The original documents are located in Box 61, folder "Special Prosecutor (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

28 CFR 74

§ 0.31 Designating officials to perform the functions of the Director.

(a) In case of a vacancy in the Office of the Director of the Community Relations Service, the Deputy Director of the Service shall perform the functions and duties of the Director.

(b) The Director is authorized, in case of absence from his office or in case of his inability or disqualification to act, to designate the Deputy Director to act in his stead. In unusual circumstances, or in the absence of the Deputy Director, a person other than the Deputy Director may be so designated by the Director.

§ 0.32 Applicability of existing departmental regulations.

Departmental regulations which are generally applicable to units or personnel of the Department of Justice shall be applicable with respect to the Community Relations Service and to the Director and personnel thereof, except to the extent, if any, that such regulations may be inconsistent with the intent and purposes of section 1003(b) of the Civil Rights Act of 1964.

Subpart G—Office of the Pardon Attorney

CROSS REFERENCE: For regulations pertaining to the office of Pardon Attorney, see Part 1 of this chapter.

§ 0.35 Applications for clemency.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Pardon Attorney shall have charge of the receipt, investigation, and disposition of applications to the President for pardon and other forms of Executive clemency, and shall perform any other duties assigned by the Attorney General or the Deputy Attorney General.

[Order No. 543–73, 38 FR 29584, Oct. 26, 1973]

§ 0.36 Recommendations.

The Pardon Attorney shall submit all all recommendations in clemency cases to the Attorney General through the Deputy Attorney General.

[Order No. 543–73, 38 FR 29584, Oct. 26, 1973]

Subpart G–1—Office of Watergate Special Prosecution Force

§ 0.37 General functions.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix below which is incorporated and made a part hereof.

[Order 551–73, 38 FR 30738, Nov. 7, 1973]

§ 0.38 Specific functions.

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

APPENDIX—DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, (1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action.

STAFF AND RESOURCE SUPPORT

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable departmental policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

[Order 551–73, 38 FR 30738, Nov. 7, 1973, as amended by Order 554–73, 38 FR 32805, Nov. 28, 1973]

Subpart H—Antitrust Division

§ 0.40 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Antitrust Division:

(a) General enforcement, by criminal and civil proceedings, of the Federal antitrust laws and other laws relating to the protection of competition and the prohibition of restraints of trade and monopolization, including conduct of

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, (1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action.

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1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable departmental policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

[Order 551–73, 38 FR 30738, Nov. 7, 1973, as amended by Order 554–73, 38 FR 32805, Nov. 28, 1973]

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August 23, 1973

J. Fred Buzhardt, Esq.
Counsel to the President
White House
Washington, D. C. 20500

Dear Mr. Buzhardt:

On August 13, 1973, a federal grand jury was impanelled to investigate possible violations of various federal criminal statutes. The grand jury has begun hearing testimony and receiving evidence relating to the alleged September 3, 1971, burglary of the offices of Dr. Lewis J. Fielding, Beverly Hills, California, and the alleged cover-up of the burglary. We have been informed that the alleged burglary was planned, perpetrated and covered-up by members of the White House staff and their agents. In order to investigate these allegations fully it is essential that as we present the case to the grand jurors we be furnished certain White House records relating to various individuals and subject matters. Accordingly, I request that you promptly make available the records and other material described below:

1. All records, logs or other material reflecting meetings, appointments or telephone conversations between June 13, 1971, and December 31, 1971, for each of the following individuals: David Young, Egil Krogh, Charles Colson, John Ehrlichman, E. Howard Hunt, Jr. and G. Gordon Liddy.*

---

*Some, but not all, of the material included in categories 1 and 2 has been received by this office as follows:

A. For John Ehrlichman: (1) Copies of typed meeting logs from 1970 through April 1973, excluding July 23 through July 27, 1971; (2) Copies of desk calendars 1971 through 1973.

B. For Charles Colson: Copies of desk calendars from 1971 through April 1973.

2. All records, logs or other material reflecting meetings, appointments or telephone conversations between June 13, 1971, and December 31, 1971, of the President with each of the following individuals: David Young, Egil Krogh, Charles Colson, John Ehrlichman, E. Howard Hunt, Jr. and G. Gordon Liddy.*

3. All records relating to the Pentagon Papers, Daniel Ellsberg, Dr. Lewis J. Fielding, E. Howard Hunt, G. Gordon Liddy, Hunt and Liddy Special Project No. One, Project Odessa, or Project "O", that were authored or initiated by, addressed to or received by any of the following individuals: David Young, Egil Krogh, Charles Colson, John Ehrlichman, E. Howard Hunt, Jr., or G. Gordon Liddy.

4. All records, including telephone toll call records, reflecting telephone calls placed from or received in the offices of David Young, Egil Krogh, John Ehrlichman, Charles Colson, G. Gordon Liddy, and E. Howard Hunt, Jr. for the period of time between August 11, 1971, and September 15, 1971.

5. All records relating to Daniel Ellsberg, the Pentagon Papers, Dr. Lewis J. Fielding, E. Howard Hunt, Jr., G. Gordon Liddy, Hunt and Liddy Special Project No. One, Project Odessa, or Project "O", that were removed from the files of Egil Krogh at the Department of Transportation and delivered to the White House or Executive Office Building by or on behalf of Egil Krogh or Saundra (Greene) Sheperd from the period beginning December 1, 1972, until May 31, 1973, including all records relating to G. Gordon Liddy delivered to the safe in Egil Krogh's former office and subsequently transferred therefrom to the custody or control of Leonard Garment.

