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BY MESSENGER

October 2, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR

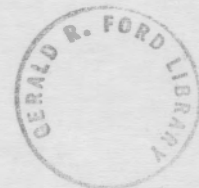
**John C. Keeney
Deputy Assistant Attorney General
Criminal Division
Department of Justice**

Pursuant to the joint request of the Criminal Division, Department of Justice, the FBI and the Secret Service, enclosed please find a copy of the Statement of President Ford relative to the alleged assassination attempt on the President's life in Sacramento, California, September 5, 1975.

As soon as practicable, I shall forward to you the President's statement relevant to the alleged assassination attempt which occurred in San Francisco on September 22, 1975.

**Kenneth A. Lazarus
Associate Counsel
to the President**

KAL:dlm



BY MESSENGER

October 2, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR

CLARENCE M. KELLEY
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

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Associate Counsel
to the President

KAL:d1m



BY MESSENGER

October 2, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR

**H. S. KNIGHT, DIRECTOR
U. S. SECRET SERVICE**

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As soon as practicable, I shall forward to you the President's statement relevant to the alleged assassination attempt which occurred in San Francisco on September 22, 1975.

**Kenneth A. Lasarus
Associate Counsel
to the President**

KAL;dlm



*President
assassination
attempt*

Monday 10/20/75

11:20

Ken wanted you to know that tomorrow Lynn Fremme will make a motion in the U. S. District Court in Sacramento to subpoena the President as a witness in the prosecution against her. There is a notion of need in the rule governing the subpoenas and the Justice Dept. anticipates that because of the lack of need, they will be able to quash the motion. They will get copies of all relevant pleadings.



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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF CALIFORNIA

---o0o---

BEFORE HONORABLE THOMAS J. MacBRIDE, Judge.

---o0o---

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

LYNETTE ALICE FROMME,)

Defendant.)

CR. NO. S-75-451

---o0o---

REPORTER'S TRANSCRIPT

AFTERNOON SESSION

TUESDAY, OCTOBER 21, 1975

---o0o---

APPEARANCES:

For the Government:

DWAYNE KEYES, Esq.
United States Attorney
and
DONALD HELLER, Esq., AUSA

For the Defendant:

JOHN E. VIRGA, Esq.

CSR Lic. No. C 2223

DENNIS F. McKINNON
CERTIFIED SHORTHAND REPORTER
SACRAMENTO



1 1:50 o'clock p. m.

2 (In camera hearing not transcribed.)

3 2:15 o'clock p. m.

4 THE CLERK: Court is now in session.

5 THE COURT: All right. The record will show the
6 defendant is present with counsel.

7 Now, I have had an in camera discussion with the
8 defendant and her co-counsel, and I concluded that there is
9 justification for the issuance of 35 subpoenas to be delivered
10 at the expense of the Government. Miss Fromme and Mr. Virga
11 have advised me they may not use all of these subpoenas, but
12 nevertheless they have shown the necessity for these persons
13 being here in the event they elect to actually request them
14 to come. But as Mr. Virga has pointed out, the situation may
15 develop that in discussion with a prospective witness, they
16 may make the decision that they want that person and they want
17 to be able to give the subpoena to them at that time. Accord-
18 ingly, the Clerk is authorized to issue 35 blank subpoenas to
19 the defense.

20 Now we come to the request for the subpoenaing of
21 President Ford. Mr. Virga or Miss Fromme, you may address
22 yourselves to that request.

23 MR. VIRGA: Your Honor, in this matter the case that
24 I'm relying on is U. S. vs. Nixon, cited as 418 U. S. 683.
25 We are requesting that President Ford be subpoenaed because he

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1 is a percipient witness to this particular offense or alleged
2 offense. There have been reports in the newspapers that one
3 of the agents involved heard a click of this particular weapon,
4 this .45 automatic that it's alleged Miss Fromme had in her
5 hand at the time of this alleged attempted assassination. It
6 is our contention that there was no click of that weapon. I
7 don't know whether this particular person who allegedly heard
8 this click -- it is my understanding from reading the news-
9 paper account that it was a Secret Service Agent or FBI Agent.
10 I don't know if this particular person indicates that it's
11 just the noise of the gun or if it is because there could be
12 a noise from an automatic, or whether it is the click of the
13 hammer coming forward. I think the contention that could be
14 made is that Miss Fromme simply didn't know how to use this
15 weapon. If she had wanted to use it, she didn't know how to
16 use it; and that that accounts for the weapon not going off
17 -- in other words, she may have confused this with a revolver
18 where all you have to do is pull back the hammer and pull the
19 trigger and the shot would be propelled down the barrel. There
20 have been numerous statements in the newspapers about comments
21 that Miss Fromme made after this alleged assassination attempt,
22 something to the effect that "It didn't go off, it didn't go
23 off. He's not a public servant." I would think that her
24 demeanor at this time would also be extremely important.
25 Everything was happening very fast. Exactly how was that said?



1 How it was said could be very relevant in this particular case.

2 Now, President Ford is a percipient witness to these
3 matters. What he saw and what he heard will be extremely
4 relevant, because as I see this case, the pivotal issue is
5 obviously intent. I think anyone connected with the case
6 would appreciate that. The testimony President Ford can give
7 in this matter is not only relevant, it's very material, meets
8 all of the tests that are necessary for admissibility in a
9 courtroom into evidence. I can't think of anything he could
10 have seen or heard that would be hearsay or that he wouldn't
11 be percipient to. In the case of United States vs. Nixon, and
12 I know the Court is well aware of that case so I'm not going
13 to go through all the facts and details of the case, but I do
14 want to make reference to Page 1066 of that decision. The
15 Court states:

16 "That the right to the production of all
17 evidence at a criminal trial similarly has con-
18 stitutional dimensions. The Sixth Amendment
19 explicitly confers upon every defendant in a
20 criminal trial to the right 'to be confronted
21 with the witness against him' and 'to have
22 compulsory process for obtaining witnesses in
23 his favor.'"

