Proposal submitted to White House
by Archibald Cox September 20, 1973

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9/20/73 1:40 pm

I. TAPES

A. Step One

1. The President or a delegate of senior rank (see para. 5) may "omit" any continuous portion of substantial duration which is clearly and in its entirety unrelated to any matter within the jurisdiction of the Special Prosecutor as defined in the Appendix. (It is understood that short interruptions or diversions, interpolations, exclamations, brief comments upon personalities or other irrelevant subjects, etc., are among the matters not to be omitted at Step One but that they will be considered at Step Two.)

2. Any portion omitted is to be described in writing to the Special Prosecutor in terms of --

(a) subject matter,

(b) participants, and

(c) duration.

There must be an assurance in the description that the omitted portion does not include incidental or parenthetical remarks or brief comments that relate to any matter within the jurisdiction of the Special Prosecutor.

3. The transitional sentences introducing the separable, unrelated portions and returning to subjects within the jurisdiction of the Special Prosecutor will be included in the portions furnished to the Special Prosecutor as provided in paragraph 6.

4. The President or a delegate of senior rank (e.g., Messrs. Haig, Laird, or Buzhardt) will apply the above guidelines.

5. The President will appoint Honorable J. Lee Rankin [or some other mutually acceptable person] as special consultant upon the handling of Presidential recordings and papers sought by the prosecutors in the criminal investigation or prosecution. Mr. Rankin will not participate in applying the above guidelines, but thereafter will listen independently to each tape covering a requested conversation and determine whether in his independent judgment the gudelines have been accurately applied. If Mr. Rankin finds that in his judgment there has been a departure from the guidelines, he will so advise the President, who will make the necessary amendment. When Mr. Rankin determines that the guidelines have been accurately applied, he will so certify to the President and the Special Prosecutor.

6. The Special Prosecutor will be furnished an exact re-recording and a typed transcript of the remaining portions of the tapes.

B. Step Two

1. The Special Prosecutor and Mr. Buzhardt will

review the portions furnished and endeavor to agree upon --

(a) the excision of any portion which cannot properly be found "clearly and in its entirety unrelated to any matter within the jurisdiction of the Special Prosecutor" but which is not actually material to a matter before the grand jury;

(b) the excision of additional words, phrases, or sentences normal in informal conversations which might be unnecessarily embarrassing or prejudicial where paraphrase is practicable without impairing the opportunity to interpret or understand the meaning and/or nuances of the transcript and recording.

2. If the Special Prosecutor and Mr. Buzhardt cannot agree on the excision or paraphrase of any matter, they may seek the assistance of Mr. Rankin but if, even after giving weight to his recommendation, agreement cannot be reached, the matter will not be excised. It is further understood that questions of immateriality may require reconsideration from time to time during the progress of an investigation.

3. Portions produced before the grand jury will be treated as other evidence before the grand jury. The grand jury will again be expressly admonished that a breach of secrecy is a criminal offense.

4. Portions shown to the Special Prosecutor but not submitted to the grand jury will be held in complete confidence both now and in the future, unless otherwise required by a final order of a court of competent jurisdiction after allowance of opportunity for counsel to the President to assert executive privilege. (This paragraph and paragraph II 4 do not apply to the availability of evidence for submission by the Special Prosecutor upon trial of an indictment).

5. The Special Prosecutor will request only tapes of particular identifiable conversations, listing the date, times, and individuals involved with as much precision as possible.

II. MEMORANDA AND OTHER PAPERS

1. The Special Prosecutor will not request papers which he has no reason to consider potentially relevant to actual or prospective proceedings before a grand jury. He will request only specifically identified papers, definable categories of papers (e.g., papers pertaining to "ITT"), or describable files (e.g., "Political Matters Memoranda" of H.R. Haldeman).

2. The President will not assert a privilege to withhold papers or parts of papers from inspection by the Special Prosecutor, but in unusual cases may urge the Special Prosecutor not to press a request because of some extraordinary public interest in restricting the information (e.g., military or foreign intelligence secrets); in the latter instances an effort will be made to give the Special Prosecutor a general idea of the subject of the paper and its bearing or lack of bearing upon matters within his jurisdiction.

3. Upon the request of Mr. Buzhardt, the Special Prosecutor himself will review any papers with Mr. Buzhardt with a view to withdrawing his request for any paper or a part of any paper which, upon inspection, he agrees is irrelevant to matters within his jurisdiction or the materiality and importance of which he agrees is outweighed by the Executive's interest in confidentiality.

4. The Special Prosecutor will not disclose the contents of any papers and portions of papers which the Special Prosecutor and Mr. Buzhardt agree under paragraph (B)(3) are to be held confidential, unless otherwise required by final order of a court of competent jurisdiction after allowance of an opportunity for counsel to the President to assert executive privilege.

5. Papers turned over to the Special Prosecutor will be held in the same status as evidence before a grand jury.

III. SCOPE

These principles shall apply to all recordings, papers, and other tangible evidence as to which Presidential privilege has been or might be claimed.

Because the above procedures are not entirely appropriate to evidence to be used at the trial of an indictment, they can apply only to the grand jury phase. It is agreed, however, that an effort must be made to work out acceptable adaptations.