6. All records relating to the Pentagon Papers, Daniel Ellsberg, Dr. Lewis J. Fielding, Hunt and Liddy Special Project No. One, Project Odessa, Project "O", E. Howard Hunt, Jr., and G. Gordon

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*See footnote on preceding page.

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7. All records relating to the Pentagon Papers, Daniel Ellsberg, Dr. Lewis J. Fielding, Hunt and Liddy Special Project No. One, Project Odessa, Project "O", E. Howard Hunt, Jr., and G. Gordon Liddy, deposited in the Presidential files by or on behalf of each of the following individuals: John Ehrlichman, David Young, Egil Krogh, and Charles Colson. In connection herewith, identify the date or dates of deposit for each item deposited and the individual on whose behalf said records were deposited.

8. All records relating to the company known as Wagner and Baroody, Public Relations, 1100 17th Street, N.W., Washington, D. C. 20036, including the members, partners, directors, officers, shareholders or employees of said entity, including all records relating to Joseph Baroody in connection with a White House request for and delivery to the Executive Office Building of five thousand dollars ($5,000) in cash between August 20, 1971, and September 3, 1971. In connection herewith, please furnish all records that reflect Joseph Baroody's visits, entries or admissions to the White House or Executive Office Building between August 20, 1971, and September 3, 1971.

Although I feel confident that these requests are framed with all the specificity necessary for a subpoena, I recognize that some of them may present problems of identification and retrieval depending upon the exact methods of filing and indexing. The problem could have been greatly simplified if you had felt able to agree to the kind of inventory of the papers left by various assistants to the President as proposed in my earlier letters. At this point perhaps the most convenient course -- provided that you are willing to make any disclosures -- would be for you to confer with William H. Merrill, one of my senior Associate Special Prosecutors. He can explain informally everything lying behind the specifications and perhaps could indicate what course you

should follow after you explained any problems of retrieval. I would be glad to participate in the conference if this would be helpful.

I am aware that some of the papers to which we request access may be classified. In that event questions could arise later concerning whether they were to be submitted to a grand jury or used in a judicial proceeding. It would seem to me, however, that no national security considerations are pertinent at this stage. When Mr. Richardson appeared before the Senate Judiciary Committee as the President's nominee to the position of Attorney General, he gave both the Committee and myself his assurance that no papers would be withheld from me on grounds of national security, and that any questions concerning their use in judicial proceedings would have to be argued out in the manner followed whenever there was a difference of opinion between the Attorney General and other officials concerned with security and classification. Needless to add, I have received all the top clearances, as has Mr. Merrill.

Sincerely,

AC

ARCHIBALD COX
Special Prosecutor

August 23, 1973

J. Fred Buzhardt, Esq.
Counsel to the President
White House
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should follow after you explained any problems of retrieval. I would be glad to participate in the conference if this would be helpful.

I am aware that some of the papers to which we request access may be classified. In that event questions could arise later concerning whether they were to be submitted to a grand jury or used in a judicial proceeding. It would seem to me, however, that no national security considerations are pertinent at this stage. When Mr. Richardson appeared before the Senate Judiciary Committee as the President's nominee to the position of Attorney General, he gave both the Committee and myself his assurance that no papers would be withheld from me on grounds of national security, and that any questions concerning their use in judicial proceedings would have to be argued out in the manner followed whenever there was a difference of opinion between the Attorney General and other officials concerned with security and classification. Needless to add, I have received all the top clearances, as has Mr. Merrill.

Sincerely,

AC

ARCHIBALD COX
Special Prosecutor

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

October 10, 1973

J. Fred Buzhardt, Esquire
Special Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Buzhardt:

As you are aware, a federal grand jury was impanelled on August 13, 1973, to investigate possible violations of various federal criminal statutes. This grand jury has begun hearing testimony and receiving evidence relating to, among other matters, a physical assault by approximately seven or eight persons including, allegedly, Mr. Bernard Barker, perpetrated upon individuals lawfully demonstrating against the Administration's policies in Vietnam on the west steps of the Capitol on the evening of May 3, 1972. Simultaneous with this assault there was a presumably lawful "counter-demonstration" participated in by supporters of the Administration's policies and, coincidentally, at the same time, there was a public viewing in the Capitol Rotunda of the remains of the then recently deceased former Director of the Federal Bureau of Investigation, J. Edgar Hoover.

This Office has been informed that the alleged assault upon the anti-war demonstrators was, in part, planned and participated in, and, subsequently, covered-up by, members of the White House staff and/or persons working for them, including such individuals who exercised responsibility for organizing the "counter-demonstration" and/or exercised responsibility for arranging the various funeral proceedings and related memorial tributes for Mr. Hoover. In order to investigate these allegations fully it obviously is essential that we be furnished certain White House records which might relate to the subject matter and individuals under investigation. Accordingly, I request that you furnish to us as promptly as possible the records and other material described below:

1. All diaries, calendars, logs, and/or other types of records which in any way reflect any meetings, appointments, or telephone conversations, had between April 24, 1972, and May 8, 1972, by Mr. Charles Colson and any persons on his staff, * by Mr. Robert Haldeman, and any persons on his staff, and any such records reflecting meetings, appointments, or telephone conversations during that period of time had by Mr. E. Howard Hunt.