24 "Moreover, the Fifth Amendment also
25 guarantees that no person shall be deprived



1 of liberty without due process of law. It is
2 the manifest duty of the Courts to vindicate
3 those guarantees, and to accomplish that it is
4 essential that all relevant and admissible evi-
5 dence be produced."

6 The Court goes on to say:

7 "In this case we must weigh the importance
8 of the general privilege of confidentiality of
9 Presidential communications in performance of
10 his responsibilities against the inroads of such
11 a privilege on the fair administration of
12 criminal justice."

13 The Court goes on from there. In that case, we're
14 talking about a very delicate situation involving these tapes
15 and whether or not they are privileged. The Court said when
16 we are talking about due process and the fact that someone
17 might be going to prison, you bring those tapes in, present
18 them to the Court. Your Presidential privilege does not
19 extend to that. This case is far beyond that, Your Honor.
20 This is a case where the President is, in fact, the percipient
21 witness, and the fair administration of justice would indicate
22 that he should be here and we should be allowed to hear from
23 him as to what he did see and what he observed and what he
24 heard.

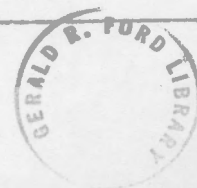
25 THE COURT: Thank you. Mr. Heller or Mr. Keyes?



1 MR. KEYES: Your Honor, I don't know that the Nixon
2 case, apparently the only case that they could find in dis-
3 cussing the issue, or the Burr case are of particular help
4 because they discuss a subpoena duces tecum and also discuss
5 Executive Privilege. I don't believe we have that in this
6 case.

7 THE COURT: We've had no exertion of Executive
8 Privilege. In other words, the Executive Privilege wouldn't
9 come into play unless I did in fact subpoena the President.
10 At that time, then I would suppose that he might, if he elected
11 to do so, claim Executive Privilege.

12 MR. KEYES: Well, I'm not sure that -- I presume
13 that would be the point we would reach that question. I'm not
14 sure if the privilege itself would be relevant at this point.
15 I think what we're discussing here is -- once again we're still
16 with Rule 17(b), which indicates that as far as subpoena power
17 is concerned the Court is looking at whether the witness is
18 necessary to an adequate defense. That's the question pre-
19 sented to the Court at this time. In the Ninth Circuit case
20 of Wagner vs. U. S., it's a 1969 case, 416 Fed. 2d, certiorari
21 was denied by the Supreme Court. Two points were raised in
22 that case. One, the Court stated that the right given a
23 defendant to subpoena witnesses at Government expense is not
24 absolute but is to be governed by the sound discretion of the
25 trial court. The Court has already acknowledged that today.



1 The second was the defendant does not have a right to subpoena
2 at Government expense witnesses whose testimony would be
3 cumulative. Now, in this particular case the defendant has
4 not filed an affidavit in support of this request for a
5 subpoena, so therefore we don't have facts alleged by this
6 defendant which we can respond to.

7 THE COURT: I think Mr. Virga has stated in open
8 court why he wants the President here. That is the question
9 of whether or not he heard -- I guess he's probably the closest
10 person to that gun, except maybe the one right next to it. As
11 I understand it, the gun was about two feet from him.

12 MR. KEYES: There were people all around, yes.

13 THE COURT: So he's looking right at the gun. The
14 question was: Did he hear the gun click, or did he hear the
15 defendant say anything?

16 MR. KEYES: That's right. Now, Mr. Virga has stated
17 to the Court just now his reasons for wanting that witness.
18 The United States intends to call approximately 15 witnesses
19 regarding these three areas. Each witness will not address
20 themselves specifically to all three, but the areas will be
21 covered. Statements of the defendant at the scene, the demeanor
22 of the defendant at the scene, the sound of a click or lack
23 thereof. Now, we have also indicated at the time of the
24 motions for discovery that at the conclusion of our case we're
25 going to turn over to the defendant Grand Jury statements that



1 were not used by us and all of the statements of any percipient
2 witness of which we had knowledge, which we did not call. I
3 think the defendant is going to have available everybody that
4 was there that we have any knowledge of. They may through
5 their own investigation in fact come up with other witnesses
6 of which we have no knowledge. There's going to be a lot of
7 testimony on the issues stated by Mr. Virga.

8 It's the position of the United States that the
9 testimony of the President, if he were called, would be
10 cumulative, and that this is supported in fact by a statement
11 that has been submitted by the President to Clarence Kelly,
12 Director of the Federal Bureau of Investigation. This state-
13 ment was presented on approximately October the 2d of 1975.
14 In that statement the President has indicated -- it's separated
15 into 10 paragraphs. The President has indicated that he has --

16 THE COURT: I think it best you read the statement
17 into the record.

18 MR. KEYES: All right, Your Honor. This is the
19 statement of President Gerald R. Ford.

20 "I, Gerald R. Ford, President of the United
21 States of America, pursuant to the joint request
22 of the Criminal Division and the Federal Bureau
23 of Investigation within the Department of Justice,
24 submit the following:

25 "One, during the morning of Friday,

1 September 5, 1975, I was in the Senator Hotel,
2 Sacramento, California.

3 "Two, at 10:00 a. m., I departed the Senator
4 Hotel on foot and proceeded diagonally across L
5 Street en route to the State Capitol Building.

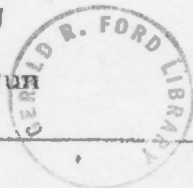
6 "Three, by 10:05 a. m., I had crossed into
7 the Park on the State Capitol grounds and started
8 shaking hands with a group of people gathered, two
9 or four rows deep, on my left.

