

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEMOCRATIC NATIONAL COMMITTEE.     )  
ET AL,                                     )  
  )  
  )     Plaintiffs                     )  
  )     v.                                     )  
  )     Civil Action No. 1233-72  
JAMES W. McCORD, JR.,                 )  
  )  
  )     Defendant                     )

OPPOSITION TO MOTION  
TO QUASH SUBPOENA

Comes now JAMES W. McCORD, JR., defendant and cross-claimant in Democratic National Committee, Et Al v. James W. McCord, Jr., et al, Civil Action No. 1233-72, by and through his counsel, and opposes the Motion to Quash filed in this Court on September 11, 1974.

STATEMENT

On August 23, 1974, defendant McCord served a subpoena duces tecum on Philip W. Buchen, Esq., Counsel to the President, commanding him to appear and give testimony in the above-styled case on September 17, 1974 and to bring with him "all tapes and transcripts of tapes, of conversations of Richard M. Nixon and/or his aides recorded in the White House for the period from January 1, 1973 to January 31, 1973, inclusive."

On September 11, 1974 the Government filed a Motion to Quash said subpoena and a hearing was held before Judge Pratt in this Court. Judge Pratt did not quash the subpoena, but continued the matter until September 23, 1974 so that Judge Richey, who has been assigned the above-styled cases, could hear and determine the matter. Judge Pratt additionally requested that the tapes and transcripts of tapes not be moved from the District of Columbia pending the disposition of the Motion to Quash.

ARGUMENT

1. The thrust of the Government's argument supporting its Motion to Quash is that the tape recordings are the subject of an agreement dated September 6, 1974 between Richard M. Nixon and the Administrator of the General Services Administration. Under the terms of that agreement there are restrictions on access to the tape recordings which require that there be mutual agreement to the access and in the event the tape recordings are subpoenaed, the former President retains the right to assert any privilege or defense prior to making the tapes available.

2. The above-mentioned agreement is purportedly based on 44 U.S.C. §2101 et seq., which, inter alia, authorizes the Administrator of General Services Administration to accept a former President's "papers and other historical materials" for deposit.


3. While there is a long-established tradition that the President's papers become his property upon leaving office, there is no such tradition regarding tape recordings such as are involved in the instant action.

4. The tape recordings clearly do not belong to the former President. The equipment used to record the conversations is the property of the Government. The system was installed and maintained by the Secret Service and the tapes themselves were purchased by the Secret Service. Under no statute or Court ruling or historical tradition can these tapes be deemed to have become the property of Mr. Richard M. Nixon.

5. Moreover, and more importantly, the exodus of these tapes out of this jurisdiction, pursuant to the terms of the agreement, will make it extremely difficult, if not impossible, for defendant McCord to ever subpoena them back to this jurisdiction for use in prosecuting his cross-claim in the forementioned civil action.

3.

For the foregoing reasons and for such other reasons as may be presented by Counsel at the time of hearing on said Motion, defendant McCord urges the Court to deny the Government's Motion to Quash.

  
BERNARD FENSTERWALD, JR.  
910 16th St., N.W.  
Washington, D.C. 20006  
Tel: 223-1667  
Attorney for Defendant McCord

Date: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Opposition to Motion to Quash Subpoena upon Raymond G. Larroca, Esq., Suite 500, 1320 19th St., N.W., Washington, D.C. 20036; Jeffrey Axelrad, Esq., Department of Justice, Washington, D.C., by messenger; and mailed copies of the same to John H. Koonz, Jr., Esq., 925 15th St., N.W., Washington, D.C.; Richard W. Galiher, Esq., 1215 19th St., N.W., Washington, D.C. 20036; James R. Stoner, Esq., 1000 Connecticut Ave., N.W., Washington, D.C. 20006; Daniel E. Schultz, Esq., 1990 M St., N.W., Washington, D.C. 20036; Fred M. Vinzon, Jr., Esq., 800 17th St., N.W., Washington, D.C. 20006; William A. Snyder, Jr., Esq., 1600 Maryland National Bank Bldg., Baltimore, Maryland 21202; Peter L. Maroulis, Esq., 11 Cannon St., Poughkeepsie, New York 12601; James J. Bierbower, Esq., 1625 K St., N.W., Washington, D.C. 20006; Walter J. Bonner, Esq., 1001 Connecticut Ave., N.W., Washington, D.C. 20036; Charles B. Murray, Esq., 1025 15th St., N.W., Washington, D.C. 20005; William G. Hundley, Esq., 839 17th St., N.W., Washington, D.C. 20006; and John J. Wilson, Esq., 815 15th St., N.W., Washington, D.C. 20005, this 20<sup>th</sup> day of September, 1974.

  
BERNARD FENSTERWALD, JR.