

W.C. [Signature]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED  
NOV 26 1973  
JAMES F. DAVEY, Clerk

IN RE GRAND JURY SUBPOENA DUCES TECUM )  
ISSUED TO RICHARD M. NIXON, OR ANY )  
SUBORDINATE OFFICER, OFFICIAL OR )  
EMPLOYEE WITH CUSTODY OR CONTROL OF )  
CERTAIN DOCUMENTS OR OBJECTS )

Misc. No. 47-73

ANALYSIS, INDEX AND PARTICULARIZED CLAIMS OF  
EXECUTIVE PRIVILEGE FOR SUBPOENAED MATERIALS

Pursuant to the special court procedures issued on  
October 30, 1973, the President of the United States through his  
counsel submits herewith an analysis and an index of the subpoenaed  
materials, and particularized claims of executive privilege where  
applicable.

All materials subpoenaed are primarily identified in the  
subpoena as related to one of a series of specified conversations,  
one of which was a telephone conversation and the remainder of which  
were conducted in personal meetings. For each conversation, the  
subpoena demands production of "1. All tapes and other electronic  
and/or mechanical recordings or reproductions, and any memoranda,  
papers, transcripts or other writings, relating to" the specified  
conversation.

This submission treats each conversation covered by the  
subpoena separately, in the order of the subparagraphs of Paragraph 1  
of the subpoena. (The materials covered by Paragraphs 2 and 3 of the  
subpoena were voluntarily provided by the President to the Special  
Prosecutor for the Grand Jury's use when the subpoena was issued.)

PART I

Item 1(a) of the subpoena relates to "Meeting of June 20, 1972,  
in the President's Executive Office Building ("EOB") office involving  
Richard Nixon, John Ehrlichman and H. R. Haldeman from 10:30 a.m. to  
noon (time approximate)."

(2) Index

The President's comments relating to the Mitchell conversation begin at 2 minutes 22 seconds playing time from the beginning of the dictating belt and end at 2 minutes 45 seconds playing time from the beginning of the dictation.

(3) Particularized Claim of Executive Privilege

No claim of Executive Privilege is asserted with respect to that portion of the dictating belt on which are dictated the President's recollections of and comments on his telephone conversation that day with John N. Mitchell.

## PART III

Item 1(c) of the subpoena relates to a "Meeting of June 30, 1972, in the President's "EOB" office, involving Messrs. Nixon, Haldeman and Mitchell from 12:55 to 2:10 p.m."

## A. Tape Recording

This conversation was recorded on tape by the sound actuated recording system described in testimony given in the evidentiary hearings held by this Court, and the tape recording of this conversation is being submitted as Item III.A. covered by the subpoena.

(1) Analysis

This conversation occurred at a luncheon in the President's "EOB" office, attended by President Nixon, John N. Mitchell and H. R. Haldeman, on June 30, 1972, immediately prior to the announcement of the resignation of John N. Mitchell as Chairman of the Committee to Re-elect the President and the appointment of Clark MacGregor as his successor. The conversation relates primarily to the reasons for, the timing of, and the procedures for, Mitchell's announcement of his resignation, and the choice and announcement of his successor. There are a few passing and collateral references to Watergate ~~which are not substantive.~~ There is an incoming telephone

call just prior to the conversation. At the end of the conversation, the President indicates his intention to take a short nap.

(2) Index

The playing time for the tape recording of this conversation is approximately 1 hour 9 minutes and 44 seconds. Playing time of the tape preceding significant portions of the conversation are as follows:

<u>Event</u>	<u>Playing Time from Beginning of Recording</u>
Telephone rings	4 minutes 56 seconds
Mitchell and Haldeman enter	8 minutes 54 seconds

(3) Particularized Claims of Executive Privilege

The conversation recorded consists of advice to the President by his senior staff assistant and his former Attorney General relating to matters which had a direct bearing on the President's ability to operate his office and conduct his official business at that time. The conversation includes discussions of highly personal matters. The President believes that the conversation is subject in its entirety to a valid claim of Executive Privilege in order to protect the confidentiality of the matters discussed. There is nothing in this conversation "concerning possible criminal conduct or discussions of possible criminal conduct" as to testimony concerning which the President announced he would not invoke Executive Privilege on May 22, 1973.

This particularized claim of Executive Privilege should be sustained as to Item III.A. and this tape recording should not be submitted by the Court to the Grand Jury.