2. All records, including, but not limited to, memoranda, weekly reports, and/or letters, relating to the May 3, 1972, demonstration, "counter-demonstration," or funeral proceedings for Mr. Hoover authored, addressed to, or received by, any of the following named individuals: Mr. Charles Colson, and anyone then serving on his staff, Mr. Robert Haldeman, and anyone then serving on his staff, Mr. Jeb Stuart Magruder, Mr. Bart Porter, Mr. E. Howard Hunt, Jr., and Mr. G. Gordon Liddy. **

3. All records that reflect visits or admissions to the White House and/or Executive Office Building between April 24, 1972, and May 8, 1972, by any of the following named individuals: Bernard Barker, Felipe de Diego, Pablo Fernandez, Angel Ferrer, Hiram Gonzalez, Virgilio Gonzalez, Frank Fiorini, a/k/a Frank Sturgis, Rolando Martinez, Reinaldo Pico, Humberto Lopez, John Lofton, Jr., Bart Porter, Jeb Stuart Magruder, E. Howard Hunt, Jr., and G. Gordon Liddy.

Sincerely,

/s/

ARCHIBALD COX
Special Prosecutor

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* I should note that of this type of material, this Office already has received copies of the desk calendars of Mr. Colson and Mr. William Rhatican, covering the period of time in question.

** Mr. Rhatican already has discussed with two members of my staff one memorandum he wrote to Mr. Colson dated on or about May 5, 1972, which, in part, concerned the plans for Mr. Hoover's funeral. Mr. Rhatican substantially quoted to my staff members what he claimed were the relevant portions of this document.

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Dear Mr. Buzhardt:

As you are aware, a federal grand jury was impanelled on August 13, 1973, to investigate possible violations of various federal criminal statutes. This grand jury has begun hearing testimony and receiving evidence relating to, among other matters, a physical assault by approximately seven or eight persons including, allegedly, Mr. Bernard Barker, perpetrated upon individuals lawfully demonstrating against the Administration's policies in Vietnam on the west steps of the Capitol on the evening of May 3, 1972. Simultaneous with this assault there was a presumably lawful "counter-demonstration" participated in by supporters of the Administration's policies and, coincidentally, at the same time, there was a public viewing in the Capitol Rotunda of the remains of the then recently deceased former Director of the Federal Bureau of Investigation, J. Edgar Hoover.

This Office has been informed that the alleged assault upon the anti-war demonstrators was, in part, planned and participated in, and, subsequently, covered-up by, members of the White House staff and/or persons working for them, including such individuals who exercised responsibility for organizing the "counter-demonstration" and/or exercised responsibility for arranging the various funeral proceedings and related memorial tributes for Mr. Hoover. In order to investigate these allegations fully it obviously is essential that we be furnished certain White House records which might relate to the subject matter and individuals under investigation. Accordingly, I request that you furnish to us as promptly as possible the records and other material described below:

1. All diaries, calendars, logs, and/or other types of records which in any way reflect any meetings, appointments, or telephone conversations, had between April 24, 1972, and May 8, 1972, by Mr. Charles Colson and any persons on his staff, * by Mr. Robert Haldeman, and any persons on his staff, and any such records reflecting meetings, appointments, or telephone conversations during that period of time had by Mr. E. Howard Hunt.

2. All records, including, but not limited to, memoranda, weekly reports, and/or letters, relating to the May 3, 1972, demonstration, "counter-demonstration," or funeral proceedings for Mr. Hoover authored, addressed to, or received by, any of the following named individuals: Mr. Charles Colson, and anyone then serving on his staff, Mr. Robert Haldeman, and anyone then serving on his staff, Mr. Jeb Stuart Magruder, Mr. Bart Porter, Mr. E. Howard Hunt, Jr., and Mr. G. Gordon Liddy. **

3. All records that reflect visits or admissions to the White House and/or Executive Office Building between April 24, 1972, and May 8, 1972, by any of the following named individuals: Bernard Barker, Felipe de Diego, Pablo Fernandez, Angel Ferrer, Hiram Gonzalez, Virgilio Gonzalez, Frank Fiorini, a/k/a Frank Sturgis, Rolando Martinez, Reinaldo Pico, Humberto Lopez, John Lofton, Jr., Bart Porter, Jeb Stuart Magruder, E. Howard Hunt, Jr., and G. Gordon Liddy.

Sincerely,

/s/

ARCHIBALD COX
Special Prosecutor

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* I should note that of this type of material, this Office already has received copies of the desk calendars of Mr. Colson and Mr. William Rhatican, covering the period of time in question.

** Mr. Rhatican already has discussed with two members of my staff one memorandum he wrote to Mr. Colson dated on or about May 5, 1972, which, in part, concerned the plans for Mr. Hoover's funeral. Mr. Rhatican substantially quoted to my staff members what he claimed were the relevant portions of this document.

