

Sirica Tells Nixon He Must Provide 64 Taped Talks

But St. Clair's Arguments Lead Jaworski to Assail President's Appeal Plan

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—Special Prosecutor Leon Jaworski won the first round in a new court battle with President Nixon over Watergate tapes and then charged that the President is making a "farce" of the prosecutor's office.

A rapid sequence of events yesterday moved the President and the special prosecutor toward their sharpest confrontation since Mr. Jaworski took the job late last year, following the President's firing of Mr. Jaworski's predecessor, Archibald Cox.

This is what happened:

Federal Judge John Sirica yesterday afternoon ordered President Nixon to turn over to him by May 31 the tapes of 64 recorded conversations and other material subpoenaed by Mr. Jaworski last month. The prosecutor is seeking the material as evidence in the Watergate cover-up conspiracy trial of seven former White House aides and Nixon re-election campaign officials. The seven, who go on trial Sept. 9, include John Mitchell, the former Attorney General and Nixon re-election campaign chief, and former top White House aides H. R. Haldeman and John Ehrlichman.

Shortly after the judge's ruling, presidential lawyer James D. St. Clair announced the President would appeal.

Rather than by the decision to appeal, Mr. Jaworski was set off by Mr. St. Clair's courtroom argument that Mr. Nixon—as head of the Executive Branch—has final say over the special prosecutor's actions.

In a bitter letter to the Senate Judiciary Committee, which has jurisdiction over his office, the special prosecutor said Mr. Nixon's move "challenges my right to bring action against him to obtain evidence."

Mr. Jaworski argued that Mr. Nixon "contends I cannot take the President to court," and he maintained that "acceptance of his contention would sharply limit the independence that I consider essential if I am to fulfill my responsibilities as contemplated by the charter establishing this office."

This, the Texas lawyer added, "would make a farce of the special prosecutor's charter."

The flare-up, which is the most explosive yet between Messrs. Jaworski and Nixon, was reminiscent of the circumstances that led to the President's firing of Mr. Cox. Following that event, President Nixon promised that Mr. Jaworski would be free of any presidential interference in conducting his investigation.

After receiving Mr. Jaworski's letter, James Eastland (D., Miss.), Senate Judiciary Committee chairman, called for a closed hearing by the committee this afternoon. He also asked Messrs. Jaworski and St. Clair to be available if called.

Judge Sirica, in his ruling, said he personally would examine the tapes and docu-

ments called for by the subpoena and then turn over to the special prosecutor's office all the evidence he considers relevant to the cover-up trial. Further, the judge said he would provide the defendants with the material he thinks they might need to fight the cover-up charges.

To assist him in the examination, Judge Sirica ordered the White House to provide an index and analysis of what is contained in the subpoenaed material. President Nixon can tuck on his arguments as to why he wants to keep certain portions of the tapes confidential.

In a terse White House statement, Mr. St. Clair said "Judge Sirica's decision has been received. An appeal therefrom will be prosecuted" in the federal appeals court here.

Judge Sirica's plan for screening the tapes privately is similar to the course he followed last year when he ordered the White House to turn over to him nine tapes sought on behalf of a Watergate grand jury by Special Prosecutor Cox. The federal appeals court upheld that Sirica ruling.

That eventually led to the firing of Mr. Cox as special prosecutor. Instead of appealing to the Supreme Court, the White House offered the "compromise" of letting Sen. John Stennis (D., Miss.) hear the tapes and verify White House summaries of them, and ordered the prosecutor not to go into court to get any additional White House tapes or documents. When Mr. Cox rejected this, he was fired.

In yesterday's ruling, Judge Sirica said there is even "more compelling" need for the latest evidence than there was for the information sought by Mr. Cox. A grand jury, the judge said, needs only "probable cause" to indict a person, while a trial jury needs evidence to show guilt "beyond a reasonable doubt."

Mr. Jaworski obtained the subpoena April 18 after President Nixon refused to give up any more evidence for either the prosecution or defendants in the Sept. 9 trial, which will deal with alleged efforts to cover up involvement of Nixon associates in the June 1972 break-in at Democratic Party headquarters and its aftermath. The President moved to quash that subpoena May 3, claiming release of the confidential material would be "inconsistent with the public interest."

The thrust of President Nixon's argument to quash the tape subpoena, as dis-

closed in legal briefs released yesterday by Judge Sirica, was that the federal district court hadn't any jurisdiction over "an entirely intra-executive" branch squabble between the special prosecutor and the President.

When the appeals court upheld the special prosecutor last year, the President's lawyers argued, it was because the tapes were being sought on behalf of the grand jury. And "the grand jury was an appendage of a judicial branch of the government rather than the Executive Branch."

But Judge Sirica agreed with Mr. Jaworski's argument that the special prosecutor's office is entitled to all the information it considers it needs for its cases.

"The President personally and directly approved this arrangement, which expressly empowers the special prosecutor to investigate allegations concerning the President and the White House and, if necessary, to seek judicial process against the President," Mr. Jaworski said.

If the President sticks with his promise, Mr. Jaworski said, then he must allow the special prosecutor to gather evidence with-

out fear of "any potential executive power to frustrate the administration of justice." As long as President Nixon doesn't renege, "the President and the special prosecutor remain in fact and in law separate parties," the prosecutor stated.

In another Watergate-related development, Federal District Judge Gerhard Gesell released a letter from the President in which Mr. Nixon stated he didn't have "prior knowledge" of the September 1971

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"plumbers" burglary of the office of Daniel Ellsberg's psychiatrist.

The six men charged in a federal indictment with violating the psychiatrist's constitutional rights are contending that they were conducting a legitimate "national security" mission in seeking information on Mr. Ellsberg, who gave the Pentagon papers to the press.

Mr. Nixon's letter, dated April 29, said he considered the problem of unauthorized disclosures of national security information "critical." He explained that, "It was my intent, which I believe I conveyed, that the fullest authority of the President under the Constitution and the law should be used if necessary to bring a halt to these disclosures."

Judge Gesell, opening four days of hearings on a raft of pretrial motions filed by the six defendants, said he was satisfied that the President didn't know of the burglary and didn't specifically authorize it. The other two questions to be explored, he said, are "Did he by implication in the course of conversation convey the impression, intentionally or otherwise, that he had authorized it?" and "Did he have any power to do it anyway?"

Meanwhile, it appeared possible the House Judiciary Committee would have to subpoena over 60 of Mr. Nixon's taped conversations relating to allegations that he did favors for milk producers and International Telephone & Telegraph Corp. in return for campaign contributions. The committee requested the tapes April 19, and Mr. St. Clair indicated he would reply by yesterday. But the day came and went without any public reply by Mr. St. Clair.

What's more, tomorrow is the due date for two more subpoenas issued by the Judiciary Committee for presidential tapes, these relating to the Watergate break-in and cover-up.