B. Memorandum (Notes of H. R. Haldeman)

A file search has disclosed handwritten notes by H. R. Haldeman, which from identifying markings and the

content, appear to be the notes made by H. R. Haldeman during the meeting of the President, John N. Mitchell and H. R. Haldeman on June 30, 1972, between 12:55 and 2:10 p.m. The notes appear on one page of paper from a yellow legal pad. They are being submitted as Item III.B. covered by the subpoena.

(1) Analysis

None necessary.

(2) Index

None necessary.

(3) Particularized Claim of Executive Privilege

Item III.B. are notes of the same conversation which was recorded on Item III.A., and subject to the same claim of Executive Privilege. Item III.B. should not be submitted to the Grand Jury.

PART IV

Item 1(d) of the subpoena relates to a "Meeting of September 15, 1972, in the President's Oval office involving Mr. Nixon, Mr. Haldeman and John W. Dean, III, from 5:27 to 6:17 p.m."

A. Tape Recording

This conversation was recorded on tape by the sound actuated recording system described in testimony given in the evidentiary hearings held by this Court, and the tape recording of this conversation is being submitted as Item IV.A. covered by the subpoena.

(1) Analysis

John W. Dean, III, then Counsel to the President entered the President's Oval office at approximately 5:27 p.m. on September 15, 1972, during a meeting then in progress between the President and his Assistant, H. R. Haldeman. He remained in the Oval office, as did the President and Mr. Haldeman, until approximately 6:17 p.m., at which time the President left by automobile for the Washington Navy Yard. Earlier in the day, the Grand Jury had returned

indictments on seven persons in connection with the entry into the Democratic National Committee offices at the Watergate Apartments. For the first approximately 33 minutes and 9 seconds after Dean entered the Oval office, the conversation involves subjects directly or indirectly related to the Watergate matter. Included are discussions of the indictments, the time of the pending trials, the civil cases connected with the incident and potential Congressional committee inquiries into the matter, as well as press coverage of the matter. After the first approximately 33 minutes and 9 seconds of the conversation, the conversation turns to other subjects within the President's official cognizance not directly or indirectly related to the Watergate matter.

(2) Index

The playing time for the tape recording of this conversation is approximately 48 minutes 44 seconds. The only significant event is the end of discussion of Watergate related matters approximately 33 minutes and 9 seconds playing time from the beginning of the recording.

(3) Particularized Claim of Executive Privilege

No particularized claim of Executive Privilege is asserted to the conversation recorded on the first approximately 33 minutes 9 seconds of playing time of the tape being submitted as Item IV.A.

The conversation recorded subsequent to that point on the tape consists of discussions with and advice from the President's senior Assistant and his counsel on matters relating to the President's conduct of his official duties and are unrelated to Watergate matters.

The President believes that the conversation recorded on Item IV.A. following the first 33 minutes 9 seconds of playing time is subject to a claim of Executive Privilege in order to protect the confidentiality of the advice and counsel provided to the President.

This particularized claim of Executive Privilege should be sustained as to that part of Item IV.A. following the first 33 minutes 9 seconds of playing time of the tape, and this latter portion of the tape should not be submitted by the Court to the Grand Jury.

B. Memorandum (Notes of H. R. Haldeman)

A file search has disclosed handwritten notes of H. R. Haldeman, which from the identifying markings and the content indicate the notes were made by H. R. Haldeman during the meeting with the President, during a part of which John Dean participated, on the afternoon of September 15, 1972. These notes are being submitted as Item IV.A. covered by the subpoena.

(1) Analysis

These notes consist of three sheets of yellow legal pad paper on which notes are written. The first page and the first portion of the second page relate to matters discussed prior to the conversation to which Item 1(d) of the subpoena relates. The notes reflect the point of entry of John Dean into the conversation on page two of the notes. The notes on the third page of Item IV.B. relate to the conversation recorded on Item IV.A. after the first 33 minutes 9 seconds of playing time.

(2) Index

Not necessary.

(3) Particularized Claim of Executive Privilege

As to that portion of the notes relating to the first portion of the conversation, which is in connection with Watergate matters, and which appears on page 2 of Item IV.B. following the words "John Dean" circled in ink, no particularized claim of Executive Privilege is asserted.