November 7, 1973

J. Fred Buzhardt, Esquire
Special Counsel to the President
The White House
Washington, D.C.

Dear Mr. Buzhardt:

The August 13, 1973, Grand Jury of the United States District Court for the District of Columbia is investigating possible acts of perjury and obstruction of justice at the time of the hearings before the Senate Judiciary Committee on the nomination of Richard G. Kleindienst to be Attorney General. It appears that the records of certain conversations involving the President and Messrs. Ehrlichman, Kleindienst, and Mitchell, including, where available, the recordings of such conversations, are essential to the proper investigation of the above matter. Accordingly, I request that you supply to me all recordings, transcripts, memoranda, notes, and other writings relating to the following meetings and telephone conversations during which matters concerning ITT, including the pending suits by the United States, were discussed:

1. Meeting(s) between the President and John Ehrlichman on April 19, 1971;

2. Telephone conversation(s) between the President and Richard Kleindienst on April 19, 1971;

3. Telephone conversation(s) between John Ehrlichman and John Mitchell on April 19, 1971; and

4. Meeting(s) between the President and John Mitchell on April 20, 1971.

In addition to the foregoing, I request that you furnish to me the original memorandum dated April 23, 1969, from Richard G. Kleindienst and Richard W. McLaren to John Ehrlichman on the subject of the ITT-Canteen Corporation merger. I am advised that this office asked you last June to confirm that the

original of this memorandum was in the White House files and that you did so after locating the memorandum.

To enable us to complete this investigation with reasonable dispatch, I request that the above evidence be furnished by November 16, 1973. I should add that although the above materials are of immediate importance, there may be other evidence that will be required for the grand jury or, in the event indictments are returned, in connection with their prosecution.

Sincerely,

/S/

LEON JAWORSKI
Special Prosecutor

November 1973

J. Fred Buzhardt, Esquire
Special Counsel to the President
The White House
Washington, D.C.

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Sincerely,

/S/

LEON JAWORSKI
Special Prosecutor

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

December 4, 1973

J. Fred Buzhardt, Esquire
Special Counsel to the President
The White House
Washington, D. C.

Dear Mr. Buzhardt:

This is in response to your November 24, 1973, letter to me insofar as it relates to my November 7, 1973, request for tape recordings and documents relating to conversations on April 19 and 20, 1973, in which ITT was discussed.

You observed with respect to the telephone call between John Ehrlichman and John Mitchell on April 19, 1971, that the White House recording system covered only Presidential calls. It is our understanding, however, that Mr. Ehrlichman made certain calls from the President's office, and, accordingly, we request that you examine the Presidential tapes to determine whether the Ehrlichman-Mitchell telephone call was in fact recorded by the White House recording system.

I also wish to invite your attention to the fact that my request covered not only tape recordings, but also any documents, transcripts, memoranda or notes relating to the specified conversations. It is our understanding that Mr. Ehrlichman made detailed notes of his meetings and conversations, and, occasionally, made recordings of his own telephone conversations. I request that you review Mr. Ehrlichman's files at your earliest opportunity to locate any materials that may relate to the specified conversations and that you furnish us with those materials. I also request that you furnish to us any materials such as notes or memoranda from the files of Mr. Haldeman and the President for the April 1971 period that relate to the specified conversations.

Finally, I would appreciate your advising me upon receipt of this letter as to when I may expect to receive the tape recordings of the three conversations which you undertook to furnish to me in your November 24 letter.

Sincerely,

/S/

LEON JAWORSKI
Special Prosecutor

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

December 4, 1973

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Special Counsel to the President
The White House
Washington, D. C.

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Sincerely,

/S/

LEON JAWORSKI
Special Prosecutor

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

January 8, 1974

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

Dear Mr. St. Clair:

In my letter to Mr. Buzhardt of December 4, 1973 (copy attached) , I asked that he provide this office with certain tape recordings, transcripts, memoranda, notes and other writings relating to governmental actions taken with regard to the dairy industry. The following items, requested in my earlier letter, have not been received by this office:

1. Any tape recordings, transcripts, memoranda, notes or other writings relating to conversations between the President and Secretary Connally during the period February 15, 1971 to March 25, 1971. Information developed by this office indicates that in addition to the March 23, 1971 conversations between Secretary Connally and the President, Secretary Connally spoke to the President on March 11 (twice), March 16, March 18 and March 25, 1971. Further, the tape recording of the March 23, 1971 meeting in the President's Oval Office attended, inter alia, by Secretary Connally concludes with Secretary Connally's request for, and the President's assent to, a discussion after the departure of the other participants.

2. Subsection (e) of my earlier letter requested that the files of certain individuals be examined for materials relevant to four specific events. Information developed by this office suggests that Mr. Murray Chotiner was the recipient of correspondence from spokesmen for the dairy industry which would be encompassed by my earlier

request which would have been placed in his files, possibly ones entitled, "Dairy", "Milk", or "Harrison". This office has received no documents which indicate that they were received or authored by Mr. Chotiner.

Finally, in my earlier letter I asked that Mr. Buzhardt permit a representative of this office to examine the originals of a memorandum from Mr. Charles W. Colson to the President regarding a meeting to be held on September 9, 1970, and a document described in paragraph 4(c) of his November 16, 1973, affidavit filed with Judge Jones in Nader v. Butz. I renew that request.

I ask that you provide this office with the above-listed items.

In addition, I ask that you provide this office with tape recordings, transcripts, memoranda, notes, and other writings relating to a meeting between Attorney General John Mitchell, Mr. Lee Nunn, and the President held on May 5, 1971.

In an abundance of caution, Mr. Jaworski has recused himself from at least a part of our dairy industry investigation. Consequently, as Deputy Special Prosecutor, I am at present responsible for the investigation. Please be assured that we have endeavored to particularize our request as much as possible and to ask for only those items deemed essential to the investigation.

If we can be of any assistance to you in locating or copying any of the above-requested material, we stand ready to help and cooperate. I appreciate your assistance in this matter.

