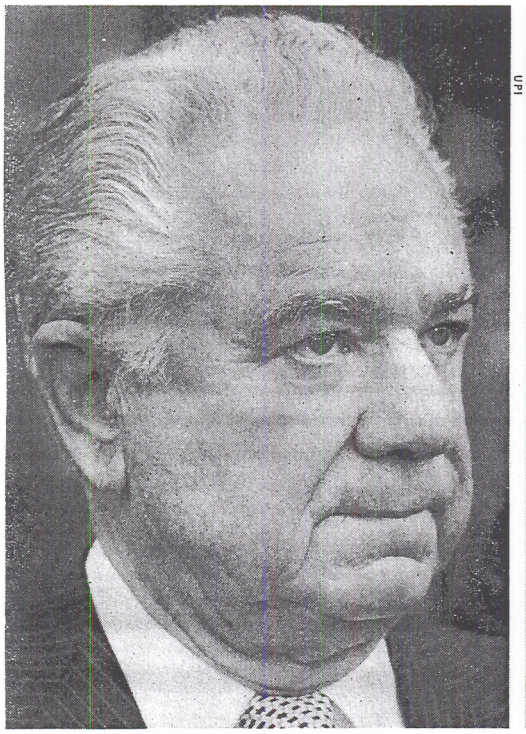

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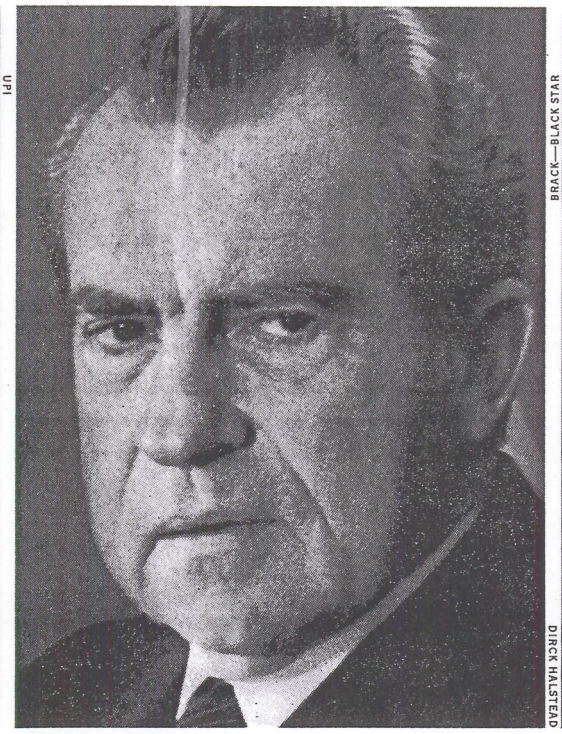
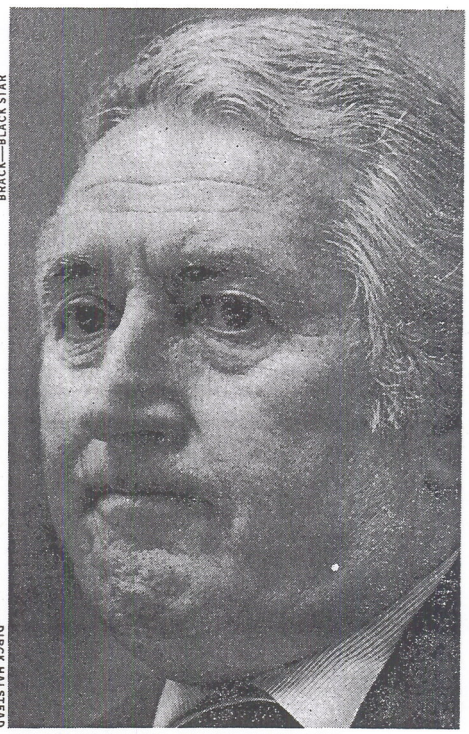
SPECIAL PROSECUTOR JAWORSKI