Page 1 of Item IV.B. and that portion of page 2 of Item IV.B. which precedes the words "John Dean" circled in ink are not covered by the subpoena and should not be submitted to the Grand Jury.

The notes on page 3 of Item IV.B. reflect portions of the conversation recorded on that portion of Item IV.A. following the first 33 minutes 9 seconds playing time and are subject to the same particularized claim of Executive Privilege, which the President asserts.

Only the portion of page 2 of Item IV.B. which follows the words "John Dean" circled in ink should be submitted to the Grand Jury.

## PART V

Item 1(e) of the subpoena relates to a "Meeting of March 13, 1973, in the President's Oval office involving Messrs. Nixon, Dean and Haldeman from 12:42 to 2:00 p.m."

A. Tape Recording

This conversation was recorded on tape by the sound actuated recording system described in testimony in the evidentiary hearing held by this Court, and the tape recording of this conversation is being submitted as Item V.A. covered by the subpoena.

(1) Analysis

The initial participants in this conversation were the President, H. R. Haldeman and John Dean. Mr. Haldeman's participation is limited to the very early portion of the conversation. Among the subjects of discussion were the employment of former members of

the White House staff as consultants, questions and answers for a scheduled Presidential Press Conference, comparative performance of the Federal Bureau of Investigation (FBI) in the former and present administrations, the nomination hearings on Mr. Gray as Director of the FBI, prospective witnesses for the Senate Select Committee, the possible knowledge by potential witnesses of the Watergate matter and the potential sentencing of the defendants in the Watergate case.

(2) Index

The playing time for the tape recording of this conversation is approximately 1 hour 7 minutes and 40 seconds. Playing time of the tape preceding significant portions of the conversation are as follows:

<u>Event</u>	<u>Playing Time from Beginning of Recording of Conversation</u>
End of H. R. Haldeman's participation	8 minutes 45 seconds

(3) Particularized Claim of Executive Privilege

Although the conversation recorded on Item V.A. contains advice to the President from his counsel on official responsibilities, the subject matter of the conversation so frequently relates directly or indirectly to the Watergate matter that it cannot be separated from the conversation without destroying the meaning and comprehensibility of the overall conversation. Accordingly, the President asserts no particularized claim of Executive Privilege with respect to Item V.A.

PART VI

Item 1(f) of the subpoena relates to a "Meeting of March 21, 1973, in the President's Oval office involving Messrs. Nixon, Dean and Haldeman from 10:12 to 11:55 a.m."

A. Tape Recording

This conversation was recorded on tape by the sound actuated system described in testimony given in the evidentiary hearing held by this Court, and the tape recording is being submitted as Item VI.A.



(1) Analysis

This conversation was related in its entirety to the Watergate matter. The participants at the beginning of the meeting are the President and John Dean. H. R. Haldeman joined them shortly after the midpoint of the discussion.

(2) Index

The playing time for the tape recording of this conversation is approximately 1 hour 38 minutes and 38 seconds.

(3) Particularized Claim of Executive Privilege

None.

B. Cassette Recording of Presidential Recollections

A search of the Presidential daily diary files disclosed a cassette recording on which the President had dictated at 9 p.m. on March 21, 1973, his recollections of events and conversations of that day, including references to his conversation with John Dean. This cassette recording is being submitted as Item VI.B. covered by the subpoena.

(1) Analysis

The portion of material dictated on this cassette recording which refers to the President's conversation with John Dean is relevant to Watergate matters.

(2) Index

The dictation related to the President's conversation of March 21, 1973, appears on Side 1 of the cassette following dictation done by the President on March 16, 1973. Playing time for the dictation covered by the subpoena is 7 minutes 25 seconds. Playing times of the cassette prior to significant portions are:

<u>Event</u>	<u>Playing Time from Beginning of Dictation on Side 1 of the Cassette</u>
End dictation of March 16	17 minutes 30 seconds
End portion of dictation relating to John Dean meeting of 3/21/73	7 minutes 25 seconds

## PART VII

Item 1(g) of the subpoena relates to a "Meeting of March 21, 1973, in the President's EOB office from 5:20 to 6:01 p.m. involving Messrs. Nixon, Dean, Ziegler, Haldeman and Ehrlichman."

## A. Tape Recording

This conversation was recorded on tape by the sound actuated recording system described in testimony given in the evidentiary hearings held by this Court, and the tape recording of this conversation is being submitted as Item VII.A. covered by the subpoena.

