

File mch

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005
July 1, 1974

RECEIVED
JUL 2 - 1974

OFFICE OF THE CLERK
SUPREME COURT, U.S.

James D. St. Clair, Esq.
Special Counsel to the President
The White House
Washington, D. C.

Re: United States v.
Nixon, Nos. 73-1766,
73-1834

Dear Mr. St. Clair:

In the reply brief you filed today in the Supreme Court on behalf of the President, you stated in footnote 25 on page 26:

The President stated in his Formal Claim of Privilege (J.A. 48a) that he advanced no claim of privilege with respect to those portions of 20 tape recorded conversations for which transcripts have been made public. Accordingly, those portions of the 20 tapes are not at issue in this case as the President has no objection to judicial authentication.

In line with this representation, and in view of the importance of proceeding with dispatch in preparing for trial in United States v. Mitchell, et al., I hereby request that you submit immediately to Judge Sirica the tapes containing the twenty subpoenaed conversations, partial transcripts of which have been released by the President, so that the process of "judicial authentication" can proceed without delay.

Of course, we recognize that such a submission would be without prejudice to the respective positions of the parties in the case now before the Supreme Court.

Sincerely,

Leon Jaworski
LEON JAWORSKI
Special Prosecutor

*Distinuted to the
Court July 27, 1974
m. r. [unclear]*

cc: Honorable John J. Sirica
United States District Judge

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

Counsel for all Defendants

WATERGATE SPECIAL PROSECUTION FORCE

United States Department of Justice

1425 K Street, N.W.

Washington, D.C. 20005

July 1, 1974

*File
M.A.*

RECEIVED

JUL 3 - 1974

OFFICE OF THE CLERK
SUPREME COURT, U.S.

James D. St. Clair, Esq.
Special Counsel to the
President
The White House
Washington, D. C.

Re: United States v. Nixon, Nos. 73-1766,
73-1834

Dear Mr. St. Clair:

In my letter to you today I urged that you promptly act in accordance with your concession in footnote 25 of your Reply Brief that you are not claiming privilege as to those taped portions of the subpoenaed conversations for which transcripts were released, and will submit them to Judge Sirica. To avoid any later question, I want to let you know that I assume that this will be done in conformity with the procedures specified in Rule 17(c) and Judge Sirica's order of May 20, 1974. That is, I understand that upon a judicial determination that those portions of the tapes are relevant to the issues in United States v. Mitchell, et al., as the White House transcripts had indicated, the recordings themselves will be available for appropriate use at trial.

If this understanding does not accurately reflect your intention, please advise me promptly so that we will both be in a position to report to the Supreme Court whether, as you state in your brief, "those portions of the 20 tapes are not at issue in this case. . . ."

We reiterate that while we are pleased that you now recognize that there is no arguable basis for a claim of privilege as to those portions of the subpoenaed tapes, we shall continue to press our position concerning the

*Handwritten to the
Court July 3, 1974*

remaining subpoenaed conversations, including the balance of the twenty conversations for which partial transcripts were released.

Sincerely,

Leon Jaworski

LEON JAWORSKI
Special Prosecutor

cc: Honorable John J. Sirica
United States District Judge

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

Counsel for the Defendants

*Resubmitted
to Court July 5, 1974*

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

July 3, 1974

James D. St. Clair, Esq.
Special Counsel to the President
The White House
Washington, D.C.

Re: United States v. Nixon, Nos. 73-1766, 73-1834

Dear Mr. St. Clair:

I have now received your letter of July 2, 1974, but find that it does not respond to the basic question I asked in my letters to you of July 1, namely, whether, as you seem to indicate in your Supreme Court brief, you are agreeing to make available to the district court and to us the tapes of those portions of 20 subpoenaed conversations for which the President has released transcripts.

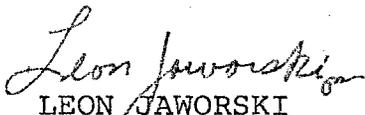
Your letter of July 2 talks about having Judge Sirica verify the accuracy of the White House transcripts "for use in the forthcoming trial." Such a procedure would not constitute compliance with the outstanding subpoena which the court has ordered enforced and which you are now asking the Supreme Court to review. Furthermore, it is highly questionable whether such transcripts could be used at trial in lieu of the tapes themselves. It was for that reason that the tapes were subpoenaed and it was for that reason that the district court has enforced the subpoena.

You have, I think necessarily, conceded in your Supreme Court brief that there can be not even an arguable basis for a claim of "executive privilege" for those portions of the tapes for which the President has publicly released transcripts. I fail to see any reason, and to date you have suggested none, for persisting in a refusal to make these subpoenaed tapes available to the court and to the prosecution for use at trial.

