

Prosecutors to Seek Some Tapes at Once But Hill Faces Wait

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Watergate prosecutors intend to press for immediate White House surrender of at least one batch of the tape recordings that have been subpoenaed for the Watergate cover-up trial.

They have no plans, however, to turn any of the tapes over to Congress before they become public, one by one, in U.S. District Court Judge John J. Sirica's courtroom this fall.

As a result, unless President Nixon yields them not only to Sirica but to Congress as well, the tapes could remain a closely guarded secret until the trial of Mr. Nixon's own former aides and campaign advisers is well under way.

Watergate Special Prosecutor Leon Jaworski is expected to ask Sirica within a few days to order production of all the recordings before a fixed deadline.

According to informed sources, the prosecutors will probably begin by calling for posthaste surrender of a dozen of the recordings that Mr. Nixon's appointments secretary, Stephen Bull, quietly checked out for Mr. Nixon's review on May 5 and 6.

Bull apparently located them so quickly that the White House would be hard put to protest that it would take a prolonged search before sorting them out once again. These tapes could prove to be the most important recordings of all.

It was on Sunday, May 5, that Jaworski informed the President's chief defense lawyer, James D. St. Clair, that the Watergate grand jury had named Mr. Nixon as an unindicted co-conspirator in the cover-up. The next day, May 6, St. Clair and Jaworski asked Sirica for a

five-day delay in the court fight over the tapes to discuss Mr. Nixon's "possible compliance."

Meanwhile, according to the prosecutors, Bull, acting at the President's direction, "located and marked some 16 specified conversations on May 5th and 6th, 1974, so that the President could review those tape recordings at that time."

The next day, May 7, St. Clair announced that the President was determined not to surrender any of the subpoenaed recordings after all. The court battle resumed, culminating in yesterday's Supreme Court decision.

Jaworski's office refused yesterday to identify any of the 16 conversations that Bull checked out. The prosecutors have reported, however, that 12 of them are among the 64 that they are seeking for the cover-up trial.

With the trial only seven weeks away, Sirica has a long summer ahead of him if the President chooses to comply. Under the elaborate procedures first set down last year by the U.S. Circuit Court of Appeals, Sirica must first listen to each tape and decide what portions might be relevant to the alleged cover-up and what portions ought to remain privileged.

Meanwhile, the Supreme Court said yesterday that the judge must see to it that "until released to the special prosecutor, no in camera material is revealed to anyone."

Jaworski, in turn, is expected to pick up the injunction of secrecy as similarly binding on him. The prosecutor, it was understood, plans to disclose the relevant conversations turned over to him in advance of the cover-up trial only to defense lawyers for the six

men formally indicted for the conspiracy.

The laborious schedule makes the Sept. 9 trial date somewhat tenuous. White House lawyers can still appeal Sirica's rulings on each and every tape to a higher court.

Whatever the starting point, Sirica has repeatedly made clear his hopes of getting the cover-up trial under way before any impeachment trial of Mr. Nixon begins in the Senate.

The cover-up trial, however, is expected to take three to four months. The tapes will be offered into evidence on a piecemeal basis and it could take weeks before all those deemed relevant have been introduced.

The cross-currents are impossible to predict. The subpoena upheld yesterday, which was issued April 18, calls for the tapes and other records of 64 post-Watergate conversations between June 20, 1972, and June 4, 1973.

All but one of them involve meetings or phone calls between Mr. Nixon and one or another of former aides H. R. Haldeman, John D. Ehrlichman, Charles W. Colson and John W. Dean III. The only exception is a Nov. 15, 1972, meeting at Camp David between Haldeman, Ehrlichman and Dean, which the President did not attend.

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Haldeman and Ehrlichman are awaiting trial on the cover-up charges along with former Attorney General John N. Mitchell, former Assistant Attorney General Robert Mardian, former White House aide Gordon Strachan and Nixon re-election committee lawyer Kenneth W. Parkinson.

Colson had also been indicted with them March 1, but he now ranks as an unindicted co-conspirator—along with the President, Dean and 16 others—as a result of his guilty plea to obstructing justice in the Ellsberg case.

The Supreme Court held yesterday that "there was a sufficient likelihood that each of the tapes contains conversations relevant to the offenses charged in the indictment.

"With respect to many of the tapes," the court held, "the special prosecutor offered the sworn testimony or statements of one or more of the participants in the conversations as to what was said at the time. As for the remainder of the tapes, the identity of the participants and the time and place of the conversations, taken in their total context, permit a rational inference that at least part of the conversations relate to the offenses charged in the indictment."

In connection with the cover-up case, the court added, "Declarations by one defendant may also be admissible against other defendants upon a sufficient showing, by independent evidence, of a conspiracy . . . The same is true of declarations of co-conspirators who are not defendants in the case on trial."

How many of the tapes actually exist remains uncertain. In anticipation of yesterday's Supreme Court ruling, Jaworski had repeatedly asked St. Clair to make that determination, but the President's lawyer turned aside the request as "a time-consuming task" that he did not consider necessary before the court ruled. More recently, St. Clair has declared that "there were many days when . . . it was necessary to replace a tape that had run out, and whenever this was done, any conversation taking place at the time was not recorded."