

# Tapes 'Privilege' Challenged

## Inspection Urged

By William Claiborne  
Washington Post Staff Writer

Watergate Special Prosecutor Leon Jaworski yesterday challenged President Nixon's claim of executive privilege for the White House tape recordings surrendered to the U.S. District Court on Monday, and asked that they be turned over to a federal grand jury after a private inspection by Chief Judge John J. Sirica.

The subpoenaed tapes are bound to be relevant to the Watergate probe and should be given to the grand jury "irrespective of whether the President believes they concern 'possible criminal conduct' . . ." Jaworski argued in a written response to a White House analysis of documents and recordings it delivered to Sirica Monday.

Brushing aside the claim by White House special counsel J. Fred Buzhardt that some of the tapes and documents involve confidential communications between the President and his staff and are not relevant to the thrust of the Watergate investigation, Jaworski asked Sirica to inspect the material and decide for himself whether executive privilege can be invoked for any reason.

"The unsworn, conclusory allegations of (Buzhardt) cannot suffice to preclude this inspection by the court," Jaworski argued.

Moreover, Jaworski asked Sirica to order the White House to turn over to the court transcripts and summaries of

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## Buzhardt on 'Gap'

By George Lardner Jr.  
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White House special counsel J. Fred Buzhardt admitted yesterday that he saw "no innocent explanation" for the 18¼-minute Watergate tape recording erasure when he first reported it to the court last week.

Testifying before U.S. District Court Judge John J. Sirica, Buzhardt said he subsequently resolved "some" of the questions in his own mind about the obliterated segment.

Buzhardt told reporters later that he was now "satisfied there are innocent ways it could have occurred." But he said that he still has no explanation for what happened to the subpoenaed tape, especially in light of testimony by Mr. Nixon's personal secretary, Rose Mary Woods, that she could have caused only part of the gap.

It was also disclosed at yesterday's hearing that Miss Woods was still handling original White House tape recordings a few days ago, without the knowledge of White House lawyers.

The recordings had been requested, but not subpoenaed, by Watergate Special Prosecutor Leon Jaworski on Nov. 15.

The prosecutor's request indicated a concentrated pursuit of allegations that Mr. Nixon authorized an offer of executive clemency for Watergate conspirator E. Howard Hunt Jr. early last January, shortly before Hunt was put on trial.

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## TAPES, From A1

Hunt pleaded guilty a few days after the trial started on Jan. 8.

Jaworski asked the White House for tapes and related documents on Jan. 3 and 4 conversations involving Mr. Nixon, former White House adviser John D. Ehrlichman and former White House special counsel Charles W. Colson.

Former White House counsel John W. Dean III told the Senate Watergate committee last summer that Colson told Ehrlichman "he felt it was imperative that Hunt be given some assurances of executive clemency. . . Ehrlichman said that he would have to speak with the President," Dean testified. "On January 4, I learned from Ehrlichman that he had given an affirmative regarding clemency for Hunt and that Colson had talked with (Hunt's lawyer William) Bittman again about the matter."

Nine tapes revolving around the Jan. 3 and 4 dates were checked out to Miss Woods on Monday, Nov. 19, by the keeper of the recordings, deputy presidential assistant John Bennett, an aide to White House chief of staff Alexander M. Haig Jr.

The checkout was made four days after Buzhardt has said he told Mr. Nixon of the 18¼-minute erasure in the 1972 recording that Miss Woods might have fouled up.

Buzhardt, however, said he did not know Miss Woods had any original tapes in her possession until Thanksgiving, Nov. 22, when he discovered she was making a digest of one of them on a substitute Uher recording machine.

He said he immediately arranged for Secret Service technicians to make a taped copy that she could use. He said he had already told Haig the day before, on Nov. 21, that he saw "no innocent explanation" for the erasure in the June 20, 1972 recording.

"When you told Haig that there was no innocent explanation, he knew that Miss Woods had the nine original tapes?" asked Watergate assistant prosecutor Richard Ben-Veniste.

