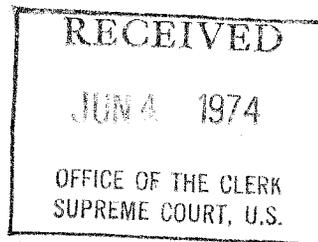


*File in
District Court to the
on June 4, 1974
mrf*

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005
June 3, 1974



Honorable Michael Rodak, Jr.
Clerk
Supreme Court of the United
States
Washington, D. C.

Re: United States v. Nixon, No. 73-1766

Dear Mr. Rodak:

I am writing to you to request the Court's instructions on how to proceed with two aspects of this case, in which the Court granted certiorari on May 31, 1974, and set an accelerated schedule for briefing and argument.

First, there is the question of the printing of a joint appendix. The government would designate for printing in the appendix the following items in the record:

1. The indictment returned on March 1, 1974.
2. Order of the district court dated April 18, 1974, directing issuance of a subpoena (Pet. App. D).
3. Subpoena duces tecum to Richard M. Nixon, with attached schedule (Pet. App. C).
4. Special appearance and motion to quash on behalf of the President dated May 1, 1974, together with annexed "Formal Claim of Privilege" by the President.
5. Pages 1-2, 44, of the "Memorandum for the United States in Opposition to the Motion to Quash Subpoena Duces Tecum" together with the 49 page appendix annexed thereto.
6. Special appearance and motions to expunge and for a protective order filed on May 13, 1974, on behalf of the President.

7. Opinion and order of the district court filed May 20, 1974 (Pet. App. A).

Ordinarily there would be no problem in printing the foregoing materials. However, in this case the district court has placed under seal the pertinent portions of the government's memorandum in opposition to the motion to quash as well as the pertinent portions of the President's "Special Appearance and Motions to Expunge and for a Protective Order." (Items 4 and 5). Because of the nature of the information contained in the government's pleadings in opposition to the President's motions to quash and to expunge, including the appendix annexed thereto, and the possible prejudice to the President's interests, the district court directed that these items be placed under seal, and those portions of the briefs containing legal arguments based on the sealed information were also sealed and the oral argument on the various motions was held in camera.

Pursuant to the district court's opinion and order of May 20, 1974, the President's motions for protective orders and to expunge this sealed material were denied but the district court directed that these matters would remain confidential and that the written materials in the record would be transmitted under seal to the appellate courts.

The sealed materials contain information that in our judgment is necessary to the Court's informed decision on the executive privilege question, since they relate to the issues whether executive privilege can properly be invoked and whether the government has made a sufficient showing of relevancy, materiality, and need to warrant enforcement of the subpoena. In our view, therefore, it would be extremely helpful for the Court to have convenient access to these portions of the record. Under the district court's order, however, we are not permitted to disclose this information to anyone, and presumably this would apply to the Government Printing Office. We therefore request that the Court determine whether and under what conditions the foregoing information should be printed.

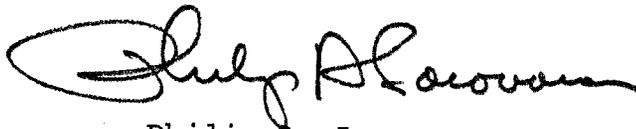
The second problem raised by the district court's order sealing certain information is that it will not be possible to brief and argue before this Court one of the

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legal issues that was presented to the district court unless the Court either unseals this material or follows the district court's lead in receiving a sealed brief on the question. If the latter course is followed, of course, there will remain a problem with making appropriate printing arrangements.

Because our brief is due in printed form on June 21, 1974, I respectfully request any instructions the Court may wish to give on how we can handle these two problems of (a) printing an appendix which contains currently sealed material and (b) briefing and arguing a legal issue that turns inextricably upon information currently under seal. I note, incidentally, that the sealed information does not involve classified or "national security" information or presumptively privileged Presidential conversations.

Sincerely,



Philip A. Lacovara
Counsel to the Special
Prosecutor

Attorney for the United States

cc: Honorable John J. Sirica
James D. St. Clair, Esq.
William G. Hundley, Esq.
Sidney Dickstein, Esq.
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John M. Bray, Esq.
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