

States Marine Corps from 1946 to 1949 and from 1950 to 1952.

Following his appointment in 1955, he was assigned as Information Specialist and Press Officer, News Division. In 1956–59, he served as Consular Officer, Lahore. In 1959, he was assigned as Economic Officer, then Political Officer, Beirut. In 1961–62, he took African area studies at Northwestern University under Foreign Service Institute auspices. He was assigned as Principal Officer, Enugu, during 1962–65. In 1965–69, he was Officer in Charge of Ghanaian Affairs, Bureau of African Affairs.

Mr. Smith attended the National War College during 1969–70. From 1970 to the present, he has been Deputy Chief of Mission, Pretoria.

He received the Meritorious Honor Award in 1967.

He is married to the former Irene Rountree, and they have four children.

## Uniformed Services University of the Health Sciences

### *Announcement of Intention To Nominate Dr. Philip O'Bryan Montgomery, Jr., To Be a Member of the Board of Regents. June 12, 1974*

The President today announced his intention to nominate Philip O'Bryan Montgomery, Jr., of Texas, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences.

He replaces Anthony R. Curreri, whose resignation was accepted by the President, effective January 4, 1974.

Dr. Montgomery is currently professor of pathology, Southwest Medical School, and special assistant to the chancellor, the University of Texas System, Dallas, Tex.

Dr. Montgomery was born on August 16, 1921, in Dallas, Tex. He received his B.S. degree from Southern Methodist University in 1942 and his M.D. degree from Columbia University in 1945.

The Uniformed Services University of the Health Sciences was created by Public Law 92-42 of September 21, 1972. The Board of Regents will consist of nine members appointed by the President, with the advice and consent of the Senate, the Secretary of Defense or his designee, the Surgeons General of the Uniformed Services, and, as a nonvoting, ex officio member, the Dean of the University.

## Disclosure of Grand Jury Materials

### *Documents Filed by Attorneys for the President, Moving To Disclose Materials To the President and To Transmit Them to the Supreme Court. June 12, 1974*

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

Criminal No. 74-110

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, ET AL., DEFENDANTS

SPECIAL APPEARANCE AND MOTION TO DISCLOSE AND TO  
TRANSMIT GRAND JURY MATTERS

Pursuant to Rule 6(e), Federal Rules of Criminal Procedure, Richard Nixon, President of the United States, through his counsel, enters this special appearance for the limited purpose of moving this Court to disclose to the President and his counsel any and all transcripts, tape recordings of Presidential conversations, grand jury minutes and exhibits and any and all other matters occurring before the Grand Jury which pertain to the Grand Jury action in naming and/or authorizing the Special Prosecutor to identify Richard Nixon as an unindicted co-conspirator and to transmit this material as part of the certified record of the above captioned case to the United States Supreme Court. For the reasons set forth in the Affidavit and the Memorandum filed in support of this motion, we respectfully request that this Court enter an order disclosing this material to the President and his counsel and transmitting this material to the United States Supreme Court.

Respectfully submitted,

JAMES D. ST. CLAIR  
MICHAEL A. STERLACCI  
JEROME J. MURPHY  
EUGENE R. SULLIVAN  
MALCOLM J. HOWARD  
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UNITED STATES DISTRICT COURT FOR THE  
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AFFIDAVIT OF JAMES D. ST. CLAIR

James D. St. Clair, being duly sworn, deposes and says:

1. I am the Special Counsel to the President of the United States. For the past four weeks I have been attending Executive Sessions of the Committee on the Judiciary of the United States House of Representatives by the invitation of said Committee in my capacity as the Special Counsel to the President, and in accordance with the Special Rules of said Committee.

2. During the Presentation of Information by the Committee's Special Staff, extracts of testimony by various individuals before the June 5, 1972 Grand Jury have been presented to the Committee on the Judiciary to determine whether the President has committed an impeachable offense. Specifically, testimony given to the Grand Jury by H. R. Haldeman on January 30, 1974, John Dean on February 14, 1974, William O. Bittman on August 3, 1973, Frederick C. LaRue on February 13, 1974, and E. Howard Hunt on July 17, 1973, has been presented (See Appendices A, B, C, D, and E attached hereto). I have learned as a result of these presentations that this information has been given to the Committee on the Judiciary of the United States House of Representatives by virtue of this Court's Order in *In Re Report and Recommendation of June 5, 1972 Grand Jury concerning transmission of Evidence to the House of Representatives*, Misc. No. 74-21, dated March 18, 1974.

