

WATERGATE SPECIAL PROSECUTION FORCE

United States Department of Justice

1425 K Street, N.W.

Washington, D.C. 20005

September 4, 1974

Philip W. Buchen, Esq.  
Counsel to the President  
The White House  
Washington, D. C.

Dear Mr. Buchen:

You have inquired as to my opinion regarding the length of delay that would follow, in the event of an indictment of former President Richard M. Nixon, before a trial could reasonably be had by a fair and impartial jury as guaranteed by the Constitution.

The factual situation regarding a trial of Richard M. Nixon within constitutional bounds, is unprecedented. It is especially unique in view of the recent House Judiciary Committee inquiry on impeachment, resulting in a unanimous adverse finding to Richard M. Nixon on the Article involving obstruction of justice. The massive publicity given the hearings and the findings that ensued, the reversal of judgment of a number of the members of the Republican Party following release of the June 23 tape recording, and their statements carried nationwide, and finally, the resignation of Richard M. Nixon, require a delay, before selection of a jury is begun, of a period from nine months to a year, and perhaps even longer. This judgment is predicated on a review of the decisions of United States Courts involving prejudicial pre-trial publicity. The Government's decision to pursue impeachment proceedings and the tremendous volume of television, radio and newspaper

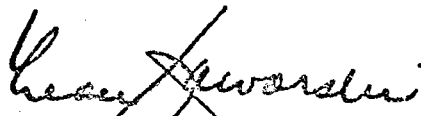
coverage given thereto, are factors emphasized by the Courts in weighing the time a trial can be had. The complexities involved in the process of selecting a jury and the time it will take to complete the process, I find difficult to estimate at this time.

The situation involving Richard M. Nixon is readily distinguishable from the facts involved in the case of United States v. Mitchell, et al, set for trial on September 30th. The defendants in the Mitchell case were indicted by a grand jury operating in secret session. They will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions. It is precisely the condemnation of Richard M. Nixon already made in the impeachment process, that would make it unfair to the defendants in the case of United States v. Mitchell, et al, for Richard M. Nixon now to be joined as a co-conspirator, should it be concluded that an indictment of him was proper.

The United States v. Mitchell, et al, trial will within itself generate new publicity, some undoubtedly prejudicial to Richard M. Nixon. I bear this in mind when I estimate the earliest time of trial of Richard M. Nixon under his constitutional guarantees, in the event of indictment, to be as indicated above.

If further information is desired, please advise me.

Sincerely,



LEON JAWORSKI  
Special Prosecutor