10 "Four, as I approached a row of trees, I saw
11 a woman in an unusual red and orange dress standing
12 in the second row of the crowd. The woman had grey-
13 brown hair and a weathered complexion. She was
14 standing next to a tree and was visible to me above
15 her chest.

16 "Five, as this woman moved her right hand for-
17 ward toward me through the crowd at about waist
18 level, I saw that she was holding a handgun. At
19 this point, she was about two feet away from me.

20 "Six, at about the same time I saw the hand-
21 gun, several Secret Service personnel grabbed me
22 by the shoulders and pushed me down and away from
23 the woman and surrounded me.

24 "Seven, I have no recollection of hearing
25 the woman say anything or of hearing the handgun



1 click.

2 "Eight, I was quickly led away in the direction
3 of the State Capitol Building. I turned and looked
4 back momentarily to see two or three Secret Service
5 or other security personnel wrestling the woman down.

6 "Nine, at about 10:10 a. m., I entered the State
7 Capitol Building and went directly to the office of
8 Governor Brown.

9 "Ten, this is a complete and accurate statement
10 of my recollections of the incident described above."

11 It is signed by Gerald R. Ford, The White House,
12 Washington, D. C., September 24, 1975.

13 As I stated, Your Honor, it's our position that his
14 testimony would be cumulative, and this is supported by the
15 statement just read.

16 THE COURT: Let me ask you this, Mr. Keyes: Would
17 you be willing to stipulate that if the President were called
18 as a witness by the defense, that that's the testimony that
19 he would give?

20 MR. MEYES: Yes, Your Honor.

21 THE COURT: Now, if the President were called and
22 would so testify -- of course, I'm sure that what you would
23 want to hear him say is that he heard no click.

24 MR. VIRGA: That's right, Your Honor.

25 THE COURT: And that's what he would say.



1 if she did make any damaging statements, he didn't hear them.
2 It would seem to me that those are the areas of inquiry for
3 which you would want the President. If the Government is
4 willing to stipulate that if he was called that that's the way
5 he would testify, then what would be the need for calling the
6 President?

7 MR. VIRGA: Your Honor, I think he can still give
8 testimony that should be heard by the jury. I appreciate that
9 that -- that we could enter into a stipulation with regard to
10 some of these things. I noticed, at least I thought what I
11 heard Mr. Keyes say, he indicated he had no recollection of
12 hearing the gun click. Does that mean he didn't hear it click
13 or he has no recollection? That's kind of vague to me. That
14 leaves an open end. He doesn't know whether it clicked or not.
15 Or is he saying it didn't click? Certainly, I would like to
16 be in a position where I can show that he was there, which
17 obviously he was, that if it had clicked, he would have heard
18 it and he didn't hear a click; not that he doesn't recall.
19 That's basically what we're getting into now, an area of the
20 right to cross-examine, the right to confront. I appreciate --

21 THE COURT: I'm sure, Mr. Virga, that if you had
22 President Ford on the stand and you asked him: Did you hear
23 a click? And he would say I have no recollection of hearing
24 a click, you would say "Thank you, Mr. President."

25 MR. VIRGA: That may very well be the case. Your --

1 Honor. He may be our most important witness after listening
 2 to what Mr. Keyes has to say. There might be 14 witnesses
 3 who say they heard a click, he says he didn't hear one. It
 4 was my understanding -- what if the gun was closer to him than
 5 two feet? It's our contention it was closer to him than two
 6 feet. Then if there was a click, would he have heard it? It
 7 depends upon a number of things.

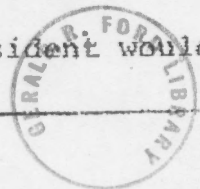
8 Just one other point. He indicated that she has
 9 grey-brown hair. Now, she doesn't have grey-brown hair, she
 10 has reddish brown hair. I don't notice any grey in her hair
 11 at all.

12 THE COURT: I don't think that that's too important,
 13 frankly.

14 MR. VIRGA: Well, I don't think it is of the greatest
 15 significance. Is he talking about Lynette Fromme? Maybe there
 16 was someone there who had grey-brown hair.

17 THE COURT: Someone else that they wrestled to the
 18 ground?

19 MR. VIRGA: Is he talking about the same particular
 20 person? I don't know. What did he say with regard to the
 21 weapon, what did he say with regard to her demeanor, the
 22 expression on her face, if he saw it, if he noticed? Was it
 23 an anxious demeanor; was it a panic-type demeanor? None of
 24 that is covered in his statement. I simply feel this is a
 25 situation where it's highly unusual that the President would be



1 the alleged victim and percipient witness. His testimony is
2 vital and necessary. I'm certain that if subpoenaed he would
3 be more than happy to be here. I'm sure he wouldn't need a
4 subpoena. I'm sure a phone call from the Court or the U. S.
5 Attorney's Office, or maybe even me -- I haven't called because
6 it seemed to me an impossibility for me to get through. It
7 seemed the best thing for me to do would be to ask you for a
8 subpoena. I don't know if he noticed the hammer back on the
9 gun even if he didn't hear anything. There would be so many
10 questions that should be covered, because from what Mr. Keyes
11 has to say, there are definitely some people who say they
12 heard a click. I don't think there's any question about that.
13 That's going to be very, very important on the issue of intent.

14 From what I understand, the President was the
15 closest person to that weapon. His ability to perceive and
16 recollect might be much greater than anyone else because he's
17 the one actually confronted with it. What other people might
18 not notice, I'm certain he would. This is something that
19 certainly he will never forget. His power of observation
20 could be increased tenfold because of what happened directly
21 to him.

