY

COUNSEL  
DONALD L. HERSKOVITZ

LAW OFFICES  
**WHITEFORD, HART, CARMODY & WILSON**  
815 FIFTEENTH STREET, NORTHWEST  
WASHINGTON, D. C. 20005

202-638-0465  
CABLE ADDRESS  
WHITEHART WASHINGTON

MARYLAND OFFICE  
7401 WISCONSIN AVENUE  
BETHESDA, MARYLAND 20014  
301-656-5700

JO V. MORGAN, JR.  
FRANK H. STRICKLER  
WILLIAM E. ROLLOW  
CHARLES J. STEELE

September 27, 1974

BY HAND

Hon. Philip W. Buchen  
Counsel to the President  
The White House  
Washington, D.C.

Re: U.S. v. Mitchell, et al.  
Criminal No. 74-110

Dear Mr. Buchen:

Now that it appears quite certain that the "Watergate" trial will begin next week, we would like to have some relaxation of the current rules for Mr. Haldeman to inspect documents in the EOB, as follows:

1. That Mr. Haldeman will be permitted to make notes.
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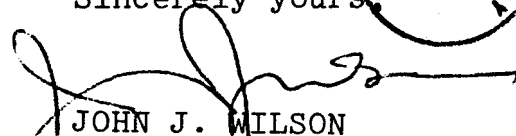
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I hope that you may find it possible to give our request favorable consideration.

With kindest personal regards, I am

Sincerely yours,

  
JOHN J. WILSON



THE WHITE HOUSE

WASHINGTON

October 15, 1974

Dear Jack:

John Wilson is pressing us for a reply to the enclosed letter. Please call me and give me your thoughts on the matter.

Sincerely,



Philip W. Buchen  
Counsel to the President

Enclosure

Mr. Herbert J. Miller, Jr.  
Miller, Cassidy, Larroca & Lewin  
1320 19th Street, N. W.  
Washington, D. C.

*Letter not sent*

- 1) 10/16 Caselman asked Spec. Pros. who had no objection
- 2) 10/17 No objection from Jack Miller's office - Caselman
- 3) 10/17 Spec. Pros. had second thoughts. Caselman to resolve + call Wilson
- 4) All dropped. Caselman wrote Wilson



ROGER J. WHITEFORD 1886-1965  
RINGGOLD HART 1886-1965  
JOHN J. CARMODY 1901-1972  
JOHN J. WILSON  
HARRY L. RYAN, JR.  
JO V. MORGAN, JR.  
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CHARLES J. STEELE  
JOHN J. CARMODY, JR.  
JAMES EDWARD ABLARD  
KEVIN W. CARMODY

COUNSEL  
DONALD L. HERSKOVITZ

LAW OFFICES  
WHITEFORD, HART, CARMODY & WILSON  
815 FIFTEENTH STREET, NORTHWEST  
WASHINGTON, D. C. 20005

202-638-0465  
CABLE ADDRESS  
WHITEHART WASHINGTON

MARYLAND OFFICE  
7401 WISCONSIN AVENUE  
BETHESDA, MARYLAND 20014  
301-656-5700

JO V. MORGAN, JR.  
FRANK H. STRICKLER  
WILLIAM E. ROLLOW  
CHARLES J. STEELE

September 27, 1974

BY HAND

Hon. Philip W. Buchen  
Counsel to the President  
The White House  
Washington, D.C.

Re: U.S. v. Mitchell, et al.  
Criminal No. 74-110

Dear Mr. Buchen:

Now that it appears quite certain that the "Watergate" trial will begin next week, we would like to have some relaxation of the current rules for Mr. Haldeman to inspect documents in the EOB, as follows:

1. That Mr. Haldeman will be permitted to make notes.
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With kindest personal regards, I am

Sincerely yours,

  
JOHN J. WILSON

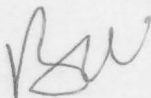


THE WHITE HOUSE  
WASHINGTON

10/17/74

Phil,

FYI



Bill Casselman

*For filing  
re Nixon  
papers.*



October 17, 1974

Dear Mr. Kreindler:

This is in response to your letter to me of October 9, 1974, requesting the stenographic transcripts of White House press briefings which relate to the so-called Watergate matter.

Enclosed are copies of the mimeographed transcripts of all White House press briefings conducted by then Press Secretary, Ronald Ziegler or his staff from June 17, 1972 to August 9, 1974. I am advised by the Press Office that the actual stenographic transcripts (from which the mimeograph transcripts are made) are part of the records of former President Nixon which are in the custody of the White House pursuant to the September 6 Nixon--Sampson agreement. Accordingly, the permission of counsel for the former President would be required before the actual stenographic transcripts could be turned over to you.