DIRCK HALSTEAD

PRESIDENT NIXON



BRACK—BLACK STAR

HOUSE JUDICIARY CHAIRMAN RODINO

WATERGATE

Nixon: No, No, a Thousand Times No

Facing demands for Watergate-related White House evidence on three fronts, President Nixon last week hung tough, adamant and defiant. He flouted the constitutionally sanctioned impeachment process by informing the House Judiciary Committee that he will ignore all pending and future subpoenas for White House tapes and documents. He directed his attorneys to appeal Federal Judge John J. Sirica's succinct ruling that Special Prosecutor Leon Jaworski's subpoenas for 64 tape recordings are legally binding upon the President. He took legal action to kill court-sanctioned subpoenas for White House files from two defendants in the impending Daniel Ellsberg burglary trial, thereby advancing the possibility that charges against two of his former aides, John Ehrlichman and Charles Colson, may have to be dismissed.

Nixon's strategy of stonewalling all subpoenas carried at least one clear inference, based on both longstanding legal precepts and simple logic. By publicly releasing the edited transcripts of 46 Watergate conversations, Nixon had presented his own best evidentiary case against impeachment; damning as those documents may prove, the material he is now withholding must be even worse. Nixon is apparently gambling that his refusal to deliver such evidence will be seen in the end as a somewhat technical procedural matter carrying less danger of impeachment and conviction than would the contents of the material itself if yielded.

To be sure, the President couched his subpoena rejections in terms of principle rather than in the concrete concerns of survival. The three objects of his defiance:

I. THE IMPEACHMENT INQUIRY.

Although the President's decision to choke off any further turnover of White House tapes or documents to Chairman Peter Rodino's impeachment committee had been signaled clearly by Presidential Defense Counsel James St. Clair, Nixon's formal declaration carried a ring of finality. Feigning ignorance of the purpose of two subpoenas issued by the committee on May 15, Nixon wrote Rodino that "I can only presume that the material sought must be thought to relate in some unspecified way to what has generally been known as 'Watergate.'" Nixon noted his counsel's reports that the committee may issue more subpoenas and termed this "a never-ending process" that would "constitute such a massive invasion into the confidentiality of presidential conversations that the institution of the presidency itself would be fatally compromised."

To yield more tapes, Nixon also argued, would merely "prolong the impeachment inquiry without yielding significant additional evidence." Therefore, he concluded, he would decline to produce tapes and presidential diaries already subpoenaed and would similarly refuse to obey all subpoenas "allegedly dealing with Watergate" that "may hereafter be issued."

The Nixon letter ignored the solid legal argument, affirmed by at least six past Presidents, that the doctrine of Executive privilege to protect presidential conversations with aides is not applicable to an impeachment proceeding. Constitutionally, impeachment is the ultimate check upon the Executive Branch by the Legislative and necessarily breeches the normal separation of powers between the two. Moreover, since Nixon had waived confidentiality for the 46 conversations of which he had released 1,254 pages of transcripts on April 30, his reassertion of confidentiality now seemed both inconsistent and arbitrary. Once again, Nixon was attempting to dictate to the committee what evidence was relevant to his own possible impeachment; no principle of U.S. law permits a potential defendant to make such a decision.