(1) Analysis

The President's log shows that Ronald Ziegler was in the room before H. R. Haldeman, John Ehrlichman and John Dean entered and that he remained for approximately five minutes after they entered. The recording, however, reveals no voice identifiable as that of Mr. Ziegler. The conversation appears to relate in its entirety to Watergate matters.

(2) Index

The playing time for this conversation is approximately 35 minutes 15 seconds.

(3) Particularized Claim of Executive Privilege

None.

## PART VIII

Item 1(h) of the subpoena relates to a "Meeting of March 22, 1973, in the President's EOB office from 1:57 to 3:43 p.m. involving Messrs. Nixon, Dean, Ehrlichman, Haldeman and Mitchell."

## A. Tape Recording

This conversation was recorded on tape by the sound actuated recording system described in testimony given in the evidentiary hearings held by this Court, and the tape recording of this conversation is being submitted as Item VIII.A. covered by the subpoena.

(1) Analysis

A major portion of this conversation relates to the Watergate matter.

(2) Index

The playing time for the tape recording of this conversation is approximately 1 hour 40 minutes.

(3) Particularized Claim of Executive Privilege

None.

## B. Memorandum (Notes of H. R. Haldeman)

A search of the files disclosed handwritten notes of H. R. Haldeman. From identifying marks and content it appears that the notes were made during the meeting with the President, John Ehrlichman, H. R. Haldeman, John Dean and John Mitchell on the afternoon of March 22. The notes are on a page of paper from a yellow legal pad. The notes are being submitted at Item VIII.B. covered by the subpoena.

(1) Analysis

The notes appear to relate to Watergate in their entirety.

(2) Index

None necessary.

(3) Particularized Claim of Executive Privilege

None.

## PART IX

Item 1(i) of the subpoena relates to a "Meeting of April 15, 1973, in the President's EOB office between Mr. Nixon and Mr. Dean from 9:17 to 10:12 p.m."

## A. Memorandum (Notes of President Nixon)

A search of the President's personal diary file disclosed handwritten notes made by the President during his meeting with John Dean on April 15, 1973. The notes were made on four pages of paper from a yellow legal pad. These notes are being submitted as Item IV.A. covered by the subpoena.

(1) Analysis

These notes all relate to Watergate matters in their entirety.

(2) Index

None necessary.

(3) Particularized Claim of Executive Privilege

None.


GENERAL INDEX OF ITEMS SUBMITTED UNDER SUBPOENA

<u>Subpoena Sub-paragraph</u>	<u>Item No.</u>	<u>Meeting with President</u>	<u>Character of Item</u>
1(a)	I A 1	June 20, 1972-Ehrlichman	Tape Recording
	I A 2	June 20, 1972-Ehrlichman	Ehrlichman Notes
	I B 1	June 20, 1972-Haldeman	Tape Recording
	I B 2	June 20, 1972-Haldeman	Haldeman Notes
1(b)	II A	June 20, 1972-Telcon, Mitchell	Dictabelt of Presidential Recollections
1(c)	III A	July 30, 1972-Haldeman- Mitchell	Tape Recording
	III B	July 30, 1972-Haldeman- Mitchell	Haldeman Notes
1(d)	IV A	Sept. 15, 1972-Haldeman, Dean	Tape Recording
	IV B	Sept. 15, 1972-Haldeman, Dean	Haldeman Notes
1(e)	V A	March 13, 1973-Haldeman, Dean	Tape Recording
1(f)	VI A	March 21, 1973 A.M., Dean, Haldeman	Tape Recording
	VI B	March 21, 1973 A.M., Dean, Haldeman	Cassette Recording of Presidential Recollections
1(g)	VII A	March 21, 1973 P.M., Dean, Haldeman, Ehrlichman	Tape Recording
1(h)	VIII A	March 22, 1973, Dean, Haldeman, Ehrlichman, & Mitchell	Tape Recording
	VIII B	March 22, 1973, Dean, Haldeman, Ehrlichman, & Mitchell	Haldeman Notes-

<u>Subpoena Sub-paragraph</u>	<u>Item No.</u>	<u>Meeting with President</u>	<u>Character of Item</u>
1(i)	IX A	April 15, 1973-Dean	President's Note

Respectfully submitted

November 26, 1973

  
\_\_\_\_\_  
J. Fred Buzhardt  
Special Counsel to the President

The President's daily diary log for June 20, 1972 (Exhibit 13) shows that the President met alone with his Assistant, John D. Ehrlichman, from 10:25 to 11:20 a.m. in his "EOB" office. Subsequently, the President met with his Assistant, H. R. Haldeman from 11:26 a.m. to 12:45 p.m. in his "EOB" office.