"Probably," Buzhardt replied.

The White House lawyer said it was not until after this past Monday that he learned that Miss Woods had had not just one original tape, but nine in her possession. She returned them to Bennett Monday morning just before beginning her testimony before Judge Sirica.

By then, Buzhardt said, Miss Woods sometime last week had "typed transcripts of some telephone conversations" of one of the recordings. He said Haig handed the transcripts to him last weekend and "I put them in my safe. I don't know what all she was requested to transcribe."

The telephone conversations that Jaworski requested involved a series of five phone calls between Mr. Nixon and Colson nlast Jan. 3-4.

The special prosecutor

had also requested the tape of a meeting between Mr. Nixon, Ehrlichman and former staff chief H. R. (Bob) Haldeman, probably in the Oval Office, last Jan. 3, and of a subsequent session between the President and Colson in Mr. Nixon's Executive Office Building suite on Jan. 4.

Finally, Jaworski requested a series of memos or "talking papers" prepared by former White House aide Gordon Strachan in the latter part of 1971 as well as a memo from March or April of 1972. That last memo, Jaworski wrote, suggested Haldeman "call (former Attorney General) John N. Mitchell to arrange for G. Gordon Liddy to report to (Assistant Attorney General) Robert C. Mardian." Liddy subsequently was indicted and convicted in the June, 1972, break-in at Democratic National Committee headquarters.

## RESPONSE, From A1

subpoenaed presidential tape recordings. The transcripts were typed by Mr. Nixon's private secretary, Rose Mary Woods, who has testified that she made only one copy and gave it to the President.

Jaworski noted that Buzhardt's analysis of the surrendered tapes and documents made no mention of the typed transcripts. The special prosecutor said "their production will be of obvious assistance to the court and the grand jury."

Sirica said he will conduct a hearing on Jaworski's request today.

The special prosecutor submitted a list of 11 tape recordings, cassette recordings, dictabelts and memoranda for which the President asserted no particular claim of executive privilege.

These, Jaworski argued, should be handed over to the special prosecution attorneys for immediate presentation to the Watergate grand jury solely on the basis that executive privilege was not claimed.

They include the President's notes of an April 15, 1973, meeting with former White House counsel John W. Dean III, a dictabelt recording of the President's recollections of a June 20, 1972 telephone conversation with former Attorney General John N. Mitchell, and tape recordings of conversations between Mr. Nixon and White House aides H. R. (Bob) Haldeman and John D. Ehrlichman.

Each of the remaining four tape recordings for which the White House has claimed executive privilege should be heard privately by Sirica, after which the judge

should rule on their relevance to the Watergate criminal prosecution, Jaworski said.

Attorneys of the special prosecution force pointed out that Sirica would have listened to the tapes in any event, but that he would not necessarily have ruled on their relevancy.

"It is too late to try to restrict this court's inquiry by implying that it is still for the White House to decide whether particular Watergate-related conversations with the President . . . can be concealed," the special prosecutor argued.

As an example, Jaworski cited a tape recording of a June 20, 1972, conversation between the President and Ehrlichman. On Monday, Buzhardt claimed executive privilege on the tape, partly because "nothing in the conversation relates to Watergate or anything connected therewith."

Jaworski pointed out that according to the White House analysis, the conversation included a discussion of the Supreme Court's ruling on domestic national security wiretapping.

"Since the Supreme Court decision on wiretapping was filed only two days after the Watergate break-in and wiretapping was discovered, it is entirely plausible . . . that there were references, no matter how remote, to the Watergate wiretapping during the discussion of this decision," Jaworski said.

Jaworski also noted that Ehrlichman, after checking his notes, testified under oath before the Senate Watergate committee that he was "sure" there was some discussion of Watergate with the President on June 20, 1972.

Asked yesterday whether his client still stood behind that testimony, Ehrlichman's attorney, John Wilson, declined to comment.