

Memorandum

TO : Leon Jaworski
Special Prosecutor

DATE: 9/5/74

FROM : Richard Ben-Veniste
Jill Wine Volner

SUBJECT: Possible Plea Bargaining in
United States v. Mitchell, et al

As you know, Mr. Mitchell, through his attorney, has already contacted this office in a tentative way to explore the possibility of a one count plea arrangement. Although it is unlikely that any serious offer will be made by John Mitchell or any other defendant until it is clear that no superseding indictment will be returned, it is possible that some of the defendants may soon endeavor to open negotiations for a one count plea.

It is our belief that it would not be in the interests of justice to accept a one count plea from John Mitchell or Harry R. Haldeman. Such a plea would put them in the same category as the younger, less culpable men who have already entered pleas and been sentenced and who have been cooperative with this office for a considerable length of time. Messrs. Mitchell and Haldeman are mature men who knew the consequences of their actions and who have substantially interfered with the future lives of those they directed. Their offer to plead, if tendered, will come only after they have run the string out entirely and are faced with an excellent chance of conviction for conspiracy, substantive obstruction and numerous perjuries in Watergate, let alone other areas of inquiry by this office. To equate them with their underlings would be contrary to the notion of equal justice and would fail to reward cooperation.

One additional factor we believe should be considered in evaluating any plea offer is that unless Mitchell, Haldeman and Ehrlichman all agree to plead, the trial of the case will not be appreciably shortened and the chances of conviction will not be improved (indeed they may be hurt) by the acceptance of a plea from fewer than all three.

In recommending that we establish a distinction between the treatment of Messrs. Haldeman and Mitchell and the younger, long-cooperating members of the conspiracy, it is not our purpose to ensure greater punishment. Thus, while we recommend that no plea to less than two counts be accepted from Mitchell and Haldeman, we would favor an arrangement wherein, based on our being satisfied of full cooperation by the defendant in question, we would recommend to the Court that the sentences imposed on the two counts be concurrent rather than consecutive. In the absence of full cooperation, it is our opinion that we should not agree to make any recommendation on sentencing. Acceptance of pleas under these conditions will recognize a distinction between the culpability and degree of cooperation among the defendants yet is not draconian in nature.

Because John Ehrlichman has already been convicted and sentenced on multiple counts, we feel that a one count plea from him (with no recommendation) would satisfy the interests of justice.

Memorandum

TO : Leon Jaworski

DATE: 9/20/74

FROM :  James F. Neal

SUBJECT: John N. Mitchell.

*Personal &
Confidential*

To place things in perspective, John N. Mitchell's counsel has approached you suggesting that Mr. Mitchell could tell the "whole story" on Watergate and related matters, including ITT, or at least add substantially to the facts presently known and would do so if we would drop our prosecution against him.

I place enormous value on having the entire story on these matters exposed, and I place little value to the public in having individuals such as Mitchell incarcerated for any length of time, particularly in view of the pardon of Mr. Nixon. I do think it vital, however, that Mitchell's guilt in the "Watergate" case be established either by plea or by trial. Further, I do not think we should do more for Mitchell than we did ^{or would do} for Dean, Magruder or LaRue.

I could recommend a plan whereby:

- (1) Mr. Mitchell would agree to plead guilty to Count One of the Indictment;
- (2) He would make a full statement of all his knowledge on Watergate and related matters;
- (3) He would enter a plea to Count One of the Indictment at a closed session of the Court;
- (4) He would testify as a government witness in the case of United States v. Mitchell, et al;

Where
Where

(5) You would agree to make a statement to Judge Sirica that the sentence to be imposed on Mitchell and Mr. LaRue be considered, and the sentences imposed on Magruder and Dean be reconsidered, in the light of the pardon of Mr. Nixon. You could make it plain that you are not suggesting a suspension of all sentence on any individual, but are suggesting that sound judicial discretion justifies a review of all sentences in the light of existing events.