22 THE COURT: I throw this out only as a suggestion.
23 Would you consider taking the President's deposition?

24 MR. VIRGA: I would consider that. I would much
25 prefer to have him here. I appreciate the problems of the

1 Presidency.

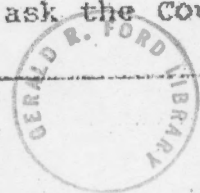
2 THE COURT: It's a very onerous thing. He's been
3 here. He's ill right now. Of course, I will admit that your
4 case is different than the Moore case. In the Moore case, the
5 lady was alleged to have been across the street. It would be
6 hard to say that he was as much of a percipient witness in
7 that case as he was to this for the reason he probably didn't
8 see her until somebody directed his attention to Miss Moore.
9 In this case, he was directly confronted, so it is claimed by
10 Miss Fromme.

11 MR. VIRGA: I would suggest that if the Court is
12 inclined to require we take his deposition, we do it on video
13 tape so that the jurors can not only listen to his words but
14 see his expressions. I would much prefer that he be here to
15 testify.

16 THE COURT: That would be a solution to the problem,
17 that his deposition be taken on video tape. I think that's
18 about the closest I can give you to a solution.

19 Mr. Keyes, would you like to comment on that?

20 MR. KEYES: Yes, Your Honor. I think, as the Court
21 realizes, it is within the Court's discretion. We are not
22 talking about a one-witness case. Apparently 35 subpoenas
23 have been issued, or authorization for 35 subpoenas to the
24 defendant. I believe I have indicated that approximately 15
25 witnesses will testify on this point. I would ask the Court



1 to withhold a decision until the conclusion of the case for
2 the United States. After the Court has seen the number of
3 witnesses, if the President is to be a defense witness, it can
4 be arranged at that time, I'm sure, if the Court feels his
5 testimony will not be cumulative.

6 THE COURT: Well, of course, you speak of cumulative,
7 cumulative to whom? I mean, if the Government puts on 20
8 witnesses and they all say the same thing, or near the same
9 thing, and then the defense attempts to put on some witnesses,
10 I couldn't permit you to stand up and object to testimony taken
11 from a defense witness, maybe it's on the same subject and say
12 this is purely cumulative to answers that came out during
13 direct examination in the Government's case. They're entitled
14 to put on the case they want. They've got their witnesses and
15 you've got your witnesses, all of whom are percipient witnesses
16 of the same incident. But they're entitled to put on just as
17 large an array of witnesses as you are. They may all say
18 exactly the same thing, but I don't think it's within your
19 province to object to a witness that they want to put on and
20 say this witness' testimony is merely cumulative to testimony
21 that's been elicited from the Government witnesses.

22 MR. KEYES: We're not to that point, Your Honor.
23 We're at the point --

24 THE COURT: I know we're talking about being at that
25 point, which is at the conclusion of the Government's case.

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1 MR. KEYES: Fine, before they put their case on.
2 We're now at where the cases are that discuss this very
3 subject. They're discussing whether the Judge was wrong when
4 he did not allow the issuance of a subpoena where there was a
5 supporting affidavit indicating what the witness was going to
6 say, and they have said it was cumulative. The Court was well
7 within their discretion to deny the issuance of a subpoena,
8 that's where we are at right now, and that's where the cases
9 are that discuss this. We certainly are willing to present
10 witnesses -- they're going to present witnesses, they're all
11 percipient, all standing within two or three feet of each
12 other, some are further away, but there are some that are
13 equally as close as the President. I don't think there's
14 going to be a lot of testimony in that area. I think the Court
15 presumes we're putting on witnesses that only heard a click.
16 There are going to be witnesses that didn't hear a click. So
17 it isn't a case of, you know, finding 20 witnesses that all
18 heard her say a certain thing and heard a click, that's not
19 the case or the nature of the evidence.

20 THE COURT: There's probably no click that's more
21 important than the click that wasn't heard by the President,
22 though.

23 MR. KEYES: I don't know, Your Honor. I think, quite
24 frankly, probably the agent that sees the gun is not going to
25 hear a click. It depends on what draws your attention, quite

1 frankly. If I saw the front end of a .45, I wouldn't even
2 recognize who was holding it. But that's something we'll come
3 to at a later time. The question here is, I think -- obvi-
4 ously, even the suggestion of video tape -- the defendant has
5 tried to commit a crime for a particular reason, I think her
6 alleged reason is publicity. We now have the President of the
7 United States who was her intended victim, she now wants the
8 President of the United States here in this trial. For what
9 reason? Allegedly it is extremely important.

10 I'm suggesting to the Court there are going to be a
11 lot of witnesses for the jury to hear on the question of intent.
12 Why is the President so important? Not necessarily because he
13 was a victim, but because he is the President. I suggest there
14 may be a little of that in the request also. I think it's
15 well within the discretion of the Court to deny it, or at least
16 to wait until the -- and the defendant still has time to take
17 the deposition or whatever they wish to do, but to wait until
18 the conclusion of our case, then they can indicate to the Court
19 in camera how many witnesses they are calling upon what points.

20 THE COURT: I already discussed with them in camera
21 the witnesses they're calling and approximately what they're
22 going to say. That's why I am seriously considering the
23 subpoena.

24 MR. KEYES: Well, the witnesses there, Your Honor --

25 THE COURT: Answer this, Mr. Keyes: If this was the

1 President of General Motors, what would I do with it, would I
2 issue the subpoena or not?

3 MR. KEYES: That depends. I don't think it should
4 be -- I think quite frankly --

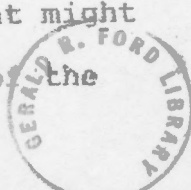
5 THE COURT: What if it was just the manager of one
6 of the branches of Bank of America here in Sacramento?

7 MR. KEYES: I would like to point out some language
8 that Justice Marshall, sitting as a District Judge, or equi-
9 valent to that, in 1807 in the Burr case. I think it's
10 apparent that the President is in a slightly different position
11 because of his duties and responsibilities. Quite frankly,
12 maybe the defendant wouldn't even want the President of General
13 Motors if that were the victim.

14 "In no case of this kind would a Court be
15 required to proceed against the President as
16 against an ordinary individual. The objections
17 to such a course are so strong and so obvious,
18 that all must acknowledge them."