3. I am further led to believe that this is the same information relied upon by the June 5, 1972 Grand Jury which named the President as an unindicted co-conspirator in *United States v. John Mitchell et al.*, No. 74-110.

4. In my opinion, the Grand Jury was acting outside its authority in naming the President as an unindicted co-conspirator, but even if it were acting properly, the evidence presented was and is totally insufficient to support the action taken and, in fact, contradicts that action. I base this opinion upon the aforementioned Appendices A through E and the conversations set forth in Appendices F and G (Transcript, March 21, 1973, 10:12-11:55 a.m.; Transcript, March 21, 1973, 5:20-6:01 p.m.).

JAMES D. ST. CLAIR

Subscribed and sworn to before me this 10th day of June, 1974.

THOMAS J. ENGLISH

Notary Public

My commission expires: June 20, 1976

UNITED STATES DISTRICT COURT FOR THE  
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MEMORANDUM IN SUPPORT OF THE PRESIDENT'S MOTION  
TO DISCLOSE AND TO TRANSMIT GRAND JURY  
MATTERS

STATEMENT OF THE CASE

On May 3, 1974, the Special Prosecutor moved the District Court for an order pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure authorizing disclosure of matters occurring before the grand jury to the extent necessary to prepare its memorandum in response to the President's motion to quash. At an *in camera* hearing in chambers on May 6, 1974, the District Court ruled that the matters could be filed under seal.

On May 10, 1974, the Special Prosecutor filed a memorandum in opposition to the motion to quash the subpoena duces tecum. On May 13, 1974, the President filed a Special Appearance and motions to expunge and for a protective order and reply to the memorandum in opposition to the motion to quash the subpoena duces tecum. The matter was heard *in camera* on May 13, 1974, and subsequently, on May 20, 1974, the court entered the order compelling *in camera* production of all subpoenaed items and denying the motions for additional relief. On May 24, 1974, the President filed a notice of appeal from that order and also moved the United States Court of Appeals for the District of Columbia Circuit, for leave to file a petition for a writ of mandamus and supported papers under seal. On the same day the United States Court of Appeals granted this motion.

The Special Prosecutor on May 24, 1974, filed in the United States Supreme Court a petition for writ of certiorari before judgment. On May 31, 1974, the Supreme Court granted certiorari in the above captioned case. On June 10, 1974, the President filed in the United States

Supreme Court a printed Cross-Petition for Writ of Certiorari.

#### ARGUMENT

Rule 6(e) of the Federal Rules of Criminal Procedure provides that the court may direct the disclosure of matters occurring before the grand jury "preliminarily to or in connection with a judicial proceeding." The United States Supreme Court has confirmed the trial court's power to allow disclosure under Fed. R. Crim. P. 6(e) upon a showing of a "particularized need" to have access to grand jury materials. *United States v. Dennis*, 384 U.S. 855, 870 (1966) ("particularized need" held demonstrated by defendants in conspiracy trial seeking a grand jury testimony of key witnesses to demonstrate inconsistencies in testimony). In *Dennis*, the Supreme Court stated:

"These developments [allowing defendants to have access to grand jury testimony] are entirely consonant with the growing realization that disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice." 384 U.S. at 870.

The circumstances of the instant case establish a "particularized need" for the disclosure of the above described grand jury materials for several compelling reasons. First, in the course of attending the House Judiciary Committee Hearings on Impeachment, the Special Counsel for the President has learned information which leads him to believe that the grand jury's action in naming Richard M. Nixon as an unindicted co-conspirator is an action unsupported by the facts. The grand jury materials, which were recently presented to the House Judiciary Committee in its Impeachment Hearings and which served as a basis for the grand jury's action in naming Richard M. Nixon as an unindicted co-conspirator, clearly demonstrate that the grand jury was acting outside its authority and those materials are totally insufficient to impute criminal activity to the President. See Affidavit of Mr. James D. St. Clair and the Appendices thereto. If there is an abuse of the grand jury function, then there is a right to intrude into the secrecy of the grand jury proceedings. See *In Re Grand Jury Investigation (General Motors Corp.)* 32 F.R.D. 175, 181 (S.D.N.Y. 1963) appeal dismissed on other grounds, 318 F. 2d 533 (2d Cir.), cert. denied, 374 U.S. 802 (1963) (motion to restrict proposed grand jury investigation denied when no evidence of probability of abuse of grand jury process demonstrated). In the instant case, we respectfully contend that the affidavit and the appendices thereto strongly demonstrate that the grand jury's action was unwarranted and that the interest of justice will be properly served by the limited release of the grand jury matters pursuant to our motion.