Sincerely,

/s/

HENRY S. RUTH, JR.
Deputy Special Prosecutor

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

January 8, 1974

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Special Counsel to the President
The White House
Washington, D. C.

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Sincerely,

/s/

HENRY S. RUTH, JR.
Deputy Special Prosecutor

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

March 21, 1974

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

Dear Mr. St. Clair:

In line with our previous discussions on dairy industry materials, I am setting forth with more specificity a narrowed request for information presently in the White House. I have divided these requests into tapes and documents.

Although it does not seem legally necessary that the President personally listen to requested tape recordings to decide whether they fall within his understanding of the Executive Privilege doctrine, I am mindful of your statement that the President is following this process, and therefore I am asking for what I believe are the minimum number of tapes necessary to conduct the investigation with necessary thoroughness.

1. We request tape recordings of all meetings and telephone conversations between the President and Secretary Connally between March 12, 1971 and March 25, 1971, inclusive. Our examination of Secretary Connally's logs reveals four conversations between the President and Secretary Connally during this period.

a. A meeting beginning at 2:30 p.m. on March 16, 1971;

b. A phone conversation beginning at 11:45 a.m. on March 18, 1971;

c. A meeting beginning at 6:20 p.m. on March 18, 1971; and

d. A meeting beginning at 12:40 p.m. on March 25, 1971.

If your examination of the President's logs for the March 12-25 period reveals additional conversations either in person or over the phone with Mr. Connally, we request tapes of those conversations as well.

Our investigation shows that Secretary Connally was one of the focal points of the considerable pressure that dairy interests were bringing in March 1971 on the price support question. It further shows that the Secretary agreed to present the dairy position to the President and that the dairy industry had pledged large amounts of campaign funds in relation to a possible change in the price support level. There is conflicting evidence as to whether or not a crime was committed by one or more persons in relation to campaign funds and the price support decision. We believe that the requested tape recordings will help resolve some outstanding investigative questions in either an inculpatory or exculpatory manner. We have limited our request to the time preceding the reversal of the March 12 price support decision.

2. As you know, Mr. Buzhardt has furnished this office with copies of the tape recordings of the March 23, 1971, meeting between President Nixon and leaders of the dairy industry as well as tape recordings of a meeting held later that day between the President and various high officials in the administration to discuss problems generated by the March 12 announcement.

a. Our copy of the March 23 meeting with dairy industry leaders ends with the President saying "I know that, I have heard . . . ." We request access to the original recording of this meeting so that we can hear the entire meeting.

b. As I have mentioned in correspondence with Mr. Buzhardt, the recording of the afternoon meeting reveals a disturbance at the point where it has been decided to reverse the March 12 decison and Mr. Ehrlichman says "We have to tell Colson . . . ." Therefore, we request access to the original tape to determine whether the disturbance appears on it as well, and if so, what caused it.

c. The tape recording of this meeting ends with Secretary Connally asking for a short private session with the President. We have previously requested the tape recording of that private session which is actually a continuance of the tape recording Mr. Buzhardt has previously given to us, and we repeat that request.

3. In addition, we also request the tape recording of a meeting held on May 5, 1971, between President Nixon, Attorney General Mitchell, H.R. Haldeman, and Mr. Lee Nunn who later assumed responsibility for the collection of funds from the dairy industry pursuant to its previous commitments. All attempts to reconstruct the conversation of the meeting have encountered difficulty in recollection. It does seem clear, however, that the President's participation was in his capacity as candidate for re-election. We, therefore, feel that Executive Privilege does not apply to the tape recording of the meeting.

4. As far as documents are concerned, I have asked for and not received, and, therefore, repeat my request for the opportunity to inspect the original and all copies of the document described in paragraph 4(c) of the November 16, 1973, affidavit of J. Fred Buzhardt, Esq. filed with Judge Jones in Nader v. Butz, and the memorandum to the President from Charles W. Colson, subject: Meeting with Officers of the Associated Milk Producers, Incorporated, September 9, 1970, 12:25 p.m. (10 minutes), Oval Office with any attachments thereto.

I believe that the above represents a reasonable, minimum request in an extremely important investigation. In dairy industry matters, we have made very few requests over and above the materials for which the Court required production in Nader v. Butz. Although one can never foreclose the possibility of future requests, I do not see any indication at this time that this request, if granted, will lead to a continuing, burdensome series of future requests. As you know also, we do not seek possession of irrelevant material. We are certainly willing, as in the past, to verify your indication of irrelevancy by listening to the recordings in the Executive Office Building and withdrawing our request at this investigatory stage as to matters not relevant to the investigation.

I hope that we can hear from you promptly.

Sincerely,

HENRY S. RUTH, JR.
Deputy Special Prosecutor

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

March 21, 1974

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Special Counsel to the President
The White House
Washington, D. C.

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Sincerely,

HENRY S. RUTH, JR.
Deputy Special Prosecutor

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

May 31, 1974

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

Dear Mr. St. Clair:

I am enclosing a copy of our letter of March 21, 1974, requesting access to specified materials relating to the dairy industry investigation.

As you recall, at our meeting here on April 3, you promised this office immediate access to the originals of the two tape recordings specified in items 2a and 2b of the March 21 letter. Repeated calls to your attorneys for this access on our part have been unsuccessful.

As to our request for access to the original and all copies of the two documents specified in item 4 of the letter, you promised such access if you were able to locate the documents. Thus far, we have not yet heard from you.