The enclosed mimeographed transcripts are permanent White House records within the public domain and include materials unrelated to the Watergate matter. It is my understanding from our recent telephone conversations that you will review these transcripts and copy such Watergate-related material as may be required by you, and that you will return the original documents to me at your earliest convenience.

Sincerely,

William E. Casperman II  
Counsel to the President

Peter M. Kreindler, Esq.  
Counsel to the Special Prosecutor  
Watergate Special Prosecution Force  
1425 K Street, N. W.  
Washington, D. C. 20005

Enclosures

WEC:bw



WATERGATE SPECIAL PROSECUTION FORCE

United States Department of Justice

1425 K Street, N.W.

Washington, D.C. 20005

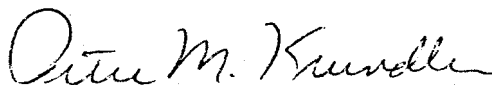
October 9, 1974

William Casselman, II, Esq.  
Counsel to the President  
The White House  
Washington, D. C. 20500

Dear Mr. Casselman:

It is our understanding that when Ronald Ziegler briefed the press each day, his remarks were recorded by a stenographer. We would appreciate your making available to us, for use in connection with the trial of United States v. Mitchell, et al., copies of the stenographer's transcripts which relate to the so-called Watergate matter.

Sincerely,



Peter M. Kreindler  
Counsel to the Special  
Prosecutor



THE WHITE HOUSE

WASHINGTON

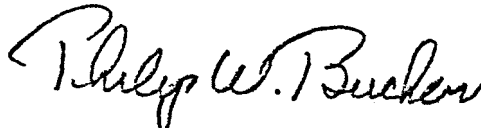
October 18, 1974

Dear Mr. Miller:

This is to notify you that I have been served with the attached trial Subpoena duces tecum captioned United States v. John N. Mitchell, et al., D. D.C., Criminal No. 74-110, which was issued upon application of the United States. Items 1 through 3 of the schedule to the Subpoena were previously requested of you by the Watergate Special Prosecution Force in a letter from Mr. Peter Kreindler dated October 1, 1974. Item 4 of the schedule was requested of this office in a letter to Mr. William Casselman from Mr. Kreindler dated October 8, 1974. I understand that the Prosecution Force has copies of all of the requested materials.

Response by me or any other defendants in Nixon v. Arthur F. Sampson, et al. to this subpoena is excepted from your Application for a Temporary Restraining Order because it involves a subpoena for materials for use in a criminal trial presently in progress. Please be advised that I am arranging to comply with this Subpoena.

Sincerely,



Philip W. Buchen  
Counsel to the President

Herbert J. Miller, Esquire  
Miller Cassidy Larroca & Lewin  
1320 19th Street, N.W.  
Suite 500  
Washington, D.C. 20036

Enclosure





United States District Court  
FOR THE

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, et al.  
Philip W. Buchen, Esq.  
To Counsel to the President  
The White House  
Washington, D. C.

Cr. No. 74-110

You are hereby commanded to appear in the United States District Court for the  
District of Columbia at Constitution Avenue and John Marshall Place, N.W. in the city of  
Washington on the 21st day of October 1974 at 4:30 o'clock P.M.  
to testify in the case of United States v. John N. Mitchell, et al. and bring with you  
See attached schedule.

This subpoena is issued upon application of the United States.

October 17, 1974.

LEON JAWORSKI, Special Prosecutor  
Attorney for United States  
1425 K Street, N.W.  
Address Washington, D. C. 20005

JAMES F. DAVEY  
By Robert L. Lane Clerk.  
Deputy Clerk.

<sup>1</sup> Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.<sup>2</sup>

Dated: \_\_\_\_\_



THE WHITE HOUSE

WASHINGTON

December 2, 1974

Dear Mr. Hall:

Pursuant to the subpoena issued upon application of the Defendant, John D. Ehrlichman, and served upon me in the case entitled United States v. Mitchell, et al., C. A. No. 74-110, D.D. C., I hereby deliver to you the following:

- A copy of an eight page unsigned, undated, handwritten report relating to the Watergate break-in.
- A copy of a proposed newspaper advertisement dealing with Watergate allegations and facts concerning those allegations, appearing on a single, legal-sized lined sheet of paper.
- A certified copy of the tape recording produced by the White House Communications Agency of a meeting in the White House on September 12, 1972 between the President and Republican leaders.
- Certified copies of the news summaries prepared by the White House for use by the President or the Presidential staff from June 17, 1972 to and including July 21, 1972.