19 Now, the objections, unfortunately, Chief Justice
20 Marshall didn't set forth. He said they were obvious. I
21 suggest that if it were the President of Crocker Bank or if
22 it were the President of General Motors, the defendant might
23 not even be that interested. We have the President of the
24 United States, I think the Court --

25 THE COURT: Did you also read in the Burr case, which



1 was cited in the Nixon case, the following language:

2 "Whatever difference may exist with respect
3 to the power to compel the same obedience to the
4 process as if it had been directed to a private
5 citizen, there exists no difference with respect
6 to the right to obtain it. The guard furnished
7 to this high officer to protect him from being
8 harassed by vexatious and unnecessary subpoenas
9 is to be looked for in the conduct of a court
10 after those subpoenas have been issued, not in
11 any circumstance which is to precede their being
12 issued."?

13 In other words, what they said in both Burr and
14 Nixon is that I'm not to look to the high office to determine
15 whether or not the person should be subpoenaed if, in fact, he
16 is a percipient witness and would be of assistance to the
17 defendant in her defense, but to let the high officer, in this
18 case the President, interpose his objections to being required
19 to obey the subpoena and then to consider whatever good reasons
20 he may have for not responding to the subpoena.

21 MR. KEYES: Well, of course, in the Nixon case, Your
22 Honor, they were discussing who was going to make the deter-
23 mination of whether or not the tapes should be turned over to
24 the Special Prosecutor. The Court decided that the Judge, in
25 camera, would make that determination. So we're talking about,

1 in that specific language, about something different than we're
2 talking about here. We are talking about will there --

3 THE COURT: You think they were talking about it in
4 the Burr case?

5 MR. KEYES: They were talking about a letter. The
6 President had the letter and the prosecutor wished to excise
7 certain parts of the letter that they felt were private. It
8 was a private letter to begin with, but they felt there were
9 parts that shouldn't be made public. They were talking about
10 a duces tecum subpoena.

11 THE COURT: In both instances?

12 MR. KEYES: In both instances, Your Honor. But I
13 feel that it is within the Court's discretion, as the Ninth
14 Circuit has said it is, to make that determination of whether
15 the testimony to be elicited is cumulative in deciding whether
16 the subpoena should issue. I feel that the Court would be in
17 a much better position, and I do not feel that the defendant
18 would be suffering if the Court heard some of the evidence.
19 We are turning over the rest of our material at the conclusion
20 of our case, that would be a very appropriate time for the
21 Court to make that determination.

22 THE COURT: Okay. Mr. Virga.

23 MR. KEYES: Thank you.

24 MR. VIRGA: Your Honor, I disagree with Mr. Keyes
25 that this is a matter of discretion as far as this Court is



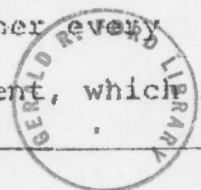
1 concerned. As I read the Nixon case, we are talking about
2 the Sixth Amendment, and it says the Sixth Amendment confers
3 upon every defendant in a criminal proceeding the right to be
4 confronted with the witnesses against him and to have compul-
5 sory processes for obtaining witnesses in his favor. It
6 doesn't say discretionary, it says compulsory. I don't see
7 this as being a matter of discretion for the Court. I think
8 that the Court's analysis is correct, that the subpoena must
9 issue and the President can then raise whatever objection he
10 has to the subpoena.

11 MR. KEYES: This is an indigent case, Your Honor. W
12 are talking about a different matter. Counsel has --

13 MR. VIRGA: May I be allowed to finish, Your Honor?

14 THE COURT: Yes.

15 MR. VIRGA: The other material issues, Mr. Keyes
16 says there were other people. Certainly there were other
17 people. Which direction were they facing? What did they say?
18 Mr. Keyes said if someone put a gun to his face he wouldn't
19 remember a thing. I'll tell you, if you put a gun in my face,
20 I'll remember you, and I think you would, too, Your Honor. I
21 think I'd remember a lot more than maybe the guy standing next
22 to me who maybe wasn't cognizant of what was happening. I'm
23 the one who sees it. We're talking about a click. That could
24 turn to a clang when that cell door slams behind her every
25 night. It bears materially upon the issue of intent, which is



1 the pivotal issue in this entire case. I'm not trying to make
2 a grandstand play by having the President here -- I resent that
3 What I'm saying is that the President of the United States is
4 not above the law, he's not above due process. He should be
5 the epitome of due process and the law. I need not go into
6 Watergate and everything that went on there. As a citizen of
7 the United States and in a criminal case such as this where he
8 can give very relevant, probative testimony, his presence
9 should be required by way of subpoena, Your Honor.

10 THE COURT: Thank you. Is there anything else to be
11 said about this?

12 MR. VIRGA: No, Your Honor.

13 MR. KEYES: No, Your Honor.

14 THE COURT: Well, I'm ready to rule. I think that
15 under the circumstances of this case, the President should be
16 asked to testify. He is a percipient witness to the case. The
17 affidavit indicates that the testimony that he would give
18 insofar as the click is concerned would be exculpatory insofar
19 as the defendant is concerned for the reason there is the
20 charge that the gun did click, which suggests that she did in
21 fact attempt to fire the gun. Although the President has
22 stated in his affidavit he has no recollection, he can be
23 examined further on that subject to determine whether or not
24 it was a case of no recollection or did he in fact not hear
25 the gun click.