As to items 1a through 1d, 2c and 3 of the March 21 letter, you promised to let us know your decision as to our request for access to these tape recordings. Thus far, we have not received your answer.

On another subject, Mr. Prochnow of your office telephoned me yesterday and requested on your behalf access to approximately twenty-eight cartons of material relative to the ITT investigation. These are materials forwarded from the Securities and Exchange Commission to the Criminal Division of the Department of Justice. They were then forwarded to our office when the ITT matters were placed under the jurisdiction of the Special Prosecutor.

I appreciate the urgency of your request and we shall make these materials available to you promptly. Since the material involves several hundreds, and perhaps thousands, of documents, we would need a truck to transport duplicates to the White House. As an alternative, I suggest that one or more of your attorneys examine the materials in our office and ascertain how many documents are actually necessary for your purposes. Please have one of your attorneys telephone our Larry Hammond (393-2300, ext. 289) to make the necessary arrangements.

As to the few items which we are requesting, as outlined above, I hope that we can hear from you promptly inasmuch as our request has been pending since March 21 of this year.

Sincerely,

HENRY S. RUTH, JR.
Deputy Special Prosecutor

1425 K Street, N.W.
Washington, D.C. 20005

May 31, 1974

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Special Counsel to the President
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HENRY S. RUTH, JR.
Deputy Special Prosecutor

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 74-116
	)	
JOHN D. EHRLICHMAN, et al.,	)	
	)	
Defendants.	)	

GOVERNMENT'S SUPPLEMENTAL MEMORANDUM ON THE ISSUE OF BRADY V. MARYLAND

INTRODUCTION

In view of certain statements made during the hearing on June 7, it seems appropriate for the Special Prosecutor to set forth his views on the rights of the defendants under Brady v. Maryland, as well as a description of the efforts made by the Special Prosecutor and the arms of the Executive Branch to locate and to make available to defendants all potentially exculpatory documents within the Government's control. It is our firm belief that, despite the differences and divisions within the Federal Government concerning the work of the Watergate Special Prosecutor, the prosecution has gone well beyond the requirements imposed by Brady v. Maryland, 373 U.S. 83 (1963) and the later cases of the Supreme Court cases interpreting Brady. See, e.g., Moore v. Illinois, 408 U.S. 794 (1972).

We shall show that nothing in this line of cases requires the prosecutor, even in the most ordinary of situations, to order a full search of the files of every office, bureau and department of the Executive Branch for unspecified documents (although we have gone

far towards ordering this in the present case). Certainly, the law does not require giving the defendant full access to every governmental file on a bald allegation that it may contain some unspecified form of exculpatory evidence. To the contrary, the heart of Brady, as restated in Moore, is a prohibition on the suppression of exculpatory evidence by the prosecutor himself. Whatever may be the rule with regard to carefully specified documents which may be exculpatory and which are in the hands of unrelated departments of the Executive Branch, the obligation of the prosecution to seek out unspecified documents does not go beyond requiring the prosecutor to turn over material in the hands of those directly involved in the prosecution itself.

The Defense has failed to specifically identify particular documents or even identify the subject matter of documents requested. Furthermore the utter vagueness of defense's allegations of materiality casts grave doubt on the good faith of the defendants in demanding documents. We have, however, gone far beyond what the law requires. To demonstrate this, we shall first discuss the relevant evidence as framed by the indictment and the Court's ruling of May 24, 1974. We shall then state what we have done to see to it that the wholly unspecified exculpatory evidence which the defendants seek might be discovered despite the absence of a Brady requirement for a burdensome search in this procedural setting. In our third section, we will review the cases dealing with the relevant issues under Brady as they bear upon the demands for all documents. Finally, and most important, in the fourth section we shall show that the claim of a violation of Brady rights with regard

to defendant Ehrlichman's demand for notes of his conversations with the President is even weaker than the other claims. It is plainly without legal justification.

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A. The prosecutor believes that the only controverted issues that these charges will raise are the following:

1/ Other charges are unlikely to raise controverted factual issues not already comprised in the above.

1. Since Ehrlichman does not deny the meeting on August 5, nor does he deny that he approved the plan for a covert operation presented in the August 11 memo, the controverted factual issue in the conspiracy case consists of whether Ehrlichman knew that this covert operation was to consist of an unlawful search of Dr. Fielding's office.

2. Did Ehrlichman tell FBI agents that he had not seen Pentagon Papers case files for a year?

3. Had Ehrlichman in fact seen Pentagon Papers case files only a short time before the FBI interview?

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B. Given this set of possibly controverted issues, all conceivably exculpatory evidence existing in the files of any Government department or agency must consist of evidence of the following sorts:

1. Evidence tending to show that Ehrlichman did not know that the covert operation proposed by Krogh and Young was to consist of an unlawful search of Dr. Fielding's office.

2. Evidence tending to show that Ehrlichman did not tell FBI agents that he had not seen Pentagon Papers case files for a year.

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II. The prosecutor, in its efforts to obtain potentially exculpatory information for defendants, has done the following:

A. The prosecutor has searched his own offices and has made available to the defense, not only information falling into categories B(1) through B(4) supra, but also any material even remotely relevant to the prosecution that he has found there.

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C. The prosecutor's staff has itself conducted a search of the Plumbers' files in the White House. All exculpatory material from those files has been made available to defendants.

