

# SIRICA BIDS NIXON HEED A SUBPOENA FOR MORE TAPES

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## JAWORSKI LETTER

NYTimes

### He Sees the President Making a 'Farce' of Prosecutor's Role

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Special to The New York Times

WASHINGTON, May 20 — United States District Judge John J. Sirica ordered President Nixon today to turn over to the court the subpoenaed tapes and other records of 64 White House conversations relating to the Watergate cover-up.

The tapes are to be processed by the court for use by both the special prosecution, which initiated the subpoena, and the defendants in the cover-up trial.

Judge Sirica also criticized what he called an "attempt" by President Nixon to "abridge" the independence of the special prosecutor, Leon Jaworski. This attempt, the judge said, violated both law and the President's own assurances that the prosecutor would have full independence.

Mr. Jaworski, for his part, charged that the President's attempt to limit the prosecution's

*Text of the Sirica decision is printed on Page 28.*

right to resort to the courts "would make a farce of the special prosecutor's charter."

He made his charge in a letter to the chairman of the Senate Judiciary Committee, James O. Eastland, complaining that the White House was not cooperating with his investigation as promised. The committee responded by scheduling a meeting for tomorrow.

#### Right to Go to Court

According to the judge's opinion, and to excerpts released by the judge from previously "sealed" briefs by the prosecution and the White

House, President Nixon's lawyer told the court that the fight between Mr. Jaworski and the President was an "intra-branch" dispute that the courts could not enter.

The lawyer argued, in effect, that Mr. Jaworski was bound to accept Mr. Nixon's decisions as to which materials were not subject to subpoena.

Both Judge Sirica and Mr. Jaworski noted, however, that the prosecutor's charter of authority specifically includes his right to go to court to seek evidence from the President. Judge Sirica rejected the White House Argument outright, calling it a "nullity" and saying, in his nine-page opinion on the subpoena:

"The special prosecutor's in-

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dependence has been affirmed and reaffirmed by the President and his representatives, and a unique guarantee of unfettered operation accorded him."

Judge Sirica's ruling was a rejection of the President's motion to quash the subpoena. While the judge stayed his order pending appeal—an appeal that the White House said would be brought—his order came as a blow to Mr. Nixon.

As for the President's arguments regarding the prosecutor's authority, Mr. Jaworski charged in his legal brief that the President's arguments, submitted by his chief defense counsel, James D. St. Clair, were an attempt to "eviscerate" the prosecution.

He made a similar point this afternoon in his letter to the Senate Judiciary Committee, which had asked him to notify the panel when ever he met interference from the President.

As a result, one committee member said later, the panel will meet in executive session tomorrow afternoon to consider the developments and to determine whatever action might be taken.

The committee had approved the nomination last winter of Attorney General William B. Saxbe on the express condition that Mr. Saxbe agree to support Mr. Jaworski's right to independence.

The committee had also asked Mr. Jaworski to appear at those confirmation hearings,

and to put into the record his understanding of his job and authority. The committee's insistence upon these assurances was based in part upon the history of the previous prosecutor, Archibald Cox, who was dismissed by order of the President because of his insistence that he be allowed to go to court to seek evidence from Mr. Nixon.

Mr. Jaworski notified the committee earlier this year that he was having trouble getting some information from the White House—information, in fact, that was subsequently included in the subpoena that Judge Sirica upheld today.

The prosecutor's letter today, however, was far stronger than the earlier one. It says in part:

"The crucial point is that the President, through his counsel, is challenging my right to bring an action against him to obtain evidence, or differently stated, he contends that I cannot take the President to court. Acceptance of his contention would sharply limit the independence that I consider essential if I am to fulfill my responsibilities as contemplated in the charter establishing this office.

"The position thus taken by the President's counsel contravenes the express agreement made with me by Gen. Alexander Haig [White House chief of staff] after consulting with the President, that if I accepted the position of special prosecutor, I would have the right to press legal proceedings against the

President if I concluded it was necessary to do so."

It is unclear what the Judiciary Committee could do, if anything, in reaction to the Jaworski letter. However, as some observers noted today, Attorney General Saxbe's promise to the committee to support the prosecution is similar to the promise that Elliot L. Richardson gave the committee during his own confirmation hearings for the post of Attorney General almost a year ago.