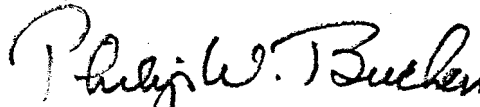
The items requested in paragraphs five (5) and six (6) of the attachment to the subpoena cannot be found.

I am informed that counsel for former President Richard M. Nixon objects, inter alia, to the production of the items described in



paragraphs 3, 4, and 6 of the attachment to the subpoena and has filed a motion to quash the subpoena as to those items. Accordingly, those items have not been produced.

Sincerely,



Philip W. Buchen  
Counsel to the President

Andrew C. Hall, Esquire  
Frates, Floyd, Pearson, Stewart,  
Proenza & Richman  
Twelfth Floor, Concord Building  
66 West Flagler Street  
Miami, Florida 33130

Enclosure

cc: Herbert J. Miller, Jr., Esq.  
Henry S. Ruth, Esq.



Dec. 12, 1974

Mr. Buchen:

As per your request by telephone  
yesterday.

Henry Ruth



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN D. MITCHELL, ET AL.

IN RE NATIONAL BROADCASTING COMPANY,  
INC.; AMERICAN BROADCASTING COMPANIES,  
INC.; CBS INC.; RADIO TELEVISION  
NEWS DIRECTORS ASSOCIATION; and  
WARNER COMMUNICATIONS, INC.

Misc. No. 74-128

FILED

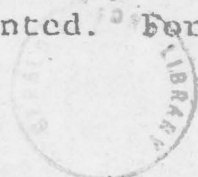
DEC 5 1971

JAMES E. DAVEY, CLERK

MEMORANDUM AND ORDER

Several television and radio broadcasters noted in the caption moved pursuant to Rule 47 of the Federal Rules of Criminal Procedure requesting copies of those portions of taped conversations initially recorded in former President Nixon's offices which were subpoenaed, received in evidence, and played to the jury in this widely publicized criminal case still on trial before Judge John J. Sirica. Copying would be accomplished at applicants' expense with the aid of the Clerk of Court from the evidentiary tapes. There would be no recording in the courtroom. Applicants propose to broadcast at least portions of the tapes locally and nationwide over both television and radio.

The reproduction of trial evidence received in tape form for subsequent public use raises an issue of first impression in this District and the Clerk of Court, James F. Davey, properly seeks guidance from the Court. No published precedent directly in point has been cited or found in any other jurisdiction. The matter has been treated as a miscellaneous proceeding and separately assigned at Judge Sirica's request. All defendants and the Special Prosecutor have been served and the Court has before it various briefs and affidavits, including an affidavit from the Clerk of Court explaining some of the mechanical and administrative considerations presented. Former



President Nixon, by his attorneys, opposes the motion. The Reporters' Committee for Freedom of the Press has been granted permission to file a brief amicus.\*/

Applicants claim a constitutional right to reproduction of the tapes under the First Amendment to the Constitution. This claim is wholly without merit. A public trial is taking place, all media, including applicants, have been present, and, by order of the trial judge, provided with earphones to enable their representatives to hear exactly what the jury heard when the tapes were actually played in the courtroom. There were no restraints placed on their subsequent reporting. Indeed, the contents of the tapes have been fully reported and written transcripts were made available to all media to assure reasonable accuracy.

The Supreme Court has repeatedly held in recent years, although admittedly by split votes, that members of the press are not constitutionally guaranteed a "right of access" greater than that afforded the general public. Pell v. Procunier, 94 S. Ct. 2800, 2810 (1974); Saxbe v. Washington Post, 94 S. Ct. 2811, 2815 (1974); Branzburg v. Hayes, 408 U.S. 665, 684-5 (1972); Estes v. Texas, 381 U.S. 532, 540 (1965). See also, Address of Mr. Justice Stewart, "Or of the Press," Y School Sesquicentennial Convocation, Nov. 2, 1974, at p. 9:

So far as the Constitution goes, the autonomous press may publish what it knows, and may seek to learn what it can. But this autonomy cuts both ways. The press is free to do battle against secrecy and deception in government. But the press cannot expect from the Constitution any guarantee that it will succeed. There is no constitutional right to have access to particular government information or to require openness from the bureaucracy. . . . The Constitution, in other words, establishes the contest, not its resolution.