Although the search of outside agency files was not conducted by the prosecutor's staff itself, the search was a thorough and competent one. As i- clear

from Part I, the controverted factual issues in this case are both narrow and few. As Part II shows, it is not difficult to explain to persons familiar with outside agency files exactly what sort of material might be exculpatory. And, as Moore v. Illinois, 408 U.S. 794, indicates, the prosecution need turn over only material that is rather clearly exculpatory. Given the enormous number of files involved 2/ any other approach would have involved enormous, burdensome, time-consuming searches by the defendant or the prosecutor's staff.

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It is plain that the prosecutor need not perform the sort of elaborate file search that he has undertaken here. As the Sixth Circuit Court of Appeals has recently observed:

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> [R]elying on the Brady principle, defendants seek to review all evidence of any kind in the possession of the government to determine if any of that evidence is "favorable to their cause." The basis of their request is that defense counsel and not the government should determine what evidence is favorable to the defendant and that defense counsel can make such a determination only after reviewing all of the evidence. As an alternative proposition, the defendants urge that all of the government's evidence should be reviewed by the court in camera and the court will then make the determination as to what evidence may be favorable to the defendant.
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> terests of all would best be served if we continue to rely on the judgment and integrity of the government to determine what, under Brady, it has a duty to disclose.

In sum, the courts have neither required the Government, nor allowed defendants, to cull Government files in the search for evidence favorable to the defense. See also United States v. Cobb, supra.

Finally, Brady imposes no obligation upon the prosecutor to have his own staff go through the files of other agencies. Indeed, the extent to which the prosecutor must produce documents from the files of outside agencies is itself in doubt. The prosecutor may be obliged to transmit to the defense exculpatory material in the possession of its investigative arm (see United States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971)) (tape in the possession of narcotics agent) or specifically identified material in the possession of another agency directly connected with the case. United States v. Deutsch, 475 F.2d 55 (5th Cir. 1973) (personnel folder of Post Office employee who was principle witness in case against defendant charged with bribing him). But the cases have not gone beyond requiring him to turn over material in the hands of those "directly assisting him in bringing an accused to justice," Moore v. Illinois, 408 U.S. 794, 810 (dissent). And there is no suggestion in any case that a Brady review of outside agency material by the outside agency staff is insufficient.

In sum, the Special Prosecutor, by turning over all conceivably relevant evidence in his own possession (not just "material" evidence), and by conducting a search for all such evidence in numerous outside agencies

(not just agencies directly assisting with the case), has not only met, but has far exceeded, any obligation that Brady imposes upon him. To do more would simply make Brady a substitute for discovery.

Of course, defendants are perfectly free to use their remaining time before trial to engage in such discovery as they see fit. If they wish to spend their preparation time pouring through Government files that various agencies have made available for inspection, we have no objection. We believe that in light of our theory of the case, the controverted factual issues, and the teaching of Brady, most if not all, of defendants' requests to obtain massive numbers of documents from outside agencies should be denied.[3/] It follows that the Court should deny any defense requests for continuances when the request is based on a representation that the defense needs more time to search through files they have no right to search through but which were voluntarily made available for inspection. But that is another matter; our point here is simply that their requests to examine files in outside agencies should be judged by traditional standards of relevancy, materiality and exculpability. It is worth stressing that the defense's failure to meet these standards is absolutely inexcusable when, as here, they are in possession of the prior relevant statements of each and every proposed

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Government witness, and a vast array of documents bearing on the charges in the indictment, including the Government's proposed trial exhibits. The defense possesses more than enough information on which they can fashion a clear and precise statement as to relevancy, materiality and exculpability as to particular files, if any exist. Those standards ordinarily govern discovery in all criminal cases, and there is no reason to deviate from them here. Brady requires us to do no more than we have done so far.[4/]

4/ However, we are willing to look ourselves through any individual file that defendant specifically identifies and with regard to which he makes a prior showing that it might contain exculpatory material.

IV. Finally, the situation with regard to the White House files of notes made by Mr. Ehrlichman when he was the Presidential Assistant is even clearer.

A. Mr. Ehrlichman has nowhere shown the basis on which he is claiming access to the White House files. To the contrary, his own statements undermine any such claim.

1. Mr. Ehrlichman has nowhere alleged that he made notes concerning the Fielding break-in. To the contrary, all of the notes in question are records of conversations to which the President was a party. Mr. Ehrlichman has repeatedly stated that the President was not even aware of the Fielding break-in before March 1973.

2. Mr. Ehrlichman is not entitled to his notes on the theory that the absence of any mention of the Fielding break-in tends to prove his non-involvement. He plainly could not produce all of these notes at trial to establish the fact that he made notes on every matter he was involved in; the evidence is too remote, too far from probative, and too irrelevant.

B. Wholly aside from this first point, Mr. Ehrlichman has been given more than what he would be entitled to even if he had claimed that exculpatory material appeared in the White House files.

1. As we have shown in Part III, supra, Brady does not even require what defendant has been afforded, a review of Government files by Government officials looking for hypothetically exculpatory materials that we have no reason to believe ever existed. Neither the

defendant nor his counsel is permitted wholesale access to Government files. In the present case the White House has offered to review these files for Brady materials in light of the clarification of the issues in Part II, supra. An appropriate affidavit could then be filed detailing the results of such a review.