*file
7/3/74*

In light of the foregoing, and unless prior to the agrument before the Supreme Court on July 8 you advise me that the tapes in question will be delivered to Judge Sirica for use of these tapes by the prosecution at trial in accordance with the subpoena and outstanding court order, the Supreme Court should be advised that your assertion in footnote 25 of your reply brief that "those portions of the 20 tapes are not at issue in this case" is inaccurate and misleading.

Sincerely,


LEON JAWORSKI
Special Prosecutor

cc: Honorable John J. Sirica
United States District Judge

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

Counsel for all the Defendants

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005
July 11, 1974

RECEIVED
JUL 12 1974
OFFICE OF THE CLERK
SUPREME COURT, U.S.

*File
map*

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

Re: United States v. Nixon,
Nos. 73-1766, 73-1834

Dear Mr. Rodak:

By virtue of the language of footnote 25 of the Reply Brief for the Respondent, Cross-petitioner Richard M. Nixon, President of the United States, and of the statements made by Mr. St. Clair contained in pages 53-60 and 73-74 of the transcript of the oral argument before the Court on July 8, 1974, it was my understanding that the tapes of the 20 conversations included in our subpoena of April 16, 1974, edited transcripts of which were in the Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives, would be turned over to the lower court subject only to the mechanical problem of extracting these identified conversations from reels containing unrelated matter. Subject to this "mechanical problem," however, the entire conversations would be submitted to the lower court for review under the guidelines of Nixon v. Sirica, 487 F.2d 700 (1973).

In a hearing held before Judge Sirica today to clarify the offer, it was determined that the offer made was not as I had understood it and that the offer was in fact only to turn over to the lower court edited tapes containing only that exact portion or portions of the 20 conversations which are in the transcripts of the President's Submission. The court would not be given tapes of the identified conversations in their entirety but only that portion of those tapes containing the exact words contained in the President's Submission. Furthermore, even these tapes would not be given to the government and could only be used by the trial court

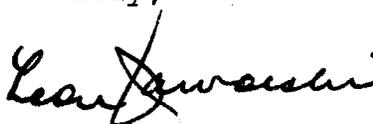
*Michael Rodak
Clerk
July 12, 1974
map*

- 2 -

to verify the language in the transcripts. After the nature and scope of the offer with respect to these 20 conversations was thus clarified in the hearing today before Judge Sirica, the government stated to the court that the offer was not acceptable in that in our opinion it would not yield evidence in admissible form for use in the trial of United States v. Mitchell, et al., Crim. No. 74-110. We, therefore, moved that the transcript of today's proceeding be transmitted to the Supreme Court in order that the Supreme Court would be aware that the issue before it concerns the availability of all of the tapes of the 64 identified conversations and not just 44 as we had concluded.

Pursuant to the judge's order, therefore, we are transmitting to you, with the request that you bring this to the attention of the members of the Court, the judge's order and the transcript of today's proceeding.

Sincerely,



LEON JAWORSKI
Special Prosecutor

Enclosures

cc: Honorable John J. Sirica
United States District Judge

James D. St. Clair, Esq.
Special Counsel to the President

Counsel for all Defendants

File

THE WHITE HOUSE
WASHINGTON
July 15, 1974

JUL 15 1974
OFFICE OF THE CLERK
SUPREME COURT, U.S.
Rec'd 5:55 PM

Dear Mr. Rodak:

Re: United States v. Nixon,
Nos. 73-1766, 73-1834

I have received a copy of Mr. Jaworski's letter to you of July 11, 1974 in which he states that he understood that the tapes of twenty conversations would be submitted in their entirety to the lower court for review.

I am at a loss to understand how Mr. Jaworski could have this view of the President's offer to verify the accuracy of the twenty public transcripts included on the list of recorded conversations covered by the Special Prosecutor's subpoena under Rule 17(c).

I spoke by long distance telephone to Mr. Jaworski from my home in Massachusetts over the Fourth of July weekend and explained to him that the President had not authorized release of those portions of the recorded conversations that were not published and that this would pose a mechanical problem, but I was satisfied then, and have since satisfied myself that it could be solved. I confirmed this conversation with Mr. Jaworski by letter dated July 10, 1974.

Mr. Jaworski seemed to understand my explanation and raised no objection at the time. It was only after the argument before the Supreme Court that his assistant, Mr. Neal, raised the question about having the tape of the entire recorded conversation produced.

Despite the dispute that seemingly has developed, the President remains willing to verify the accuracy of the published transcripts in such manner as the District Court should approve. If the

*Abstracts to
Court July 16, 1974
WRP*

Special Prosecutor determines that this is not satisfactory for his purposes, he is of course not obligated to accept the offer.

Sincerely,

A handwritten signature in cursive script that reads "James D. St. Clair". The signature is written in dark ink and is positioned above the typed name.

James D. St. Clair
Special Counsel
to the President

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

cc: Honorable John J. Sirica
United States District Judge

Leon Jaworski, Esq.
Special Prosecutor

Counsel for all Defendants