

Memorandum

TO : Leon Jaworski
Special Prosecutor

DATE: February 22, 1974

FROM : Philip A. Lacovara
Counsel to the Special
Prosecutor

SUBJECT: Status of Charles Colson in Watergate Case

In recent discussions concerning whether to recommend indictment of Charles Colson in the Watergate case, Rick Ben-Veniste has indicated that he believes we have sufficient evidence to overcome a motion to dismiss, but that our chances of obtaining a conviction are no better than 50-50. My understanding is that it has been the consistent policy from the inception of this office that we would indict an individual only if we were reasonably certain of obtaining a conviction. Hank Ruth and I (and I understand, you) have advised David Shapiro, Colson's attorney, that this policy would be followed in our recommendation to the grand jury on Colson. Under these circumstances, I have considerable doubt whether we should recommend to the grand jury that it indict Colson.

From the outset of our discussions, you have felt that Colson was very deliberate in staying on the periphery of any conspiracy and cautious to limit any overt activity on his part. According to my notes, on February 9, you indicated that the recording of Colson's conversation with Hunt in November was not enough to secure a conviction and told the Watergate task force that you would not be prepared to indict Colson unless there were more evidence of his complicity in the conspiracy. You reaffirmed this position on February 11. To my knowledge, the Watergate task force has not developed this additional evidence, despite repeated exploration of the clemency issue with Bittman; nor have they expressed greater confidence in being able to obtain a conviction. As recently as February 20, Rick Ben-Veniste gave his assessment of the likelihood of conviction as no more than 50-50.

Although there is no question that the grand jury would be fully justified in finding probable cause to indict Colson, I believe that this office should adhere to the high standard we have set for ourselves. This is particularly important

where an individual who is not part of the core of the conspiracy, either by his actions or motivations, may be swept up in a large conspiracy case.

Finally, in making your decision, you should be aware that, despite his brief to us in the Fielding case, which states that "the Special Prosecutor informed Mr. Colson and his counsel that no indictment would be brought unless the Special Prosecution Force was 'confident that it could obtain a conviction,'" David Shapiro has said that it might not be "unfair" to indict Colson in that case if, on the facts and the law, there were a 50-50 chance of conviction. In my view, however, that should not be sufficient.

(I have discussed this memorandum with Peter Kreindler, who was present at many of the meetings about Colson and with his attorney, and he asked that I mention that he concurs in these thoughts.) (Henry Ruth has also recommended that, for similar reasons, Colson should not be indicted.)

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