

NIXON REJECTS SUBPOENAS FROM SENATE COMMITTEE FOR 500 TAPES AND PAPERS

STAFF SHAKEN UP

Buzhardt and Garment Are Off Watergate Defense Team

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4—President Nixon rejected today the Senate Watergate committee's subpoenas seeking more than 500 tape recordings and documents, and simultaneously overhauled his Watergate defense staff.

In a letter delivered to Senator Sam J. Ervin Jr., Democrat of North Carolina, the chairman

Nixon's letter and Ervin's reply are on Page 15.

of the committee, and made public here, Mr. Nixon said:

"To produce the material you now seek would unquestionably destroy any vestige of confidentiality of Presidential communications, thereby irreparably impairing the constitutional functions of the office of the Presidency."

A senior White House official, apparently reflecting the President's attitude, described the subpoenas as "irresponsible, ridiculous in their scope, extreme and utterly incredible." They had been compiled, he said, by "a partisan committee staff that has lost its bearings."

Response by Senator

Mr. Ervin, speaking by telephone from his home in Morganton, N. C., said in response, "My reaction is this, period: There is nothing in the Constitution that gives the President any power to withhold from an authorized Congressional committee evidence relating to campaign activity or evidence of criminal wrongdoing by his aides."

Later, his office in Washington issued a formal statement making the same point.

Samuel Dash, the committee's

chief counsel, said in Washington that the panel would take no immediate action to enforce the subpoenas pending the outcome of a court case involving an earlier subpoena covering only five tape recordings.

Constitutional Question

The constitutional doctrine of powers is involved in the question of whether Presidents must comply with Congressional subpoenas. The issue has arisen time and again but has never been tested in the courts.

Most times, Presidents and Congress have reached some form of accommodation. In some instances, Presidents have complied with subpoenas. But when Presidents have been adamant in their refusal to supply testimony or documents, Congress has backed down without attempting to enforce its demands.

The shake-up in the White House legal staff removed both J. Fred Buzhardt Jr. and Leo

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nard Garment from active direction of the Watergate case. The new man in charge will be James D. St. Clair, a Boston lawyer and Harvard University lecturer, who was named special counsel to the President.

Mr. Buzhardt, who had held that title, will become counsel to the President, charged with day-to-day White House legal affairs. The last man to serve as counsel was John W. Dean 3d, who was ousted in the midst of the Watergate disclosures.

Mr. Garment, who had served as acting counsel since Mr. Dean's departure, was named assistant to the President, a title he shares with seven other White House aides, including Gen. Alexander M. Haig Jr., the Chief of Staff.

The reorganization had been expected since late November, when, after the discovery of an 18-minute gap in one of the Presidential tapes, White House spokesmen began talking of "mistakes" and "fatigue" in the counsel's office.

In refusing to comply with the Watergate committee's subpoenas, which were delivered to the White House on Dec. 19,

the President waited until the last minute. His response was originally due at 10 A.M. today, Washington time, but it was not until six hours later that it was delivered. Mr. Dash and Mr. Buzhardt had agreed by telephone to an extension of the deadline.

Mr. Nixon told Senator Ervin that he could view the subpoenas only as "an overt attempt to intrude into the executive to a degree that constitutes an unconstitutional usurpation of power."

In addition, the President suggested that release of documents and tapes could obstruct justice. He said, "Disclosures to you [the committee], and through you to the public, could seriously impair the ability of the office of the special prosecutor to complete its investigations and successfully prosecute the criminal cases which may arise from the grand juries."

Despite the possibility that "there may be some attempt to distort my position as only an effort to withhold information," Mr. Nixon concluded, "I must and do respectfully decline to produce the materials called for."

Exceptions to Principle

Gerald L. Warren, the deputy White House press secretary, said that the President, when turning materials over to the special prosecutor, always reserved the right to invoke executive privilege in the future. The release of those materials, he said, constituted exceptions to the principle of confidentiality.

General Haig made the same point on Oct. 23, when Mr. Nixon agreed to comply with court orders requiring him to turn over tapes to the special prosecutor. Reading from a prepared statement, General Haig said that "what the President did today, in a most painful and agonizing way, is to make this single exception to his held convictions" about confidentiality.

Three subpoenas were involved in the action today, in which Mr. St. Clair reportedly concurred. One called upon the President to produce tapes of 492 personal and telephone conversations between mid-1971 and late 1973; one sought 37 categories of documents or materials, including Mr. Nixon's daily diary; and one asked for about 100 documents relating to political contributions by milk producers.

Earlier last year, the Water-

gate committee subpoenaed only five tapes; Mr. Nixon refused to comply on that occasion also. The committee sought relief from Chief Judge John J. Sirica of the United States District Court for the District of Columbia, but he declined to act on the ground that he lacked jurisdiction.

Subsequently, Congress approved a bill giving such jurisdiction to Judge Sirica in the Watergate case, and the President allowed the bill to become law without his signature. The United States Court of Appeals for the District of Columbia Circuit, to which the committee had appealed Judge Sirica's decision, sent the case back to him for a ruling.

Yesterday, after a conference in Judge Sirica's chambers attended by Mr. Dash, Mr. Buzhardt and Mr. St. Clair, the judge ordered both sides to file new briefs. Mr. Dash said this morning that the committee's brief would be filed Monday, with the White House response due 10 days later. Mr. Dash said he hoped for Judge Sirica's ruling by mid-January.

If the committee wins, the counsel added, it will select from the 500-odd tapes and documents requested in the three later subpoenas those "of the highest priority" and seek an order from Judge Sirica enforcing the subpoenas.

Thus, just as he did before agreeing to release tapes and documents to the special prosecutor, Mr. Nixon faces the possibility of a constitutional confrontation.

For the committee, the renewed legal battle makes it all but impossible to complete its

work by the Feb. 28 deadline set by the Senate. Mr. Dash said that the panel would probably be forced to seek an extension "of some weeks."

The departure of Mr. Garment and Mr. Buzhardt from the Watergate case was considered something of a rebuke

to both, although Mr. Warren was careful to avoid saying anything critical about them.

Had the President not been displeased with their performance, one senior official said, it would not have been necessary to bring in a total outsider such as Mr. St. Clair.