

# SIRICA REQUESTS GRAND JURY LOOK AT TAPE ERASURE

JAN 19 1974

Urges Jaworski to Consider  
Investigation of Recording  
With 18½-Minute Gap

## WHITE HOUSE COMMENTS

Says Content Is Not at Issue  
—Unit Also Asked to Study  
Two Additional Items  
NYTimes

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, Jan. 18—

Judge John J. Sirica asked the special Watergate prosecutor tonight to give "immediate and serious consideration" to a grand jury investigation of the erasure of 18½ minutes of a crucial Watergate tape recording and the alleged nonexistence of two other subpoenaed tapes.

Officials of the special prosecutor said later that there was "no question" but that the

Text of Sirica statement  
appears on Page 12.

prosecution would follow Judge Sirica's recommendation.

The office of the White House counsel said in a statement, "It would be wrong to conclude on the basis of Judge Sirica's decision that any individual in the White House is guilty of impropriety or wrongdoing in the handling of the Watergate case."

"The American people should bear in mind," the statement said, "that the focus of the investigation by the Federal grand jury is primarily how the tape may have been erased, not what the tape contained."

### 'Dereliction of Duty'

Judge Sirica made his request from the bench at the close of a long day of hearings, saying he was calling a recess to refer the matter to Leon Jaworski, the Watergate special prosecutor.

"It is the court's considered opinion that a distinct possibility of unlawful conduct on the part of one or more persons exists here," he said in a statement to the crowd that

overflowed his second floor courtroom at the United States Court House here.

"A grand jury should now determine whether indictments are appropriate."

Judge Sirica did not suggest who the wrongdoers might be, or concluded that there had been any wrongdoing. But he said that it would be a "dereliction of duty" to recess his two-and-a-half-month long hearing without taking further action—especially, he said, "in a case possessing the significance of

Continued on Page 12, Column 4

Continued From Page 1, Col. 8

this one."

"The Court has concluded from the evidence now before it," he said, "that the possibility of unlawful tampering with or suppression of evidence is sufficiently strong to merit grand jury action."

Judge Sirica told the scores of lawyers, reporters and interested onlookers that he had had the statement ready this morning but that he postponed reading it to see if any testimony that developed during the day would change his conclusions.

But nothing had come up to do so, he said.

Testimony today, in fact, included the disclosure that there were additional gaps in the Presidential tape recordings that the White House has turned over, under the court order, to the Watergate prosecution.

### Effort by White House

The day's proceedings also included a serious—and unsuccessful—attempt by the White House legal team to weaken the impact of the report last Tuesday by a court-appointed panel of six technical experts on the 18½ minute gap on a subpoenaed tape recording.

The gap erased the only Watergate-related segment of the conversation that President Nixon held with H. R. Halde- man, then his chief of staff, on June 20, 1972, three days after the Watergate break-in.

The panel concluded unanimously that the gap had been caused by at least five separate erasures and re-recordings of the tape, and not by a single accidental pressing of the wrong button on a tape recorder.

President Nixon's latest lawyer in the Watergate case, James D. St. Clair, tried for several hours this afternoon to shake the testimony of various members of the panel. But the panelists—all of whom had in fact been agreed upon by the White House—stood firm.

### More Gaps Disclosed

Today's hearings started off with the disclosure that there were still more gaps on the Watergate-related recordings that President Nixon turned

over under protest to the special Watergate prosecutor.

There is a 57-second gap on a cassette on which President Nixon recorded his "recollections" of meetings with his aides last March 21 to discuss the Watergate cover-up, Richard Ben-Veniste, the assistant special prosecutor, said.

There is also a 38-second gap, he told the court, in a dictating belt on which Mr. Nixon recorded his recollections of a telephone conversation he had with John N. Mitchell on June 20, 1972, three days after the Watergate break-in. That conversation was apparently the first conversation between the President and the head of his re-election committee after the break-in.

The two recordings were turned over after the President was ordered to comply with the prosecution subpoena for material relating to nine specific White House conversations but they were not made public.

### The Gaps Described

However, Mr. Ben-Veniste reported the gap on the first recording that refers to the Watergate conversation, so that the President's recollections are cut off in mid-sentence. In the second, the gap comes at the beginning, so the recollections begin with a partial sentence.

Mr. Ben-Veniste disclosed the gaps after he called the President's counsel, J. Fred Buzhardt Jr., back to the witness stand, and the prosecutor strongly implied, in his questioning of Mr. Buzhardt, that he suspected the gaps might have been purposely caused.