1 It's unfortunate that the Chief Executive of the
2 United States has to be put to this burden. At the same time,
3 I don't know what else Congress had in mind when they passed
4 the statute that states that it is a Federal offense to attempt
5 to take the life of the President of the United States.
6 Certainly, they must have contemplated there would be those
7 circumstances where the President of the United States would
8 have to be a witness whenever such a charge came to trial. I
9 don't think, however, that it is necessary that we have the
10 presence of the President here. I think that Mr. Virga's
11 suggestion for taking his deposition on video tape is an
12 excellent suggestion. Modern technology and electronics and
13 the like I think has given us a blessing in our ability to
14 bring that deposition here so that we can not only hear what
15 the President says but also the manner in which he says it.
16 He can be thoroughly examined as if he were here. I don't see
17 any great problem. I would hope this will not discommode him
18 to any great extent. He's got a busy schedule.

19 I think, Mr. Virga, you or an associate -- you would
20 yourself go back to the deposition, is that what you would
21 intend?

22 MR. VIRGA: Yes, Your Honor.

23 THE COURT: I assume Mr. Keyes or Mr. Heller or both
24 of you also would go back. Certainly the expense of flying
25 you back will be less than bringing Air Force One out here. So

1 that will be the order, that a subpoena will issue for the
2 taking of a deposition of the President of the United States
3 at the White House or any other place that is convenient to
4 the President -- I'm stopping the sentence for the reason that
5 I believe he's supposed to be in London. Maybe some of the
6 news media would know whether --

7 MR. KEYES: It's after the start of the trial.

8 THE COURT: Is it after the start of the trial he's
9 going to London?

10 MR. KEYES: Yes.

11 THE COURT: Okay. Well, in Washington, D. C., or at
12 the White House or any other place that is convenient to the
13 President for the reason that it may be possible to schedule
14 a hearing on this in some place where he is making a speech
15 or doing something, going about his business in some place
16 other than Washington, D. C. That schedule can be established,
17 that time and place can be established, and it may be necessary
18 that instead of going to Washington, D. C., you could go to
19 Kansas City or Los Angeles, or wherever the President might
20 happen to be. The equipment should not be in the least bit
21 difficult to obtain. Video tapes, we witnessed this the other
22 day when we saw the motion picture "Manson" here, which was an
23 extremely simple device, the whole movie being in a cassette
24 that was simply shoved into a device, and there it was on TV
25 right in front of us. It was almost a marvel to see the way

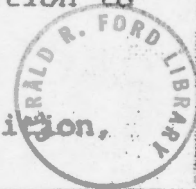
1 they were able to do it. Certainly with sound movies and the
2 like nowadays, there shouldn't be any great difficulty in
3 taking the President's deposition.

4 All right. Now that I've made this order, let's get
5 set on a time. This trial is to commence on Tuesday, November
6 the 4th, which is exactly two weeks from today. I would think
7 that this deposition should be taken within 10 days. That's
8 going to be my temporary order, that the deposition will be
9 taken within 10 days.

10 In the meantime, Mr. Keyes and Mr. Virga and Miss
11 Fromme, I would think that you'll simply have to try to work
12 this out. Undoubtedly now that I have made the order, Mr.
13 Keyes, obviously you're going to be in immediate touch with
14 the Justice Department and with the White House to determine
15 what will be the least onerous from the standpoint of time
16 and place that the deposition can be taken. Then, of course,
17 I can't say that we're home free yet for the reason that the
18 President and his counsel may object to this. If they do, it
19 would be necessary, of course, that we have further hearings
20 on the matter. But I would think that the order that I've
21 made would be the least objectionable to the President and to
22 his legal counsel. I would hope that they would abide by the
23 order, the subpoena, and permit the President's deposition to
24 be taken.

25 MR. KEYES: Who will be present at the deposition,

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1 Your Honor?

2 THE COURT: Well, Miss Fromme will not be present.
3 I would not consent to Miss Fromme going back for the taking
4 of the deposition.

5 Sorry about that, Miss Fromme. Mr. Virga certainly
6 will very ably represent you at the taking of the deposition.

7 You and Mr. Heller or either of you, or if you want
8 the deposition to be taken by someone of the Justice Depart-
9 ment, that's up to you. But I think that Mr. Virga can take
10 the deposition by himself.

11 MR. VIRGA: May I direct a comment to the Court?

12 THE COURT: Yes.

13 MR. VIRGA: Will you be there? I would prefer you
14 be there to make rulings on any objections that might come up.
15 I don't want to be in the situation where we go back there and
16 take his deposition and he's instructed by his counsel not to
17 answer a question, or the U. S. Attorney feels a question
18 should not be answered, or I feel it is a vague and ambiguous
19 question. I think we need somebody there to make a ruling.
20 I think if this deposition is going to be taken, that it should
21 have all the atmosphere the Court provides and it should be
22 just a supplemental to this trial with you there, Your Honor.
23 I would also request, since the U. S. Attorney has indicated
24 that at the conclusion of his case he is going to turn over
25 all statements, I request that before I depose the President I

1 can have all of these. And, of course, the President's state-
2 ment so I know what he has to say before I depose him.

3 THE COURT: You're seeking to call the President as
4 one of your witnesses.

5 MR. VIRGA: I know that, Your Honor.

6 THE COURT: This is a defense witness.

7 MR. VIRGA: I understand that.

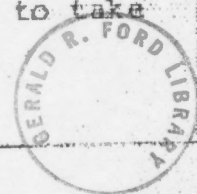
8 THE COURT: Although he may be an adverse witness,
9 you are calling him as one of your witnesses in your case.

10 MR. VIRGA: That is right. If we were to proceed
11 in the orderly procedure in the trial, the U. S. Attorney's
12 Office or the Government would have completed their case by
13 the time I get to the President, and I would have copies of
14 all the statements and be able to hear all the other witnesses
15 who would testify in this case. They would have rested before
16 I called the President. I wouldn't know what questions to ask
17 and exactly how to proceed with a particular witness who I
18 feel may very well be the most significant witness in this
19 case.

20 THE COURT: Mr. Keyes.

21 MR. KEYES: Your Honor, as far as the deposition is
22 concerned, it does provide in Rule 15(d) that the deposition
23 may be taken in any manner provided for in civil actions, then
24 the Court may request of a defendant they be directed to take
25 a deposition on written interrogatories.