2. In light of the clarity of the factual issues in this case the offer to Mr. Ehrlichman to review the files personally also is certainly a greater protection than the Brady entitlement to have an adverse party, the prosecution, review the files. In this situation the defendant can be expected to identify documents with the requisite sufficient clarity so that he and his counsel can then contest, before the Court, any Presidential refusal to release the documents (seeking, in the first instance, an order to produce specific, material documents for in camera inspection). This is the procedure that was followed at the sentencing stage without objection in United States v. Krogh.

3. We understand that the White House is willing to permit counsel to be present in a room adjoined to the files and to confer with his client's examination of the files. Counsel will also be permitted to make any notes which are necessary to aid him in assisting his recollection in the event that any relevant document is not forthcoming and must be subpoenaed. Thus, there is nothing to prevent Mr. Ehrlichman from relating to his attorney in full detail the contents of any and all documents examined by him. Though this procedure is cumbersome, it is still more than adequate.

CONCLUSION

The record to date demonstrates that any further requests by the defense for even more sweeping cooperation would be impermissible and must be denied.

Respectfully submitted,

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Attorneys for the United States

DATED: June 10, 1974

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 74-116
	)	
JOHN D. EHRLICHMAN, et al.,	)	
	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 1974, I served the attached "Government's Supplemental Memorandum on the Issue of Brady v. Maryland" by causing true and correct copies of the same to be delivered or mailed, postage pre-paid, to all counsel listed below.

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GOVERNMENT'S SUPPLEMENTAL MEMORANDUM ON THE ISSUE OF BRADY V. MARYLAND

INTRODUCTION

In view of certain statements made during the hearing on June 7, it seems appropriate for the Special Prosecutor to set forth his views on the rights of the defendants under Brady v. Maryland, as well as a description of the efforts made by the Special Prosecutor and the arms of the Executive Branch to locate and to make available to defendants all potentially exculpatory documents within the Government's control. It is our firm belief that, despite the differences and divisions within the Federal Government concerning the work of the Watergate Special Prosecutor, the prosecution has gone well beyond the requirements imposed by Brady v. Maryland, 373 U.S. 83 (1963) and the later cases of the Supreme Court cases interpreting Brady. See, e.g., Moore v. Illinois, 408 U.S. 794 (1972).

We shall show that nothing in this line of cases requires the prosecutor, even in the most ordinary of situations, to order a full search of the files of every office, bureau and department of the Executive Branch for unspecified documents (although we have gone

far towards ordering this in the present case). Certainly, the law does not require giving the defendant full access to every governmental file on a bald allegation that it may contain some unspecified form of exculpatory evidence. To the contrary, the heart of Brady, as restated in Moore, is a prohibition on the suppression of exculpatory evidence by the prosecutor himself. Whatever may be the rule with regard to carefully specified documents which may be exculpatory and which are in the hands of unrelated departments of the Executive Branch, the obligation of the prosecution to seek out unspecified documents does not go beyond requiring the prosecutor to turn over material in the hands of those directly involved in the prosecution itself.

The Defense has failed to specifically identify particular documents or even identify the subject matter of documents requested. Furthermore the utter vagueness of defense's allegations of materiality casts grave doubt on the good faith of the defendants in demanding documents. We have, however, gone far beyond what the law requires. To demonstrate this, we shall first discuss the relevant evidence as framed by the indictment and the Court's ruling of May 24, 1974. We shall then state what we have done to see to it that the wholly unspecified exculpatory evidence which the defendants seek might be discovered despite the absence of a Brady requirement for a burdensome search in this procedural setting. In our third section, we will review the cases dealing with the relevant issues under Brady as they bear upon the demands for all documents. Finally, and most important, in the fourth section we shall show that the claim of a violation of Brady rights with regard

to defendant Ehrlichman's demand for notes of his conversations with the President is even weaker than the other claims. It is plainly without legal justification.

I. The theory of the prosecution's basic conspiracy case is that defendant Ehrlichman approved an operation involving an unlawful entry into Dr. Fielding's office for the purpose of searching for psychiatric information related to Dr. Ellsberg. The prosecutor intends to prove that Ehrlichman was aware of the Fielding entry prior to its occurrence as a result of discussions and receipt of memoranda from Krogh and Young. The prosecutor will also prove Ehrlichman's prior knowledge of the entry through evidence relating to his knowledge of events surrounding the obtaining of a CIA psychological profile of Ellsberg, his participation in efforts to obtain other CIA assistance, his efforts to obtain and to disseminate derogatory information about Ellsberg, and his efforts to cover up the existence of his involvement in these activities (including lying to the FBI and the Grand Jury).

In addition, the prosecutor charges defendant Ehrlichman with making a false statement to FBI agents when he told them that he had not seen the Pentagon Papers case files for more than a year; and defendant Ehrlichman is charged with perjury in telling the Grand Jury that he did not know about any psychological profile of Ellsberg prior to the break-in.[1/]

A. The prosecutor believes that the only controverted issues that these charges will raise are the following:

1/ Other charges are unlikely to raise controverted factual issues not already comprised in the above.

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4. Was Ehrlichman in fact aware before the break-in of the existence of a psychological profile of Ellsberg?

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Attorneys for the United States

DATED: June 10, 1974

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 74-116
	)	
JOHN D. EHRLICHMAN, et al.,	)	
	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 1974, I served the attached "Government's Supplemental Memorandum on the Issue of Brady v. Maryland" by causing true and correct copies of the same to be delivered or mailed, postage pre-paid, to all counsel listed below.

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