Mr. Buzhardt conceded reluctantly that the gaps existed. But he insisted that there was nothing improper or even unusual about their existence.

"How would it not be unusual for something to begin in the middle of the sentence?" the prosecutor asked.

"Quite simply, Mr. Ben-Veniste," came the reply.

The President, Mr. Buzhardt said, "frequently" would record some thoughts, then stop the machine, and then "start talking again before he pushed the button down."

Mr. Buzhardt also pointed out—"just so there's not the wrong thinking on this," he said—that there are other "pauses" on the two recordings.

"Any as long as 57 seconds?" Mr. Ben-Veniste asked.

No, Mr. Buzhardt replied. "Any nearly as long as 57 seconds?" the prosecutor pressed on.

No, the witness replied once more.

Then Mr. Ben-Veniste asked if it were "possible" that the gaps had been caused by erasure. Mr. Buzhardt said, "No." Simultaneously, James D. St. Clair, Mr. Nixon's chief counsel in the Watergate affair, objected to the query.

"Anything is possible, I suppose," Judge Sirica said. But shouldn't the question be re-

phrased? Mr. St. Clair went on. "How about, 'probable'?" the judge asked.

After a few more minutes of such colloquy, Mr. Buzhardt testified that he could provide only his opinion and not "the facts," but that he felt that erasure was not possible.

Mr. Ben-Veniste said later that after discussion with Judge Sirica and the White House counsel, it had been agreed that the cassette and the Dictabelt should be turned over to the technical experts for analysis.

In other developments during today's hearings, Rose Mary Woods's attorney, Charles S. Rhyne, charged that Mr. Buzhardt and another White House lawyer, Leonard Garment, told Judge Sirica last Nov. 21 that Miss Woods was responsible for an improper, rather than just an accidental, erasure of the 1½ minute segment.

That was the day that Mr. Buzhardt went to Judge Sirica and first informed him of the gap, saying that at that point he had no innocent explanation for it. With Judge Sirica's permission Mr. Rhyne read aloud the transcript of that meeting; the transcript disclosed that Mr. Buzhardt suggested to Judge Sirica that the matter should be taken to a grand jury.

The White House has said that it believed there was no innocent explanation until later on Nov. 21 when, through tests at the White House, Presidential aides were able to recreate the buzzing sound that is now heard on the tape.

### Lamp and Typewriter

After they did this—through tests using the tape recorder that Miss Woods had used to transcribe the tape, in conjunction with a tensor lamp and electric typewriter in her office—they concluded, they said, that Miss Woods must have caused the gap on the tape accidentally.

The court-appointed panel of technical experts rejected this theory of how the buzzing was caused, saying, in their report, that it was probably produced by a combination of factors including a defective component in the machine.



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# Statements by Sirica and White House

Special to The New York Times

WASHINGTON, Jan. 18—  
Following are the texts of a statement issued today by Judge John J. Sirica at the end of three days of testimony on a gap in a Presidential tape recording and of a statement issued later by the White House:

## Judge Sirica's Statement

In re grand jury subpoena duces tecum issued to Richard M. Nixon, or any subordinate officer, official, or employe with custody or control of certain documents or objects.

## MEMORANDUM

These proceedings, commenced on Oct. 31, 1973, have to date produced approximately 2,800 pages of testimony by 23 separate witnesses, and nearly 200 exhibits of every description. The objective throughout has been to determine whether anyone has attempted by unlawful means to resist the grand jury subpoena duces tecum of July 23, 1973, issued to the President.

The grand jury subpoena has been ruled valid and binding on the President to an extent defined in the opinion of this Court and that of the Court of Appeals for this circuit. The President on Oct. 23, 1973, stated through counsel that the subpoena would be honored as requested.

Since that time, in three instances known to the Court, there has been a failure to comply: the tape recording of a June 20, 1972, telephone conversation, the tape recording of an April 15, 1973, conversation, and an 1100-second portion of conversation on a June 20, 1972, tape recording (sought under Parts I.B., I.1., and I.A. of the subpoena respectively) have not been produced for in camera examination.

## Three Options Cited

As in any case where a party is required to honor a subpoena and full compliance is not forthcoming, the failure to produce may or may not be justified. Where such a question arises, the Court generally pursues an investigation into the matter to determine responsibility and justification.