A. Conversation between the President and John D. Ehrlichman, from 10:25 to 11:20 a.m. in the President's "EOB" office.

(1) Tape recording

This conversation was recorded on tape by the sound actuated recording system described in testimony in the evidentiary hearing held by this Court, and the tape recording is being submitted as Item I.A.1. covered by the subpoena.

(a) Analysis

This conversation relates primarily to the Higher Education Bill then under consideration by the Congress. Other subjects discussed include school busing; the Supreme Court decision (U.S. v. U.S. District Court) on national security wiretapping, press conferences and press conference formats, legislative action on proposals for welfare reform and the Stockholm Conference on environment. During the conversation, the President conversed on the telephone with a Deputy Assistant, Edward L. Morgan, about the higher education legislation.

There is no discussion or comment which relates, either directly or indirectly, to the incident at the Democratic National Committee offices at Watergate which occurred a few days prior to the conversation.

(b) Index

The playing time for the tape recording of this conversation is approximately 54 minutes and 17 seconds. Playing time of the tape preceding significant portions of the conversation are as follows:

<u>Event</u>	<u>Playing Time from Beginning of Recording of Conversation</u>
Start of discussion on Court decision and wiretaps	5 minutes 5 seconds
End discussion on Court decision and wiretaps	9 minutes 5 seconds
Begin telephone conversation with Morgan	28 minutes 55 seconds

(c) Particularized Claim of Executive Privilege

The conversation recorded on this tape consists of advice to the President by his then senior assistant for domestic affairs on official policy decisions then pending before the President, and the conveyance to the President by his assistant of the advice of other identified persons within the administration on the same matters. Nothing in the conversation relates to Watergate or anything connected therewith.

The President believes that the conversation is subject in its entirety to a claim of Executive Privilege in order to protect the confidentiality of advice given to the President. There is nothing in this conversation "concerning possible criminal conduct or discussions of possible criminal conduct" as to testimony concerning which the President announced he would not invoke Executive Privilege on May 22, 1973.

This particularized claim of Executive Privilege should be sustained as to Item I.A.1., and this tape recording should not be submitted by the Court to the Grand Jury.

(2) Memorandum (Notes of John D. Ehrlichman)

A file search has disclosed hand written notes by John D. Ehrlichman. From identifying markings and content these appear to be notes made by John D. Ehrlichman during the meeting with the President on June 20, 1972, between 10:25 and 11:20 a.m. These notes are being submitted as Item I.A.2. covered by the subpoena.

Enclosed in 10/19/72, 8/1/72  
 10/19/72, 8/1/72  
 10/19/72, 8/1/72

(a) Analysis

None necessary.

(b) Index

None necessary.

(c) Particularized Claim of Executive Privilege

Item I.A.2. are notes of the same conversation which was recorded on Item I.A.1., and subject to the same claim of Executive Privilege. It should not be submitted to the Grand Jury.

B. Conversation between the President and his Assistant, H. R. Haldeman, from 11:26 a.m. to 12:45 p.m. in the President's "EOB" office.

(1) Tape recording

This conversation was recorded on tape by the sound actuated recording system described in testimony in the evidentiary hearing held by this Court, and the tape recording is being submitted as Item I.B.1. covered by the subpoena.

(a) Analysis

This conversation relates primarily to scheduling and travel. For a portion of this recording, in lieu of any audible conversation there is a constant hum. (See "B.1.(c), below.") At one point during the meeting, the President spoke on the telephone to his daughter, Julie. None of the recorded conversation relates to Watergate.

