

Nixon Tapes Are Subpoenaed

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Judiciary Panel Votes 33 to 3 To Issue Order

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The House Judiciary Committee, in a historic and bipartisan assertion of Constitutional powers, yesterday issued a subpoena ordering President Nixon to deliver records of 42 presidential conversations by April 25.

The committee's subpoena was served on special presidential counsel James D. St. Clair at 4:16 p.m. by Benjamin Marshall, the committee's chief security officer.

A little more than an hour later, presidential press secretary Ronald L. Ziegler promised that Mr. Nixon would deliver to the committee between April 22 and April 25 materials that would be "comprehensive and conclusive in regard to the President's actions." But he did not say that the President would comply in every detail with the demands contained in the subpoena. Mr. Nixon, he said, would simply supply materials "consistent with his constitutional responsibilities."

The materials that are to be delivered, Ziegler said, will bear out the President's version of innocence in the Watergate affair and "will receive the support of the House."

Mr. Nixon is the only President in the history of the Republic to be served with a congressional subpoena. He was first served for materials last July by the Senate Watergate committee. That subpoena was not honored and the issue is still in the federal courts.

The subpoena yesterday from the House committee demanded records, including tape recordings, of 42 face-to-face and telephone conversations between the President and five men—former White House aides H. R. (Bob) Haldeman, John D. Ehrlichman and John W. Dean III; former Attorney General Richard G. Kleindienst, and Henry Peterson, who was then and is now in charge of the Criminal Division of the Department of Justice.

The conversations in question occurred between Feb. 20 and April 18, 1973. They were first requested of the White

House on February 25 of this year and were described as essential to the committee's inquiry into Mr. Nixon's possible impeachment.

The request was renewed on April 4, and five days later St. Clair replied that by April 22 "additional materials" would be given to the committee at the discretion of the White House. He did not specify at that time which materials would be turned over.

His equivocation angered members of both parties on the 38-member committee and a meeting was scheduled for 10:30 a.m. yesterday to con-

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sider the issuance of a subpoena.

Forty-five minutes before the committee met, St. Clair made a last-ditch effort to head off the subpoena. In a telephone call to the committee's counsel, John Doar, he offered to turn over "within a day or two" records of conversations involving the President, Dean, Haldeman and Ehrlichman between Feb. 20 and March 30, 1973.

The offer did not include conversations with Haldeman and Ehrlichman between April 14 and April 17, 1973, or any of the conversations with Peterson and Kleindienst between April 15 and April 18, 1973.

The committee was unsatisfied with the St. Clair proposal and voted 33 to 3 early yesterday afternoon to issue and serve the subpoena. The three negative votes were cast by Rep. Edward Hutchinson of Michigan, the senior Republican on the committee. Rep.

Trent Lott (R-Miss.), and Rep. Charles Wiggins (R-Calif.), whose vote was cast by proxy.

It is uncertain what course the committee will take in the event Mr. Nixon fails to honor the subpoena in its entirety.

In a memorandum prepared for the committee, Doar said the "practical difficulties of enforcing the subpoena may well be insurmountable." At another point he wrote: "Realistically, the President probably cannot be compelled to comply with a subpoena duces tecum by use of the processes of either the House or the courts."

But the House has other powers, Doar said. It could hold Mr. Nixon in contempt of Congress, an impeachable offense in itself, according to the memorandum. It could also draw inferences of guilt from the President's refusal to comply: "In litigation generally, an unjustified refusal to produce evidence within the control of a party, 'permits the inference that its tenor is unfavorable to the party's cause.'"

Another avenue open to the committee, said Doar, would be to take the issue to the federal courts. But this course, he said, could be time-consuming and, perhaps, fruitless, because courts have no "means to enforce compliance" that are not available to the House.

Ziegler commented yesterday that, "I don't think the courts even have a role in it." This seemed to suggest, the Associated Press reported, that Mr. Nixon and his lawyers believe the committee is powerless to issue the subpoena under the constitutional doctrine of separation of powers.

That was not Doar's view and it was not the committee's view. The chairman, Rep. Peter Rodino (D-N.J.), said before the vote that it was essential for the House to serve the subpoena in order to meet its constitutional responsibilities.

"If the committee has any dignity," he declared, "if the House has any dignity, if we respect the institution of government and the Constitution, we will move ahead."

Another Democrat on the committee, Rep. John Seiberling of Ohio, voiced a common sentiment:

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon

Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule.

to be and appear before the Committee on the Judiciary

Committee of the House of Representatives of the United States, of which the Hon. Peter W. Rodino, Jr. is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof.

in their chamber in the city of Washington, on or before April 23, 1974, at the hour of 10:00 A.M.

produce and deliver said things to said Committee, or their duly authorized representative, in connection with the Committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of April, 1974.

Peter W. Rodino, Jr. *Chairman*

Clark *Clk.*

The Judiciary Committee's subpoena, served at 4:16 p.m.

"It's time to send a message that the playing of games is over."

Before the issue was resolved, two partisan votes were taken. The Republicans first moved to overrule Rodino's proposal that debate on the subpoena be limited to 30 minutes. Rep. Lawrence Hogan (R-Md.) and other Republicans argued that the committee was embarking on a great constitutional confrontation and that it was "ridiculous" to make a judgment after only a half hour of discussion.

Rodino was upheld on a straight party line vote—21 to 17.

The second vote came on amendment by Rep. David

Dennis (R-Ind.) to limit the subpoena to the conversations that occurred between Feb. 20 and March 30, 1973—the same conversations St. Clair had offered to provide the committee. The April conversations were not sufficiently described in the subpoena, Dennis argued. But his amendment lost, 22 to 16. On this vote one Republican joined the Democrats—M. Caldwell Butler of Virginia.

Rodino made one concession to the Republicans. He agreed to put off the final vote until 1:30 p.m. Before it was taken, the Democrats agreed to amend the subpoena to meet the Dennis objections.

Rodino also proposed some concessions yesterday for the White House. St. Clair has argued for weeks that he

should be able to represent the President in the committee's impeachment proceedings.

The chairman responded to that argument yesterday with a recommendation that St. Clair should be present and allowed to inspect any evidence as it is delivered to the committee by the staff. This would apply to both open and closed sessions. Rodino also recommended that after all the evidence is in, St. Clair should be permitted to file comments on the evidence, to recommend additional witnesses, and to question those witnesses.

These proposals will be voted on by the committee after the Easter recess.

Vice President Gerald R. Ford late yesterday said the issuance of the subpoena was "unfortunate." But he predicted that it will not provoke a confrontation and that "it will work out all right."

Ziegler, too, put the best light on the matter. "There should be no question about our desire to provide facts," he said, and implied that this "desire" was not fully appreciated by the committee or the public.

He also predicted that "there will be a prompt and just conclusion of the inquiry."

It is uncertain what records of the 42 conversations sought by the committee are in existence at the White House. The tape-recording devices installed in presidential offices reportedly were not functioning on the weekend of April 14-15, 1973, when some of the conversations occurred. There is also a question about the existence of a tape of Mr. Nixon's conversation with John Dean on February 20.

But the subpoena goes beyond the matter of tapes. It asks for "all tapes, dictabelts or other electronic recordings, transcripts, memoranda, notes or other writings or things relating" to the 42 conversations.