

## Nixon on Subpoenas: 'I Refuse to Obey the Command.....'

Following is the text of President Nixon's letter to Chief U.S. District Court Judge John J. Sirica refusing to turn over White House tape recordings to the grand jury:

Dear Judge Sirica:

White House counsel have received on my behalf a subpoena duces tecum issued out of the United States District Court for the District of Columbia on July 23 at the request of Archibald Cox. The subpoena calls on me to produce for a grand jury certain tape recordings as well as certain specified documents. With the utmost respect for the court of which you are chief judge, and for the branch of government of which it is a part, I must decline to obey the command of that subpoena. In doing so I follow the example of a long line of my predecessors as President of the United States who have consistently adhered to the position that the President is not subject to compulsory process from the courts.

The independence of the three branches of our government is at the very heart of our constitutional system. It would be wholly inadmissible for the President to seek to compel some particular action by the courts. It is equally inadmissible for the courts to seek to compel some particular action from the President.

That the President is not subject to compulsory process from the other branches of government does not mean, of course, that all information in the custody of the President must forever remain unavailable to the courts. Like all of my predecessors, I have always made relevant material available to the courts, except in those rare instances when to do so would be inconsistent with the public interest. The principle that guides my actions in this regard was well stated by Attorney General Speed in 1865:

Upon principles of public policy there are some kinds of evidence which the law excludes or dispenses with... The official transactions between the heads of departments of the government and their subordinate officers are, in general, treated as "privileged communications." The President of the United States, the heads of the great departments of the government, and the governors of the

several states, it has been decided, are not bound to produce papers or disclose information communicated to them where, in their own judgment, the disclosure would, on public considerations, be inexpedient. These are familiar rules laid down by every author on the law of evidence.

A similar principle has been stated by many other attorneys general, it has been recognized by the courts, and it has been acted upon by many Presidents.

In the light of that principle, I am voluntarily transmitting for the use of the grand jury the memorandum from W. Richard Howard to Bruce Kehrli in which they are interested as well as the described memoranda from Gordon Strachan to H. R. Haldeman. I have concluded, however, that it would be inconsistent with the public interest and with the constitutional position of the presidency to make available recordings of meetings and telephone conversations in which I was a participant and I must respectfully decline to do so.

Sincerely,

RICHARD NIXON

### Nixon's Statement To Ervin Committee

Following is the text of President Nixon's letter to Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate Watergate committee:

Dear Mr. Chairman:

White House counsel have received on my behalf the two subpoenas issued by you, on behalf of the select committee, on July 23.

One of these calls on me to furnish to the select committee recordings of five meetings between Mr. John Dean and myself. For the reasons stated to you in my letters of July 6 and July 23, I must respectfully refuse to produce those recordings.

The other subpoena calls on me to furnish all records of any kind relating directly or indirectly to the "activities, participation, responsibilities or involvement" of 25 named individuals "in any alleged criminal acts related to the presidential election of 1972." Some of the records that might arguably fit within that subpoena are presidential papers that must be kept confidential for reasons stated in my letter of July 6.

It is quite possible that

there are other records in my custody that would be within the ambit of that subpoena and that I could, consistent with the public inter-

est and my constitutional responsibilities, provide to the select committee. All specific requests from the select committee will be carefully considered, and my staff and I, as we have done in the past, will cooperate with the select committee by making available any information and documents that can appropriately be produced.

You will understand, however, I am sure, that it would simply not be feasible for my staff and me to review thousands of documents to decide which do and which do not fit within the sweeping but vague terms of the subpoena.

It continues to be true, as it was when I wrote you on July 6, that my staff is under instructions to cooperate fully with yours in furnishing information pertinent to your inquiry. I have directed that executive privilege not be invoked with regard to testimony by present and former members of my staff concerning possible criminal conduct or discussions of possible criminal conduct. I have waived the attorney-client privilege with regard to my former counsel.

In my July 6 letter I described these acts of cooperation with the select committee as "genuine, exten-

sive and, in the history of such matters, extraordinary." That cooperation has continued and it will continue. Executive privilege is being invoked only with regard to documents and recordings that cannot be made public consistent with the confidentiality essential to the functioning of the office of the President.

I cannot and will not consent to giving any investigatory body private presidential papers. To the extent that I have custody of other documents or information relevant to the work of the select committee and that can properly be made public, I will be glad to make these available in response to specific requests.

Sincerely,

RICHARD NIXON

### Sirica's Order

#### To Show Cause

Upon consideration of the verified petition of Archibald Cox, special prosecutor, Watergate Special Prosecution Force, on behalf of the grand jury in and for the United States District Court for the United States District of Columbia, for an order directing Richard M. Nixon or any subordinate officer whom he may designate as having custody and control

of certain documents or objects, to show cause why there should not be full and prompt compliance with a subpoena duces tecum of this court, dated July 23, 1973, directing the production of certain documents and objects before the grand jury of this district at 10:00 a.m. on July 26, 1973, and it appearing to this court that various items called for by that subpoena are being withheld and that good cause has been shown why the subpoena should be enforced, it is hereby ordered:

1. That Richard M. Nixon or any subordinate officer whom he may designate as

having custody or control of any of the items described in paragraph 1 of the schedule attached to the above mentioned subpoena, is ordered to show cause at a hearing on the 7th day of August, 1973, why the documents and objects described in paragraph 1 of such schedule should not be produced as evidence before the grand jury;

2. That at the hearing, and in any affidavits, briefs, or memoranda submitted in connection with this matter, the special prosecutor is authorized to disclose matters occurring before the grand jury to the extent necessary to show the grand jury's en-

titlement to enforcement of the subpoena;

3. And that the United States marshal for the District of Columbia is directed to serve forthwith a copy of this order and the above mentioned petition on Richard M. Nixon, J. Fred Buzhardt (as special counsel to the President), or any other person of suitable age and discretion at the White House or the Old Executive Office Building, Washington, D.C. Such service on or before the 30th day of July 1973, shall be deemed good and sufficient service.

John J. Sirica  
Chief Judge