

WATERGATE SPECIAL PROSECUTION FORCE

United States Department of Justice

1425 K Street, N.W.

Washington, D.C. 20005

June 17, 1974

*File
MNH*

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:

In my letter to you dated June 3, 1974, with copies to counsel, I proposed the designation of seven items for printing in the joint appendix in this case but requested special instructions because several of the items were placed under seal by the district court. Although the district court in the interim rescinded its order placing certain items under seal, the Supreme Court on June 15, 1974, denied the joint motion of the United States and the President for such relief and instead, with one exception, directed that sealed portions of the record remain under seal and dispensed with the printing thereof.

Accordingly, the joint appendix in No. 73-1766 will consist of items 1 through 4 as designated in my letter of June 3, 1974, since those items had never been sealed. Items 5 and 6 remain under seal pursuant to the Court's order of June 15 with one exception, and in light of the Court's quotation of that portion in full in its order we shall not be printing it in the appendix. Item 7 in my original designation, the district court's opinion and order, is printed in the appendix in the government's certiorari petition and will not be reprinted. It is my understanding that counsel for the President agree with the foregoing arrangements.

Although the Court dispensed with printing of the sealed material that would otherwise have been included in the printed appendix, I believe the Court might find it helpful to have conveniently at hand certain portions of the sealed record. Accordingly, I am enclosing ten xerox copies of the "Appendix to Memorandum for the United States in Opposition to the Motion to Quash Subpoena Duces Tecum". These copies are contained in a separate closed envelope marked "excerpts from sealed record". If the Court wishes these items to be distributed to the various Chambers, these items will be available to you.

It is my understanding that counsel for the President may also submit xeroxed copies of extracts from the sealed record.

We appreciate your continuing courtesy and cooperation in working out the necessary procedures in this unusual case.

Sincerely,

Philip A. Lacovara
Counsel to the Special
Prosecutor

- cc: Honorable John J. Sirica
- James D. St. Clair, Esq.
- William G. Hundley, Esq.
- Sidney Dickstein, Esq.
- John J. Wilson, Esq.
- William S. Frates, Esq.
- John M. Bray, Esq.
- Jacob A. Stein, Esq.
- David G. Bress, Esq.

These sealed portions of the record were distributed to each of the 8 justices at the time the briefs on the merits were distributed on Friday at 11:AM - (June 21, 1974)

MLP

Supreme Court of the United States

No. 73-1766 and 73-1834

United States,

Petitioner,

v.

Richard M. Nixon, President of the United States, et al.; and

Richard M. Nixon, President of the United States,

Petitioner,

v.

United States

ON CONSIDERATION of the joint motion of the Special Prosecutor and counsel for the President to unseal those portions of the record ordered sealed by the District Court on May 13, 1973,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, denied, except for the following extract from the sealed record:

1. "On February 25, 1974, in the course of its consideration of the indictment in the instant case, the June 5, 1972, Grand Jury, by a vote of 19-0, determined that there is probable cause to believe that Richard M. Nixon (among others) was a member of the conspiracy to defraud the United States and to obstruct justice charged in Count I of the instant indictment, and the Grand Jury authorized the Special Prosecutor to identify Richard M. Nixon (among other) as an unindicted co-conspirator in connection with subsequent legal proceedings in this case."

Other than this disclosure, the sealed record shall remain sealed.

2. In addition to the questions designated by the parties in the petition for certiorari, the cross-petition for certiorari, and the petition for a writ of mandamus filed in the Court of Appeals

Supreme Court of the United States

Nos. 73-1766 and 73-1834

(Court of Appeals Docket No. 73-1532), the parties are requested to brief and argue the following questions:

(a) Is the District Court order of May 20, 1973, an appealable order?

(b) Does this Court have jurisdiction to entertain and decide the petition for mandamus transmitted by the Court of Appeals to this Court?

3. Printing of any portions of the record that have been filed in this Court under seal shall be dispensed with. Any portions of the briefs that counsel deem necessary to keep confidential in order to conform with the provisions of paragraph 1 above shall be submitted under seal to this Court, and counsel in oral argument shall refrain from disclosing any portions of the record that are under seal.

June 15, 1974

Mr. Justice Rehnquist took no part in the consideration or decision of this order.