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1 MR. VIRGA: That's in a civil action, isn't it, Your
2 Honor?

3 MR. KEYES: This is under Rule 15 in the Rules of
4 Criminal Procedure.

5 THE COURT: I think Mr. Virga's point is very well
6 taken. I'm not going to impugn his integrity in any way and
7 charge him with the idea of sensationalism in this case. I
8 have great confidence in him; and that's not his purpose here.
9 His purpose is obvious. The President is in this particular
10 case, is probably the most percipient witness there is to this.
11 He's the man that was looking right down the barrel of the
12 gun. In this case, he is, in a way -- with all due respect
13 to the President, I don't mean to be disrespectful -- but he
14 is no different than the poor, little girl who is the teller
15 of a bank who looks down the barrel when somebody holds up a
16 bank. He is the most percipient witness.

17 MR. KEYES: What is the motion before us now?

18 THE COURT: Well, the motion before us now is that
19 he be furnished -- you should have been listening to this one,
20 Mr. Keyes, it's pretty tough. He wants the identity of all
21 the witnesses that you're going to present and the testimony
22 that they're going to give before he goes back to take the
23 deposition of the President.

24 MR. KEYES: We have had the discovery motions, the
25 Court has ruled on it. I believe there are cases within the

1 cases cited in Rule 17(b) and (c) that say the issuance of a
2 subpoena is not to be used as a means for discovery. Now, the
3 Court has ordered the deposition, obviously --

4 THE COURT: Well, we'll go from the second to the
5 first. He made two requests, one is that I be present at the
6 taking of the deposition. The second one was that you should
7 be required to furnish all the names of all of your witnesses
8 and also their testimony. The latter request will be denied.
9 I don't see the necessity for it in this case. You're going
10 to take his deposition, you'll know what he is going to say.
11 You can cross-examine him to your heart's content, provided
12 that the White House doesn't interpose an objection that I
13 would have to sustain. But anyway, you are going to be able
14 to examine him at length on this incident. I don't think
15 there's any need for your being given the names of the Govern-
16 ment's witnesses or their testimony. That request is denied.

17 Now, as to the request that I be there. I'm per-
18 fectly willing to be there. I'm starting a bank robbery case
19 -- I started it 45 minutes ago, frankly.

20 My Clerk has just suggested that I could preside here
21 in Sacramento and that it would be like a three-way conversa-
22 tion on the telephone. In other words, I could be here but I
23 could view the whole thing and could make my rulings from here
24 as I view the deposition being taken, whether it be in Kansas
25 City or Washington, D. C.

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1 That would certainly be a first, Mr. Fitzpatrick,
2 and I commend you for the idea.

3 MR. VIRGA: I would much prefer that you simply go
4 with us and make the rulings there.

5 THE COURT: I appreciate your feelings.

6 MR. KEYES: Your Honor.

7 THE COURT: Yes.

8 MR. KEYES: On this particular issue, perhaps the
9 Court would like to reserve it until I find out the position
10 of the White House and the schedule. Then, of course --

11 THE COURT: I think we'll do that, Mr. Virga. I think
12 it would be well if I could be back there, but at the same time
13 I think that I better reserve this. I have this trial starting,
14 Judge Halbert is selecting the jury right now, I'll probably
15 take it as soon as we finish here today.

16 MR. VIRGA: There was one other matter, Your Honor.

17 THE COURT: I know there's another matter. I want
18 the deposition taken within 10 days, that would be by the 30th.
19 Let's just see how it goes. I'm not going to guarantee that I
20 will go back there at the present time, we'll see what we can
21 work out. But at least for the time being, my order will be
22 that the deposition be taken within 10 days and it be taken
23 on video tape, either in Washington or at some other place
24 that's more convenient to the President, and that Mr. Virga
25 be present, and whatever counsels the Government wants to

1 provide for the taking of the deposition. If I can't be
2 present, it would be my intention to ask that some other U. S.
3 District Judge, possibly we could have one of the District
4 Judges in Washington, D. C., sit in for the taking of the
5 deposition, or a U. S. District Judge wherever the deposition
6 is to be taken. That will be the order on that one.

7 Now, as you say --

8 MR. VIRGA: Are you going to set a time and date for
9 your final ruling on that, Your Honor?

10 THE COURT: For my final ruling on the question --

11 MR. VIRGA: Yes.

12 THE COURT: I can give you an answer on this.
13 Shouldn't we be able to answer this by this Friday, Mr. Keyes?

14 MR. KEYES: Yes, Your Honor.

15 THE COURT: I'm sure you'll be on the phone, maybe
16 not today but certainly tomorrow. We ought to get an answer
17 on this by Friday.

18 MR. VIRGA: Will it be necessary for us to be in
19 court on that day?

20 THE COURT: Probably we should be in court, I think.
21 If we can avoid being in court, I would sure like to avoid it,
22 because I want to press this other trial as fast as I can so
23 we can be ready to try this case on the 4th. So for the time
24 being, let's schedule it for Friday morning at 9:30 with the
25 hope that possibly we'll be able to resolve the whole thing.



1 simply by telephone and possibly in chambers, a conference or
2 something.

3 MR. VIRGA: Could that possibly be Friday afternoon?
4 I was supposed to be in San Francisco on a motion to continue
5 a case there.

6 THE COURT: Would 1:30 Friday afternoon be all right?

7 MR. VIRGA: That's fine.

8 THE COURT: Will you be back by then?

9 MR. VIRGA: I'm certain I will. If not, I'll call
10 the Court and advise you.

11 THE COURT: All right. 1:30 Friday afternoon. The
12 deposition, assuming that we are successful in getting the
13 deposition, assuming that we are successful in getting a video
14 tape, that video tape will then go into the possession of the
15 Clerk, much the same as an original deposition. A transcript
16 could be easily prepared. Well, as a matter of fact, in order
17 that he'll know exactly how he's going to testify, regardless
18 of how he looks when he testifies, you could have a Court
19 Reporter there who would take down verbatim what he says in
20 addition to how he sounds and looks over the tape. I would
21 suggest that you get yourself a transcript back there. Do
22 you follow me, Mr. Keyes? Then you'd have that available to
23 you.