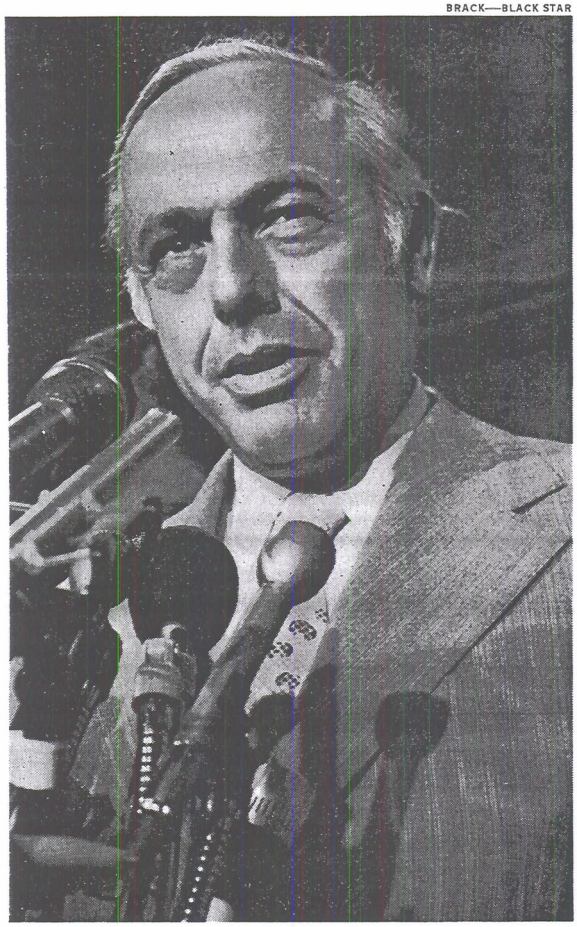
The President at the same time directed St. Clair to reject a Rodino committee request for 66 tapes or documents related to two other areas of its inquiry: Nixon's role in the Government's settlement of antitrust suits against ITT in 1972 and in the Administration's raising of milk-support prices in 1971. Both actions followed promises of financial support by ITT and milk producers to the Nixon re-election effort. St. Clair noted in two letters to the Judiciary Committee's chief counsel, John Doar, that "voluminous" material had already been supplied to the committee on both topics. He promised only that the tape of one conversation on the ITT matter would be "reviewed" and that a transcript of "the pertinent portion thereof, if any," would be furnished.

Although anticipated, the Nixon–St. Clair cutoff clearly angered many members of the Judiciary Committee. Speak-

ing for the committee, Rodino called the rejection "a very grave matter" and implied that it will be taken into consideration as a possible impeachable offense. The committee's second-ranking Republican, Robert McClory of Illinois, termed Nixon's decision "very unfortunate. It hurts him with the committee. We were very specific and justified each request." The committee's frustrating problem is that it has no practical way to force the President to relinquish the evidence withheld.

After listening last week to more of the tapes acquired from the White House and the Watergate grand jury, committee members found numerous inconsistencies with the White House transcripts. Rodino complained that the transcripts omitted words and sentences of conversations and changed some wording from that clearly audible on the tapes. Further, the White House had attributed statements to the wrong people and even added words not on the tapes. "This is a very unsatisfactory kind of evidence," protested Doar. Added Albert Jenner, the committee's Republican counsel: "Even in a routine civil case, secondary evidence such as this is not acceptable until every avenue for the best evidence has been exhausted."

BRACK—BLACK STAR



PRESIDENTIAL COUNSEL JAMES ST. CLAIR
Deliberately aborting the case?

Despite the imperfections in the transcripts, the committee members seemed in general agreement that they had heard the most damaging evidence in the two weeks of closed review of material assembled by their staff. They heard the celebrated March 21 tape of Nixon's discussion with John Dean, his fired former counsel, about paying money to keep Watergate Burglar E. Howard Hunt from talking about all his White House "plumber" activities. The tape convinced most listeners willing to discuss it that Nixon had clearly ordered Dean to make a payment to Hunt to "buy time," even if such blackmail would be impractical in the long run. Nixon was variously quoted as saying about the hush money: "For Christ's sake, get it" or "Jesus Christ, get it" or "Goddammit, get it." There was little doubt that the expletive emphasized Nixon's command; his statement was neither a question nor a devil's-advocate exploration of options.