Mr. Richardson's promise to the committee was one of the main reasons why he resigned his office last fall rather than carry out President Nixon's order to dismiss Mr. Cox, the first Watergate prosecutor.

The Judiciary Committee meeting tomorrow, according to the staff of one committee member, was called by the committee chairman soon after he received the Jaworski letter. Both Mr. Jaworski and Mr. St. Clair are apparently to be asked to be available should the committee want to interview either or both at the session.

It is possible, some observers said, that the committee will refer whatever information it obtains regarding the dispute to the House Judiciary Committee for use in the impeachment inquiry.

#### The 64 Conversations

The 64 conversations covered by the Jaworski subpoena all relate to the cover-up of the break-in at the Democratic party headquarters at the Watergate complex here on June

17, 1972.

All but one of the conversations were between the President and one or another of four of his former top aides, the exception being a conversation between some of those aides in which the President apparently did not take part.

The four are John W. Dean 3d, who is expected to be a key prosecution witness in the cover-up trial, and three of the seven defendants in the case: H. R. Haldeman, John D. Ehrlichman, and Charles W. Colson.

The four other defendants are Gordon Strachan, John N. Mitchell, Robert C. Mardian and Kenneth W. Parkinson.

The prosecution has contended that it needs the subpoenaed material either to prepare its own case or to satisfy its obligation to provide defendants with any Government-held "exculpatory" material.

Portions of 20 of the 64 conversations were included in the edited transcripts of Presidential conversations that Mr. Nixon recently released. As Judge Sirica said in his opinion, the transcripts themselves show that those 20 were relevant to Mr. Jaworski's case.

The White House, however, had sought to quash the subpoena motion "in its entirety," and had raised a number of arguments, ranging from the court's lack of jurisdiction to executive privilege, to support its view.

Judge Sirica dealt with each

argument in turn, and with one exception—in which he said he did not have to reach a ruling—the judge rejected each of the President's contentions.

In passing, he also noted that the President's lawyer was "unable to state" whether the subpoenaed conversations not included in the Presidential transcripts were relevant, "because he has not seen or heard them."

Judge Sirica relied today in part on the Court of Appeals ruling last fall in the first dispute between the special prosecution and the President, the dispute over the prosecution's subpoena of tapes of nine conversations.

The Court of Appeals, in upholding an earlier ruling by Judge Sirica, ordered President Nixon to turn over those first nine tapes. It rejected Mr. Nixon's claim of absolute executive privilege and ruled instead that the courts could decide claims of privilege, applying a sort of balancing test that weighted the need for the subpoenaed material against the need to keep the President's conversations confidential.

#### 'More Compelling'

Judge Sirica said in his opinion today that the prosecution's need for the materials covered in the latest subpoena was "if anything, more compelling" than the need for the

nine conversations covered in the original subpoena.

However, again following last fall's Court of Appeals ruling, Judge Sirica did not say that the President had no right at all to contend that any of the subpoenaed materials were privileged. He said that the President could make "particu-

larized claims" of privilege under the practice followed in the rulings last fall.

If the President did make such claims, the judge would consider them in closed proceedings. He would then turn over to the prosecution all "non-privileged" materials.

Judge Sirica apparently rejected the concept of privilege altogether, however, in deciding what materials would be available to the defendants in the case.

"The court intends to supply defense counsel with any and all exculpatory materials that may be found in the items produced," he said.

The proceedings over the subpoena have been conducted, to great extent, in private. While Judge Sirica released some previously sealed items today—the excerpts regarding the President's arguments about the prosecution's authority—many documents remain secret.

Chief among these is a long and detailed memorandum by Mr. Jaworski describing the subpoenaed materials, and their relevance to his case. It was apparently sealed because it contains information obtained by the grand jury investigating the cover-up. But Judge Sirica described the document briefly today, saying that it contained "a prima facie showing" sufficient to rebut the claim of privilege "in each instance."

Judge Sirica gave the President until 4 P.M. Friday to initiate an appeal. If an appeal is started by then, the judge said, the order will be stayed "pending the completion of such review." The White House has previously indicated it will fight the matter up to the Supreme Court.