

# The Battle of the Tapes

Joseph Alsop

## Will They Be Yielded...

Extremely complex, hardly understood causes led to the famous subpoena addressed by the House Judiciary Committee to the White House last Thursday. These are also causes that it is worth trying to see in proportion, since they explain much that is mysterious.

To begin with, the President's lawyer, James D. St. Clair, has been a man in the middle since he took the job. Lawyer St. Clair has thoroughly understood the frantic warnings of the House and Senate minority leaders, Rep. John Rhodes and Sen. Hugh Scott, that seeming-concealment would greatly increase the chances of President Nixon's impeachment.

President Nixon, however, has been an exceedingly difficult client. He has a high notion of his office's prerogatives. In large measure, he has also been trying to be his own lawyer—and there is an old legal saying that "any man who decides to be his own lawyer has a fool for a client."

In sum, lawyer St. Clair has been caught between the President pulling him one way, and political necessity and the House Judiciary Committee jointly hauling him the other way. By the same token, moreover, the Special Counsel of the House Judiciary Committee, John Doar, has also been a man in the middle.

Counsel Doar has wanted from the first to discharge his unprecedented responsibility carefully, judicially, above all, non-politically. Both lawyer St. Clair and the White House Chief of



James St. Clair

course because of the pulling and hauling. Chairman Rodino also came out in support of lawyer St. Clair's request for a watching brief throughout the committee inquiry.

None of these latter developments pleased those members of the committee who want to destroy the President at all costs. The subpoena did please them. But in lawyer St. Clair's capacity as the other man in the middle, all is now up to him. It can be fairly confidently predicted that he will now arrange for the White House to respond fully to the committee subpoena. If so, this part of the drama will be over.

The importance of all this lies in the motive of the group of committee members who actively hankered for a confrontation with the White House—but have probably got no more than a fake confrontation. Here the point is simple. If many House members and with the feeling that the President has obstinately concealed relevant evidence, the members will naturally conclude he has a lot to conceal.

This is vital in turn, not for any high constitutional reason, but because of the rockbottom test the House of Representatives is plainly going to apply in the President's case. The rockbottom test, to be blunt, is the presence or absence of solid proof that the President was personally, knowingly involved in criminal acts.

In theory, perhaps, the House should consider other matters, such as the President's choice of some of his former subordinates, and these subordinates' misdeeds. In practice, however, everyone who knows the mood of the House agrees that only the rockbottom test will be applied by a majority of members. The bill of impeachment will be voted by a big majority, if proof is shown of the President's criminality. In the absence of such proof, the bill will not be voted.

One other point can be added with some confidence. If there really is solid proof of the President's criminality, the President's supposedly impregnable defense line in the Senate will also crumble—as indeed it should. Yet this still leaves a most uncertain future, for anyone who has not violently prejudged exactly what will be proven by all the data Counsel Doar has now, and will get later.

© 1974, Los Angeles Times

*"It can be fairly confidently predicted that Mr. St. Clair will now arrange for the White House to respond fully to the committee subpoena."*

Yet Chairman Rodino has a lot of Democratic committee members on his hands who want an impeachment vote, no matter what. They know that charges of White House concealment will help such a vote along. They have therefore been bitterly impatient of all attempts to reach agreements with the White House.

In the light of all these internal pullings and haulings in the committee, the subpoena issued last Thursday can be seen as a compromise. It was only issued after several other steps that are every bit as significant. The list of charges against the president was narrowed. The subjects of interest to the House committee were carefully specified in a letter from Counsel Doar on April 4—a letter long delayed, of

Staff, Alexander Haig, are quite open in their praise of the Doar approach. In that approach, Counsel Doar has also been able to carry with him, at least in the main, the Chairman of the Judiciary Committee, Rep. Peter Rodino.

## Or Won't They?

The most ominous aspect of the historic events that sent a congressional subpoena to the White House last week was the surprise genuinely felt by President Nixon and his lieutenants over Republican outrage within the House Judiciary Committee.