In pursuing this central issue here, the testimony has principally concerned what might be called three component issues: (1) The chain of custody of subpoenaed materials, (2) the record of access to those materials, and (3) the physical or technical integrity of the subpoenaed matter. As suggested above, the investigation has been both lengthy and involved, and in the Court's opinion, not yet conclusive.

The proceedings have now arrived at a point where the Court has essentially three choices regarding their future. The Court might elect to terminate the hearings entirely without additional testimony of any sort. As a second choice, the Court could suspend the proceedings and recommend to the special prosecutor that he conduct a grand jury investigation of the entire matter. Thirdly, the Court might proceed with additional evidence-gathering in the hope of one day being able to finally resolve the compliance issue.

Of these alternatives, the Court has elected to follow the second as the preferred course.

Analyzing the evidence now before it, the Court would consider it a dereliction of duty to terminate the present inquiry without further action of any sort. Substantial questions remain unanswered. It would be inappropriate to thus abruptly terminate a proceeding of this kind in any case, but particularly so in a case possessing the significance of this one.

## Possibility of Illegality

At the same time, the subject matter of these proceedings does not appear capable of a simple or swift resolution. There remain to be delivered reports on the technical analysis of nine tape recordings and possibly other materials as well. It appears also that, lacking extensive out-of-court investigation at this juncture, continued in-court hearings can accomplish little. In short, we have reached a point where the present fact-gathering process is no longer an efficient one.

The final alternative, a referral to the special prosecutor for grand jury action, has

affirmative characteristics to recommend it. The grand jury, able to enlist the aid of court process, assisted directly by the special prosecutor, and assisted indirectly by other agencies, is uniquely equipped to conduct the sort of investigation now required. Where allegations of wrongdoing arise, the grand jury is the traditional institution charged with determining whether criminal charges are warranted.

It is the Court's considered opinion that a distinct possibility of unlawful conduct on the part of one or more persons exists here. A grand jury should now determine whether indictments are appropriate.

These statements can not be construed as identifying any particular wrongdoer or unlawful act. The Court refrains absolutely from accusing any person or persons, and refrains as well from a final conclusion that any illegal conduct has occurred. Rather, the Court has concluded from the evidence now before it that the possibility of unlawful tampering with or suppression of evidence is sufficiently strong to merit grand jury scrutiny.

In view of the foregoing, then, the Court hereby strongly recommends to the special prosecutor that he give immediate and serious consideration to opening a grand jury investigation into the possibility of unlawful destruction of evidence and any related offenses. It is suggested that the special prosecutor and grand jury consider the entire record of these proceedings, and that they give attention as well to future reports of the panel of experts treating additional materials produced under the July 23 subpoena.

## Instructions for Panel

The special prosecutor is free, of course, to incorporate within the investigation any suggestion of tampering that related to evidence in his possession obtained independently of the instant subpoena. Should the special prosecutor choose to initiate an investigation as recommended, the Court sees no need to continue these proceedings, at least for the present, and they would therefore be suspended.

The Court also takes this

occasion to instruct the panel of six experts, jointly selected by White House counsel and the special prosecutor and appointed by the Court, to continue their analysis of the nine remaining tape recordings and any other subpoenaed items that may be submitted to them for testing. Their work is to continue subject to the same restrictions and procedures that have applied heretofore. They will report from time to time, as they deem appropriate, to the Court, White House counsel and the special prosecutor in joint conference.

The Court and counsel express their appreciation to all members of the panel for their diligence, and urge them to conclude their work at the earliest practicable time.

These proceedings are now declared recessed, and will be deemed suspended indefinitely should the special prosecutor commence the recommended grand jury investigation.

JOHN J. SIRICA  
Chief Judge

## White House Statement

The decision of Judge John Sirica to refer the matter of the 18-minute gap to the Federal grand jury is not a conviction of any individual, nor is it even an indictment. And it would be wrong to conclude on the basis of Judge Sirica's decision that any individual in the White House is guilty of impropriety or wrongdoing in the handling of the Watergate case.

Further, the American people should bear in mind that the focus of the investigation by the Federal grand jury is primarily how the tape may have been erased, not what the tape contained.

Forgotten in the rhetoric about the lost 18 minutes is the fact that hand-written notes do exist concerning the conversation between the President and Mr. Haldeman. Those notes, written contemporaneously by Mr. Haldeman, now in the possession of the special prosecutor, clearly indicate that Presidential conversation and concern in the 18-minute segment were directed solely to the negative public relations impact of the Watergate break-in on the campaign of 1972.