New York.

Nov. 2, 1867.

Sir:

We have been able to arrange for a consultation here on the subject of the expected trial of Mr. Davis as presented to our consideration by your letter of 25th ult. to Mr. Evarts, and have given careful attention to the points which require presently to be provided for.

We now understand that it is the purpose of the Government that this trial shall be proceeded with when the case can be properly prepared, and the court having jurisdiction shall be ready to hear the cause. We also understand that you do not, in your office of Attorney General, expect to take part in the conduct of the prosecution in court, but that you will take part in any consultation at Washington, that counsel may think necessary.

The first point to which we think attention should be given, as of the greatest importance and responsibility, is the preparation of an indictment, in view of the evidence upon which
which, and the witnesses by whom, it is to be supported at the trial.

Although, as we understand, an indictment has heretofore been found, yet neither in framing it as a pleading, nor in selecting the overt act alleged as the body of the crime, nor in the scrutiny of the evidence by which the averments are to be maintained, has the matter been submitted to the attention of the counsel specially retained for the prosecution. Indeed, so far as the pending indictment has ever been suggested in consultation in which such special counsel have taken part, according to Mr. Evans' knowledge on the subject, it has always been assumed that whenever the actual prosecution was definitively determined on, the subject of the indictment would need to be taken up, substantially as an original question.

What steps may have been recently taken by the U.S. Attorney for Virginia, toward the preparation and finding of an indictment upon which the prosecution would expect
To rely, we are as yet without information.

We cannot but think, therefore, that the approaching term of the circuit court to be held at Richmond will require as the preliminary step towards a trial, the preparation of an indictment and its finding by the grand jury. Whenever the District Attorney shall advise us that he is ready to take up this subject we shall give the matter the proper attention.

Supposing that an indictment is procured, upon which the counsel of the Government will be ready to proceed to trial, and the presence of the witnesses and documentary evidence is assured, we have to consider no other condition in respect of the time or term of the court at which the trial can be brought on, except such as arises in respect of the court's being able to proceed with the trial. We feel quite sure that, upon every possible consideration applicable to this question, it is the general judgment of the country, as it is certainly our own, that the late Justice should preside in his circuit at the trial. As his public duties at the term of the Supreme Court at Washington preclude him from holding circuit at Richmond at the approaching
approaching November Term in that city, unless at an
adjourned day in the following Spring, we cannot hope that
a trial can actually be had until such adjourned day, or at the
May Term. We have not heard that the counsel of Mr.
Davis have any expectation of anticipating the obligation of his
recognizance by desiring a trial on the 13th inst., and we pres-
sume that no obstacle will be interposed on their part to the
trial being reserved until the chief justice will be at liberty to
hold the circuit.

We have the honor to be

Your Ob't Serv'ts

Mrs. M. Evans

(Signed)


The Honorable

Henry Stanbury

Attorney General