

St. Clair Denies Knowing If Nixon Would Defy Court

Lawyer Asserts That Should President Refuse to Turn Over Tapes, Reason Given Would Be 'Public Interest'

By LESLEY OELSNER
Special to The New York Times

7-10-74

WASHINGTON, July 9 — President Nixon's chief defense lawyer, James D. St. Clair, said today that he did not know whether the President would obey a Supreme Court order to turn over subpoenaed White House tapes.

Mr. St. Clair made it clear that the President was at least keeping open the option of defying the Court.

He also made clear what the President's explanation would be should he defy the Court: the "public interest."

Speaking to reporters at the House Judiciary Committee's impeachment proceedings, Mr. St. Clair remarked that it would take some time, perhaps two months, to process the tapes in question.

"It would require some time," he went on, "if the President is required to by the Court and determines it is in the public interest to do so."

The question, he added, "has not yet been decided."

Mr. St. Clair, who had declined even to discuss the matter for months, hinted yesterday—to the Court itself—that the President might not consider himself completely bound by a high court ruling.

But today he was more explicit than he was yesterday at the Court's hearing on the tapes case.

As a result, he raised the prospect of a monumental constitutional collision, unprecedented in the nation's history. For although at least one former President is known to have considered defying the Supreme Court, no President, as far as is known, has ever done so.

Defiance of the Supreme Court, moreover, would undoubtedly be a ground for im-

Continued on Page 22, Column 1

Continued From Page 1, Col. 7

peachment.

The President's possible response to a Supreme Court ruling against him has been a matter of speculation for months, perhaps as a result.

Last fall, when the Watergate prosecution was pursuing its first subpoena against Mr. Nixon, calling for tapes of nine Watergate-related conversations, the White House had a standard response: The President will comply with a "definitive" court ruling.

The White House spokesmen would never expand on that statement. But in October, after the Court of Appeals here ordered Mr. Nixon to comply with that initial prosecution subpoena, the President ultimately did announce that he would comply with the court's ruling rather than appeal it.

He made the announcement through one of his lawyers,

Charles Alan Wright, who asserted, "This President does not defy the law."

Would Not Answer

When the Watergate prosecution issued the subpoena that is now before the Supreme Court, calling for tapes and records of 64 conversations, the White House was asked again whether the President would abide by a court ruling.

Neither Mr. Nixon's lawyers nor his spokesmen would answer. Nor would they explain their refusal to answer.

Some observers interpreted the refusal as a sign that damaging material was on the sub-

poenaed tapes. Another common interpretation was that the President was simply buying time. If he said he would not comply, his statement might be used as a ground for impeachment. If he said that he would comply, then the Judiciary Committee might say that he would either have to comply with its subpoenas too or be impeached.

When Mr. St. Clair appeared before the Supreme Court yesterday to argue against Leon Jaworski, the special prosecutor, he still seemed reluctant to reveal how the President might respond to the Court.

For Guidance and Judgment

He was asked at one point whether he was "still leaving it up to this Court to decide it."

"Yes, in a sense," he responded.

"In what sense?" he was asked.

"In the sense that this Court has the obligation to determine the law," he replied. "The President also has an obligation to carry out his constitutional duties."

"This is being submitted to this Court for its guidance and judgment with respect to the law," Mr. St. Clair remarked, a few questions later.

The Justices did not press him on the point, though, and as a result, he did not say what he meant by the President's "obligation to carry out his constitutional duties."

Mr. St. Clair's remarks today about the President's plans were prompted by a discussion

of how long it might take to process the subpoenaed tapes. One reporter, after hearing his estimate that it might take two months, asked whether he was implying that Mr. Nixon had now decided to comply with the Court should it rule against him. No, Mr. St. Clair said, he had not intended to imply that at all.

"I really don't know," he said. The general expectation here is that the Court will decide against Mr. Nixon, at least on the subpoena issue if not on the second question—of whether the Watergate grand jury was empowered to name Mr. Nixon an unindicted co-conspirator in the Watergate cover-up.

The Court could, of course, decide, in Mr. Nixon's favor. Once before, a surprise decision by the Court averted another potential confrontation between a President and the Court. This was in 1935, when the Court was considering the so-called "Gold case," a complicated lawsuit involving the abrogation of the promise to pay gold to bond holders.

President Roosevelt, expecting an adverse decision, had prepared what Arthur M. Schlesinger Jr., the historian, terms "a dissent of his own in the shape of a set of proclamations and orders nullifying an adverse Supreme Court decision." The President had prepared a radio speech to the nation to advise it of his action.

But by a five-to-four vote, the Court made the speech unnecessary.