What makes it ominous is that Nixon lawyer James St. Clair's insulting letter was dispatched to the committee despite warnings from the most important Republicans on Capitol Hill—a clear signal which the White House failed to understand. All evidence indicates the White House was not trying to provoke a subpoena and certainly wanted no open break with its Republican allies. Thus, nearing the climax of his presidential crisis, Mr. Nixon is lethally miscalculating the mood of congressional Republicans.

The Nixon-St. Clair strategy, aimed at denying the Judiciary Committee key evidence it demands while retaining Republican support collapsed because of that miscalculation. Not only did all Republican committee members vote for the subpoena but serious new doubts were planted with congressional Republicans serving as the President's jurors.

In that sense, Mr. Nixon is paying dearly for keeping key White House tape recordings from Congress. House members suspect more than ever that he has much to hide. "I really haven't gotten into the details of Watergate," says one senior Republican congressman, never publicly critical of Mr. Nixon, "but the President is whittling away at the presumption of his innocence."

The White House desire to prevent such conclusions is obvious from activ-

---

*"Nobody believes that the President will obey the subpoena in full."*

---

ities of newly arrived presidential counselor Dean Burch, now Mr. Nixon's chief Watergate emissary to the Republicans. On April 9—the deadline set by the House Judiciary Committee for a White House reply to its demands for evidence, Burch worked hard that day to secure Mr. Nixon's Republican flank in advance of his refusal to supply all the evidence requested.

Early that afternoon, Burch telephoned Rep. John Rhodes of Arizona, House Minority leader, in Phoenix and read him a draft of St. Clair's letter. Rhodes had no time for a long discussion but thought he made this clear: the letter as written would cause trouble. So, Rhodes suggested, why not propose that St. Clair and John Doar, the committee's impeachment counsel, determine jointly the relevance of material requested by Doar?



John Doar

But a few hours later when Burch went to Capitol Hill to meet Senate Republican leaders (at his request), he carried with him essentially the same draft letter he had read to Rhodes. Certainly, it did not incorporate Rhodes's conciliatory suggestion.

Not surprisingly, the Senate Republican leaders liked it not at all, and Burch hurried back downtown to the White House to report their complaints. A new draft was then read over the telephone to the Senate leaders. General verdict: better but not

---

good enough. So staunch a Nixonite as Sen. John Tower of Texas felt the White House had ignored "our input."

Nevertheless, that second draft was the one sent the committee anyway. For one reason, it was now early evening of the April 9 deadline. But more important, the White House was trapped in another massive failure of communications so endemic in President Nixon's relations with Congress.

Based on his conversation with Burch, Rhodes was actually believed at the White House to have fully approved the letter. Even more incomprehensible, Senate Republican leaders were reported in accord with the revised version. Thus, on the evening of April 9, the White House believed Republican Judiciary Committee members would oppose a subpoena and that the Democratic Majority consequently would not seek a vote. That meant the President had successfully withheld information from the committee without losing support.

Therefore, Mr. Nixon was no more prepared for the angry, spontaneous outburst from Republican members than he had been for the reaction to the Oct. 20 Saturday night massacre. The Republicans were offended not only by St. Clair's stalling but by his offensive, condescending language. With their outburst, the warning message at last got through to the White House. Despite St. Clair's eleventh hour attempt at compromise the next morning it was obvious that Republicans would support a subpoena.

Typically, there is little self-criticism at the White House. Presidential lieutenants are furious at "leaderless" Republicans in Congress, castigating them for meekly following "the bell cows"—Counsel Doar and Rep. Peter Rodino of New Jersey, the Democratic Committee Chairman. At the Nixon White House, Congress is always wrong.

Nobody believes the President will obey the subpoena in full. Some Democrats on the Judiciary Committee are demanding a contempt of Congress resolution. The more thoughtful bipartisan majority, however, is wisely intent on avoiding such a detour and concentrating on the impeachment proceedings, even without all the evidence but—thanks to White House miscalculations—with less Republican support in Congress for President Nixon than ever before.