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\*/ In addition, the Mutual Broadcasting System, Inc. has made separate application in letter form.



The question presented by the applications then boils down to a far simpler issue. Are representatives of broadcast media entitled along with the general public to aural copies of exhibits after they have been received in evidence in a criminal trial as a normal concomitant of the constitutional requirements of a public trial found in the Sixth Amendment to the Constitution?

As a matter of practice in this court, if requested, a copy of any document or photograph received in evidence is made by the Clerk and furnished at cost of duplicating to any applicant, subject only to contrary instructions that may be given by the trial judge at the time of trial. This privilege of the public to inspect and obtain copies of all court records, including exhibits while in the custody of the Clerk, is of long standing in this jurisdiction and reaches far back into our common law and traditions. Absent special circumstances, any member of the public has a right to inspect and obtain copies of such judicial records. Ex parte Drawbaugh, 2 App. D.C. 404, 407 (1894). See also, United States v. Burka, 289 A.2d 376 (1972); Belt v. Pr. George's County Abstract Co., 73 Md. 289, 20 A. 982 (1890).

The Court stated in Drawbaugh,

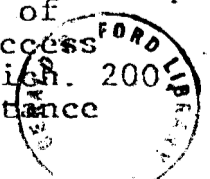
. . . any attempt to maintain secrecy, as to the records of the court, would seem to be inconsistent with the common understanding of what belongs to a public court of record, to which all persons have the right of access and to its records, according to long-established usage and practice.

2 App. D.C. at 407-8. This proposition applies without a showing of a particular "legitimate interest" in the records requested. In re Mosher, 248 F.2d 956, 958 (C.C. P.A. 1957).<sup>\*/</sup>

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<sup>\*/</sup> The supposed requirement of English common law that one have a personal "legitimate interest" in judicial records before access would be granted was in fact simply a requirement of standing to sue to enforce the right in mandamus where access had been wrongfully denied. See Nowack v. Fuller, 243 Mich. 200, 219 N.W. 749, 60 A.L.R. 1351 (1928). No one in this instance has been denied access to copy the tapes in evidence.

In this jurisdiction the practice has been to make court documents available without a showing of "special interest." Were this an action in mandamus, rather than an application to instruct the  
(footnote continued on next page)

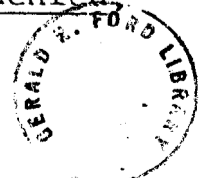


In this particular instance this general right to have access and copy exhibits is especially reinforced by directives of the Judicial Conference of the United States issued under authority of 28 U.S.C. § 457. The Clerks of Court for District Courts throughout the United States are specifically instructed to retain on file for public inspection for ten years documentation in cases of significant historical importance and then to deposit such materials with the Federal Records Center under the aegis of the General Services Administration for subsequent years under the guidelines set by 44 U.S.C. § 3301 and the implementing regulations appearing at 41 C.F.R. §§ 101-11.101 et seq. The Manual for the Clerks of the United States District Courts, Chapter 13, Exhibit 2, (Ref. 1301.4) at pp. 4-5, item 6(a) (1954), directs, among other things, that "case papers and documentary exhibits" filed in criminal cases involving the President or officials appointed by the President must not be disposed of even after ten years. Cases of this type are considered to contain "documentary evidence of movements of historical forces" and "biographical data" of obvious importance for persons interested in "social, economic and political research." Ibid., note to item 6, p. 16.

Thus there is congressional, judicial and executive recognition of the need to make available and preserve materials from a trial like the present, including the evidentiary tapes, bearing as they do directly on executive conduct at the highest levels. It should be noted that Warner Communications, Inc. by its separate application specifically requests access in order to disseminate permanent phonograph and tape recordings of evidentiary tapes for use in homes, libraries and schools.

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(footnote continued from preceding page)  
Clerk as to Court policy, the media would have standing to compel equal protection of their right of access consistent with that routinely accorded other members of the public. McCoy v. Providence Journal Co., 190 F.2d 760 (1st Cir.), cert. denied, 342 U.S. 894 (1951).