II. THE SPECIAL PROSECUTOR.

Nixon's refusal to comply with more subpoenas from Prosecutor Jaworski also poses dire risks for him. Unlike those of the Judiciary Committee, Jaworski's demands for evidence are undisputably confined to criminal matters and are moving through the clear-cut channels of the judicial process. This means that in all probability, the dispute will end in a Supreme Court decision to either quash the subpoenas or order Nixon to honor them. The latter seems the most likely result, and any refusal by Nixon to obey the highest court would make impeachment all but certain. But the White House strategy could be based on the sluggishness of the appeals process and the belief that any order to produce the tapes would come after the impeachment debate and possible Senate trial have run their course.

Jaworski wants the tapes both to prepare for the prosecution of the seven former Nixon men indicted in the Watergate cover-up and, as required by law, to supply the defendants with any Government-held exculpatory evidence that might aid their defense. Sirica brusquely dismissed St. Clair's claim that the courts have no power to rule on Executive privilege and must honor such confidentiality whenever it is invoked by a President. Sirica noted that he had been sustained by an appeals court last year when he rejected that same argument after Archibald Cox, Jaworski's fired predecessor, had subpoenaed Nixon tapes. Sirica ruled that the contention thus "was without legal force." The appeals court had added in its decision that "not even the President is above the law."

Sirica's decision revealed that this time, however, the White House had raised a new objection, not one used in the Cox case. Sirica wrote that St. Clair had argued that the courts lacked jurisdiction to enforce the subpoena because the dispute was an "intra-branch controversy wholly within the jurisdiction of the Executive Branch to resolve." While Sirica conceded that such an argument might apply to a dispute between a President and his Cabinet members, he ruled that it did not apply to Jaworski because "the special prosecutor's independence has been affirmed and reaffirmed by the President and his representatives." Sirica decided that Jaworski had specifically been granted the right to challenge assertions of Executive privilege in court and that the contrary argument by St. Clair that Jaworski lacked legal standing to do so was therefore "a nullity."

The use of that argument by St. Clair obviously infuriated the outwardly affable but tough-minded Jaworski. He dispatched a letter to the Senate Judiciary Committee complaining that St. Clair was now challenging his right to take the President to court, and this could "make a farce of the special prosecutor's charter." Nixon's top aide, Alexander Haig, had assured him he would have that authority, Jaworski wrote, as had Attorney General William Saxbe when questioned about this by members of the Senate Judiciary Committee during his confirmation hearings. Nixon had asserted that Jaworski would be given "total cooperation from the Executive Branch," but had not publicly conceded that the prosecutor could challenge him in court. Strictly as a legal matter, rather than one of promises and honor, some lawyers see validity to St. Clair's argument.

The Senate Judiciary Committee promptly backed Jaworski's position. It voted to support Jaworski's right to pursue the Nixon tapes in court. The committee also wrote to Saxbe, urging him to "use all reasonable and appropriate means to guarantee the independence" of the special prosecutor.

On Friday St. Clair met Sirica's deadline for filing an appeal. But Jaworski, moving quickly to speed up the process, directly petitioned the Supreme Court to decide the key issue without waiting for an appeals court ruling. He requested the court to hold a hearing and render its decision before its court term expires in June.

III. THE ELLSBERG BURGLARY CASE.

Nixon's refusal to supply White House documents subpoenaed by two of his most influential former aides, Ehrlichman and Colson, could work to their great personal advantage. Federal Judge Gerhard Gesell had ruled that they were entitled to the material as part of their defense against charges of having conspired to deprive Los Angeles Psychiatrist Lewis Fielding of his civil rights in the 1971 burglary of his office. The break-in was carried out by Nixon's team of White House plumbers in an effort to gain information on Pentagon Papers Defendant Daniel Ellsberg, who had consulted Fielding.

As a Friday deadline for delivering the documents arrived, St. Clair instead presented a motion to quash the two subpoenas. It included a formal claim of Executive privilege, signed by Nixon, which contended that the information