An additional and equally compelling reason to grant our motion is the consideration that must be placed on

the disposition of the above-captioned case now that certiorari has been granted. Inherent in issues presented by the Special Prosecutor and the President in this case before the Supreme Court is an analysis of the grand jury's action in naming the President as an unindicted co-conspirator. The President, in his Cross-Petition for Writ of Certiorari, presents the issue of whether the grand jury has the authority to charge the President as an unindicted co-conspirator. The Special Prosecutor has enumerated as one of his issues the question whether a claim of executive privilege can block the prosecutor's access in a criminal trial to certain material containing deliberations where there is a *prima facie* showing that these deliberations occurred in the course of a criminal conspiracy. In the resolution of both of these issues, it may be necessary for the Supreme Court to make a factual analysis of the grand jury's action. With the present record in the District Court, this analysis could not be done. It is essential that the record before the Supreme Court be as complete as possible in order to allow a full resolution of the issues. The issues in the above-captioned case are of the most grave constitutional magnitude and import and should be argued fully in all respects by both sides. The importance of this case and its relation to the essence of our Nation's Constitution demands that this case be afforded this full argument on all issues. A record complete with the grand jury materials is necessary to accomplish this objective. A limited disclosure to the President and his Counsel and the transmittal of the grand jury material to the highest court in the land, under seal or in the method as this court deems proper, would not undermine the policy behind the secrecy provisions of Fed.R.Crim.P. 6(e). Grand jury transcripts have been made available to help determination of issues in such proceedings as a police disciplinary hearing before the Director of Public Safety for the City of Columbus, Ohio, *In Re Grand Jury Transcripts*, 309 F.Supp 1050 (S.D. Ohio 1970) and in proceedings before a bar grievance committee in New York City, *Doe v. Rosenberg*, 152 F. Supp 403 (S.D. N.Y. 1957) aff'd, 255 F. 2d 118 (2d Cir. 1958). Surely the grand jury materials in the instant case should be made available to help determinations in the United States Supreme Court.

Due Process as guaranteed by our Constitution also demands that this Court grant our motion. The President has been named as an unindicted co-conspirator by this grand jury. The grand jury's action will be reviewed in the Supreme Court's disposition of the above-captioned case. To allow this review without allowing the President a complete basis upon which to attack the validity of the grand jury's action would be a denial of due process. As the court in *United States v. Byoir*, 58 F.Supp 273, 274 (N.D. Tex. 1945) speaking of the secrecy of grand jury proceedings wisely observed, "the blanket of secrecy

is not so imprisoning as to defeat justice." The veil of secrecy of a grand jury can be lifted upon a showing that the grand jury acted in violation of an individual's constitutional rights. *United States v. White*, 104 F.Supp 120, 121 (D. N.J. 1952). In the instant case, the grant of our motion will give the President the right to full due process in a forum capable of granting relief for the grand jury's action outside its lawful authority.

## CONCLUSION

For the foregoing reasons, we respectfully request that the motion to disclose and to transmit the grand jury matters be granted.

Respectfully submitted,

JAMES D. ST. CLAIR  
MICHAEL A. STERLACCI  
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UNITED STATES DISTRICT COURT FOR THE  
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## ORDER

Upon consideration of the President's Motion, the Affidavit and the Appendices, and the Memorandum of Law in support of the Motion, it is hereby

ORDERED that the Motion is granted and that the President and his Counsel are authorized to view the grand jury matters requested and that such grand jury matters shall be transmitted to the United States Supreme Court as part of the certified record in the above-captioned case.

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JOHN J. SIRICA  
*United States District Judge*

Dated: -----

## CERTIFICATE OF SERVICE

I, James D. St. Clair, do hereby certify that I have caused to be served a copy of the foregoing Special Appearance and Motion to Disclose and to Transmit Grand Jury Matters, Memorandum of Law, Affidavit and Appendices (Appendices filed under seal served only on Special Prosecutor), and proposed Order on the Counsel of Record at the addresses below:

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JAMES D. ST. CLAIR  
*Special Counsel to the President*

NOTE: Copies of the documents were made available by the White House Press Office.