Neither the defendants in this case nor the Special Prosecutor object to release of the tapes, nor has Judge Sirica indicated any reason to deviate from general practice in this instance in the interests of a fair trial. Former President Nixon does object. He seeks to avoid embarrassment and wide publicity, asserting that he still has a property right in the tapes and accordingly a privilege against disclosure, except to the extent that that privilege has been invaded by the doctrine of United States v. Nixon, 94 S. Ct. 3090 (1974). Former President Nixon is before the jury as an alleged co-conspirator and his acts, as reflected in the tapes, are pertinent to the theory of the case on which the Special Prosecutor is proceeding. The Court has carefully reviewed transcripts of the tapes in issue. From this review it is apparent that Judge Sirica has assiduously removed extraneous material, including topics relating to national security and considerable irrelevant comment relating to persons not on trial. Only portions of the tapes strictly germane to the criminal proceeding have been played to the jury. Moreover, the portions of the tapes here in issue are now of public record. Although former President Nixon has been pardoned, he has standing to protest release by the Court but he has no right to prevent normal access to these public documents which have already been released in full text after affording the greatest protection to presidential confidentiality "consistent with the fair administration of justice." United States v. Nixon, supra, 94 S. Ct. at 3111. His words cannot be retrieved; they are public property and his opposition is accordingly rejected.

It should be understood that the Court is not called upon or in any way attempting to decide whether or not the dissemination of the tapes to the public is or is not desirable. On the one hand, much has been already printed; on



the other, the aural atmosphere, emphasis and connotations of the taped discussions may be peculiarly illuminating. The law must be applied and the fact the evidence is in aural form is of no special consequence. The tape exhibits are in evidence and have therefore come into the public domain and the public should have the opportunity to hear them. Whether any individual affected has a right under the law of privacy or related doctrines against anyone who thereafter republishes is not to be determined here. See, e.g., Melvin v. Reid, 112 Cal. App. 285, 297 P. 91, 93 (1931); Briscoe v. Reader's Digest Assn., 93 Cal. Rptr. 866, 483 P.2d 34 (1971); Restatement (I) of Torts, § 867, Comment C (1939).

The courts are a branch of government and a criminal proceeding involving officials holding high positions of public trust must peculiarly remain open for the closest scrutiny and discussion by citizens. It was in just such situations that the Sixth Amendment was intended to have its greatest thrust. As the Supreme Court has succinctly stated, "what transpires in the courtroom is public property." Craig v. Harney, 331 U.S. 367, 374 (1947). Only in this fashion can arbitrary judicial authority be prevented.

Before the tapes can be released, certain immediate obstacles must be overcome. Because the tapes contain material that was not played to the jury, they will have to be rerun to remove the excluded material. There is need, as the Special Prosecutor points out, to preserve the integrity of the tapes as received in evidence during the reproduction process. Considerable time, perhaps running as much as several weeks, will be required to reproduce them. Court personnel and experts now fully committed to the trial must be consulted. Because of these administrative and mechanical difficulties no attempt should be made to provide verbatim sound copies, in addition to the transcript copies



already provided, until after the trial.

If and when released, there will be a broad demand for copies, as witnessed by the applications already filed, when availability becomes better known. The office of the Clerk of Court is not equipped with trained personnel or facilities allowing it to become involved in any mass release of numerous copies of the tapes, even at the expense of applicants. Furthermore, if any release is to be made, it must obviously be accomplished on a basis which does not permit overcommercialization of the evidence. Clearly, all persons, whether or not members of the press, desiring copies must be accommodated without special favoritism or priority.

There is time between now and the end of the trial to determine whether a satisfactory mechanism and procedure can be evolved which will permit the Court to prepare only a single copy of the tapes as played and then place its subsequent reproduction and distribution in the responsible hands of an organization, agency or person which, without profit, can, for a defined limited period, assure fair and equitable distribution to all categories of applicants. Without in any way indicating whether it is practical or possible to release aural copies in addition to the transcripts already released, the Court solicits any suggestions which the Special Prosecutor, the defendants or applicants may have as to an appropriate method for facilitating a release which is consistent with the considerations enumerated generally above. Suggestions should be submitted in concrete detail and filed with the Clerk of Court on or before January 3, 1975.

In the meantime, the Clerk shall upon completion of the trial promptly proceed to reproduce a single set of the tapes in evidence which shall contain only those portions played to the jury during trial. He shall consult with expert personnel to assure accuracy of this reproduction and to avoid compromising



the evidentiary value of the exhibit in any respect. He shall advise the Court when this task is completed and withhold the reproduced tapes from public inspection until further order of the Court. Final action on the applications will be taken at a later date in the light of developments. The opposition filed on behalf of former President Nixon is denied.

SO ORDERED.

*Richard A. Scahill*  
UNITED STATES DISTRICT JUDGE

December 5, 1974.

