

for the limited purpose of moving this Court to quash the subpoena duces tecum issued by this Court's order dated April 18, 1974, permitting production and inspection of certain materials and made returnable before this Court on May 2, 1974. For the reasons set forth in the Memorandum filed in support of this Motion, we respectfully request that this Court enter an order quashing the subpoena in all respects.

Respectfully submitted,

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Criminal no. 74-110
UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, ET AL., DEFENDANTS.

FORMAL CLAIM OF PRIVILEGE

I, Richard Nixon, President of the United States, hereby represent to the Court that, except as noted hereafter, the materials covered by the subpoena issued April 18, 1974, to the extent that they exist, are within the constitutional privilege of the President to refuse to disclose confidential information when disclosure would be contrary to the public interest.

Portions of twenty of the conversations described in the subpoena have been made public and no claim of privilege is advanced with regard to those Watergate-related portions of those conversations. These are items 9, 11, 15, 16, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31 of the subpoena.

The other items sought are confidential conversations between a President and his close advisors that it would be inconsistent with the public interest to produce. Thus I must respectfully claim privilege with regard to them to the extent that they may have been recorded, or that

there may be memoranda, papers, transcripts, or other writings relating to them.

Respectfully submitted,

RICHARD NIXON
President of the United States

MAY 1, 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.

MEMORANDUM IN SUPPORT OF THE PRESIDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

STATEMENT OF THE CASE

On April 16, 1974, the Special Prosecutor, Leon Jaworski, moved this Court for an order pursuant to Rule 17(c), Federal Rules of Criminal Procedure, directing the issuance of a subpoena for the production and inspection of certain materials by Richard M. Nixon, President of the United States. This material relates to confidential communications of the President. Subsequently defendants Charles W. Colson and Robert C. Mardian joined in this motion. On April 18, 1974 this Court ordered that the subpoena calling for 46 enumerated items¹ be issued and made returnable on May 2, 1974. It is this subpoena that the President moves this Court to quash in its entirety.

INTRODUCTION

We note at the outset that we continue to believe that it is for the President of the United States, rather than for a court, to decide when the public interest requires that he exercise his constitutional privilege to refuse to produce information. We also continue to believe that a President is not subject to compulsory process from a court. We recognize that at the present stage of this case these contentions are foreclosed by the decision in *Nixon v. Sirica*, — U.S. App. D.C. —, 487 F.2d 700 (1973). Thus we do not now press these points, but mention them here in order that they may be preserved should it be necessary for this case to reach a court in which *Nixon v. Sirica* is not a controlling precedent.

In truth, it should be possible to decide the present matter without reference to the contentions noted in the

¹ An analysis of these 46 enumerated items reveals that 64 recorded conversations are sought by the subpoena. Attached is a copy of the Schedule of Documents and Objects to be produced by or on Behalf of Richard M. Nixon designating those items involved here for which transcripts of Watergate related materials have subsequently been made available to the general public by the President on April 29, 1974.