24 MR. VIRGA: What do you mean get a transcript there?
25 You mean ask that it be transcribed there?

1 THE COURT: What I'm saying is, this video tape itself
2 will go into the possession of the Clerk's office just as any

3 --

4 MR. VIRGA: You are talking about a Court Reporter?

5 THE COURT: I'm talking also about having a Court
6 Reporter when the deposition is taken, then get a transcript
7 from the Court Reporter of what the President says so that it
8 will be available to you if you need to study it. Needless to
9 say, I'd just as soon save expense of the Government, but at
10 least I make that suggestion to you, if you think you need it.

11 MR. VIRGA: I assume a Court Reporter would be
12 present.

13 THE COURT: Okay. Anything else? Now, you have
14 another motion?

15 MR. VIRGA: Yes.

16 THE COURT: Is that your motion or Miss Fromme's?

17 MR. VIRGA: Miss Fromme will be arguing that motion.

18 THE COURT: All right. Miss Fromme, you have a motion
19 to make?

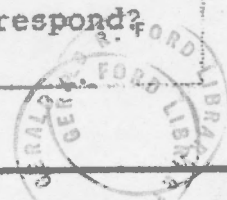
20 MISS FROMME: This is a motion to continue, Your
21 Honor. I submit that.

22 THE COURT: You have a motion to continue and you
23 submit it.

24 MISS FROMME: Yes.

25 THE COURT: Any objection? Do you wish to respond?

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1 MR. KEYES: Yes, Your Honor. The trial date was set
2 approximately six weeks ago, and it was agreeable at that
3 time. In fact, I believe the defendant stated on at least
4 one occasion in court she was very interested in a speedy
5 trial herself. The legislative history of the speedy trial
6 act, Senator Ervin heard much testimony. In fact, he heard
7 testimony against it from many defense attorneys, prosecutors,
8 and from the Judicial Office of the courts, because they felt
9 they had a rule that was workable now. But it was the interest
10 of Congress that it is not only all of the participants in the
11 courtroom who are interested in a speedy trial, but it is the
12 public, they wanted trials to be tried as soon as they could
13 after the arraignment. So we would oppose a continuance and
14 ask that we hold to the date of November the 4th.

15 THE COURT: All right. Anything else, Miss Fromme?

16 DEFENDANT FROMME: Well, Your Honor, you know my
17 argument, you know my reasons for wanting a continuance.

18 THE COURT: Yes, I do.

19 DEFENDANT FROMME: I don't feel I need to argue.

20 THE COURT: I'll state, then, into the record, Miss
21 Fromme has advised me the reason she wants a continuance is
22 because her new counsel has turned over to her a great number
23 of papers that she hasn't had an opportunity to read. She
24 felt that during the period she was represented by the Federal
25 Defender, that there wasn't sufficient work done in preparation



1 for her trial. I find that initially when this date was set,
2 I gave her the choice of either November the 4th or November
3 the 11th, and on the record she stated that she preferred
4 November the 4th because we want to get this over with as soon
5 as possible.

6 I have observed from the time that Mr. Walker and
7 Mr. Holley first came into the case they were working all of
8 the time, they made all the appearances, they made their
9 appropriate arguments, and the matters in connection with your
10 visitation privileges, your right to have witnesses come and
11 see you, your obtaining certain facilities at the jail and so
12 forth, all of those things were done for you with alacrity on
13 the part of the Federal Defender. I'm satisfied that you were
14 adequately represented by him up to the time Mr. Virga has
15 taken over the case. I've heard nothing to indicate that
16 Mr. Virga is not ready to go to trial on the 4th. Further-
17 more, I think the longer this trial draws out, the more chance
18 there is for unfortunate publicity to get into the newspapers.
19 As it is now, I think we're rolling along quite well. It's
20 impossible to keep a low profile on a case like this, but
21 nevertheless, I think we kept as low a profile on this case
22 as is possible to do. I think that to take the chance of going
23 beyond November 4th prejudices the possibility of our getting
24 a fair and speedy trial, a fair trial for you, a fair trial
25 for the Government and a speedy trial in the sense that it will

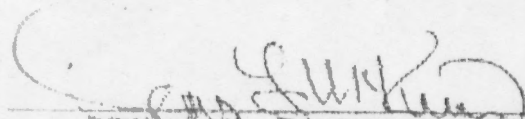
1 take us a longer time to get unprejudiced jurors and jurors
 2 that have not been too exposed to those matters that from time
 3 to time, unfortunately, appear in the news media. We're set
 4 to go to trial, I think we can do it notwithstanding some
 5 difficulty we may have in connection with this order I made
 6 today in asking to take the President's deposition. I still
 7 think we can make it, and I'm going to hold to it. It is my
 8 present intention to go ahead with the trial commencing at
 9 10:00 o'clock on November the 4th. The defendant is ordered
 10 back for trial at that time.

11 This is the time for a trial confirmation hearing,
 12 but it's obvious to me this case is going to trial November
 13 4th, having just ordered it. All right.

14 ---o0o---

15 CERTIFICATE OF REPORTER

16 I, DENNIS F. MCKINNON, Official Reporter, certify
 17 that the foregoing 43 pages constitute a true and correct
 18 transcript of the matter therein contained as reported by me
 19 and thereafter reduced to typewriting to the best of my ability.

20
 21
 22 
 23 DENNIS F. MCKINNON, CSR
 24 CSR Lic. No. C 2223

25 ---o0o---

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