(b) Index

Between Item I.A.1. and Item I.B.1., there is a lapsed playing time on the tape of approximately 3 minutes and 10 seconds, during which the President requests con-somme and speaks to the steward about minor administrative matters. The tape records various noises of movement. The playing time of the tape recording from the point where H. R. Haldeman enters the office to his departure



is approximately 54 minutes and 49 seconds. The playing time of the tape preceding significant portions of the conversation are as follows:

<u>Event</u>	<u>Playing Time from Beginning of Recording of this Conversation</u>
Start of "hum" signal	3 minutes 40 seconds
End of "hum" signal	21 minutes 55 seconds
Telephone conversation	47 minutes 0 seconds

(c) Explanation of "hum"

It is believed that the hum which occurs approximately 3 minutes and 40 seconds from the beginning of this conversation between President Nixon and H. R. Haldeman, and which continues for approximately 18 minutes and 15 seconds was caused by the depression of a record button during the process of reviewing the tape, possibly while the recorder was in the proximity of an electric typewriter and a high intensity lamp.

The incident was detected and reported when made to the President, and shortly thereafter to White House counsel, J. Fred Buzhardt, as having occurred on a portion of the tape recording subsequent to that of the meeting between the President and John Ehrlichman, which at that time and until November 14, 1973, was believed to be the only part of that recording subpoenaed. The incident was therefore believed to be inconsequential.

The delay in discovering that the incident affected a portion of the tape containing a subpoenaed conversation was due to the ambiguity of the language of the subpoena. The applicable portion of the subpoena, dated July 23, 1973, is:

"1. All tapes and other electronic and/or mechanical recordings or reproductions, and any memoranda, papers, transcripts and other writings, relating to:

"(a) Meeting of June 20, 1972, in the President's Executive Office Building ("EOB") office involving Richard Nixon, John Ehrlichman and H. R. Haldeman from 10:30 a.m. to noon (time approximate.)"

In the remainder of the subpoena applicable to tape recordings, each separate meeting is subpoenaed as a separate item. Accordingly, item 1(a) of the subpoena was initially assumed to be applicable to only one meeting.

An examination of the President's daily log revealed that there was no meeting with the President on the morning of June 20, 1972 in which both Mr. Ehrlichman and Mr. Haldeman participated. Mr. Ehrlichman, however, met with the President from 10:25 a.m. to 11:20 a.m. This meeting most nearly coincided with the time specified in the subpoenas.

In addition, the public testimony given by Messrs. Haldeman and Ehrlichman indicated that it was Mr. Ehrlichman's conversation in which the Special Prosecutor would have an interest.

White House counsel is not aware of any testimony given by Mr. Haldeman relating to a meeting with the President on June 20, 1972.

Mr. Ehrlichman, however, was examined in some detail by the Senate Select Committee on his meeting with the President on June 20, 1972. (Senate Transcript. pp. 5363-5369, July 24, 1973; p. 5925, July 30, 1973). On July 24, 1973, Mr. Ehrlichman testified, in answer to questions by Senator Baker, that he had no recollection or notes of having discussed Watergate at this meeting

with the President, but rather, met with the President because he "needed some decisions and some marching orders" on a particular legislative subject (Tr. 5366). Subsequently, on July 30, 1973, Mr. Ehrlichman testified:

"I told Senator Baker, I believe, the other day that Watergate was not discussed at that meeting and since then I have rechecked what sketchy notes I have and I find I was in error on that. I am sure there must have been some discussion of the Watergate with the President on that occasion on the 20th.

"There were three principal subjects covered at that meeting. One of them was government wire-tapping and it is obvious to me that there must have been some Watergate discussion that led into this discussion in which I took an assignment from him to get some statistics for him about the incidents of Federal wiretapping in domestic-foreign situations, that is, situations involving U.S. citizens and foreign governments which was a statistic he did not have and which he wanted.

"Now, I am surmising and reconstructing because I have no direct notes on this, but I am just -- I am just certain that we did discuss Watergate at the outset of that meeting."

It was not until the evening of Wednesday, November 14, 1973, when copies of the subpoenaed tapes were provided for White House counsel's use in preparing the index and analysis required under the court's direction, that all materials remotely relating to the subpoenaed conversations were reviewed to assist in preparing the analysis. Among the materials then reviewed was the opinion of the United States Court of Appeals for the District of Columbia, Nixon v. Sirica, decided October 12, 1973. Appendix II, beginning at page 48 of the opinion, is a memorandum filed by the Special Prosecutor with this court on August 13, 1973. The first numbered item of that memorandum is as follows:

"1. Meeting of June 20, 1972. Respondent met with John D. Ehrlichman and H. R. Haldeman in his Old Executive Office Building (OEOB) office on June 20, 1972, from 10:30 a.m. until approximately 12:45 p.m. There is every reason to infer that the meeting included discussion of the Watergate incident. The break-in had occurred on June 17 -- just three days earlier. Dean did not return to Washington until June 18 (S. Tr. 2166). Mitchell, Haldeman and LaRue had also been out of town and did not return until late on June 19 (S. Tr. 3305, 3307, 6195). Early on the morning of June 20, Haldeman, Ehrlichman, Mitchell, Dean and Attorney General Kleindienst met in the White House. This was their first opportunity for full discussion of how to handle the Watergate incident, and Ehrlichman has testified that Watergate was indeed the primary subject of the meeting (S. Tr. 5923-5924). From there, Ehrlichman and then Haldeman went to see the President. The inference that they reported on Watergate and may well have received instructions, is almost irresistible. The inference is confirmed by Ehrlichman's public testimony that the discussion with respondent included both Watergate and government wiretapping (S. Tr. 5924-25). The contemporary evidence of that meeting should show the extent of the knowledge of the illegal activity by the participants or any effort to conceal the truth from the respondent."

Only the most careful reading of even this memorandum discloses that the Special Prosecutor seeks a recording of more than one meeting on June 20, 1972. Only two indicators are present. First, the ending time of the "meeting" in the memorandum is 12:45 p.m., rather than the approximation of "noon" as specified in the subpoena. Second, the word "then" in the sentence "From there, Ehrlichman and then Haldeman went to see the President" indicated the Special Prosecutor sought recordings of two sequential meetings.

White House Special Counsel J. Fred Buzhardt received an inquiry on September 28, 1973, as to the conversation covered by the first item of the subpoena, to which he replied that the conversation at the meeting with Ehrlichman was what was involved, and that the Special Prosecutor must have been mistaken in assuming that Haldeman also was in the meeting. This response was relayed to the President and to Mr. Steve Bull.

(d) Particularized Claim of Executive Privilege

The conversation on the tape recording of the meeting between H. R. Haldeman and the President consists of advice to the President by a senior advisor on official decisions then pending before the President. None of the conversation recorded relates to Watergate.

The President believes that the conversation is subject in its entirety to a claim of Executive Privilege in order to protect the confidentiality of advice given to the President. There is nothing in this conversation "concerning possible criminal conduct or discussions of possible criminal conduct" as to testimony concerning which the President announced he would not invoke Executive Privilege on May 22, 1973.

This particularized claim of Executive Privilege should be sustained as to Item I.B.1., and this tape recording should not be submitted by the Court to the Grand Jury.

(2) Memorandum (Notes of H. R. Haldeman)

A file search has disclosed handwritten notes of H. R. Haldeman, which from the identifying markings and the content indicate the notes were made by H. R. Haldeman during the meeting with the President on June 20, 1972, between 11:26 a.m. and 12:45 p.m. The notes are on two pages of paper from a yellow legal pad. These notes are being submitted as Item I.B.2. covered by the subpoena.

(a) Analysis

The notes to be submitted to the Court as Item I.B.2. reflect that the President gave instructions to Mr. Haldeman to take certain actions of a public relations character which related to the Watergate incident.

(b) Index

None necessary.

(c) Particularized Claim of Executive Privilege

Portions of the notes to be submitted as Item I.B.2. reflect confidential matters discussed by H. R. Haldeman and the President. As such, the President believes these portions of Item I.B.2. are subject to a valid claim of Executive Privilege, in order to protect the confidentiality of private discussions between the President and his assistants. Accordingly, only those portions of the notes which have any relationship to the Watergate matter (specifically, the first three items on page two of the notes) should be submitted to the Grand Jury.

## PART II

Item 1(b) of the subpoena relates to "Telephone conversation of June 20, 1972, between Richard Nixon and John N. Mitchell from 6:08 to 6:12 p.m."

## A. Dictating belt of Presidential recollection.

The only material relating to this conversation is a dictating belt of his recollections dictated by the President as a part of his personal diary on June 20, 1972, at eight-thirty p.m., in which the President referred to his telephone conversation with John N. Mitchell. That portion of the dictating belt to and including the reference to the telephone conversation with John N. Mitchell is being submitted as Item II.A. covered by the subpoena.

(1) Analysis

That portion of the dictating belt on which the President dictated recollections of the conversation with John N. Mitchell does contain references to Watergate.