

# Jaworski To Subpoena Nixon Data

Washington

Special prosecutor Leon Jaworski asked the U.S. District Court here yesterday to issue a subpoena directing President Nixon to turn over tape recordings and other documents relating to 64 conversations between President Nixon and four of his former top aides.

It was the first step in what could be another major clash between the President and the Watergate prosecution — one that Jaworski made clear he would prefer avoiding.

The prosecutor said he was asking for the subpoena only after trying for months to secure the tapes and materials from the White House in an informal manner.

He told the court that he needs the materials for the forthcoming trial of the seven defendants indicted in the Watergate coverup case, saying that "information now available to the government" indicates that each of the items he is seeking contains evidence that either could be used by the government or that "might be helpful" to one or more defendants.

But, he said, despite requests as early as January 9 to James D. St. Clair, the President's chief defense counsel, for much of the material, "I have as yet received no definitive response" regarding whether the material would be made available.

Jaworski took an even more frustrated and angry tone in a letter sent to St. Clair last Thursday — and disclosed yesterday — informing the President's lawyer that a subpoena would be sought.

"I have delayed seeking a subpoena in the hope that the President would comply with our request voluntarily," he said in the letter. "Indeed, I have sought no

more at this time than an assurance that the materials would be provided sufficiently in advance of trial to assure thorough preparation."

The White House had no immediate comment on Jaworski's move.

Previously, as Jaworski has noted in the past, the White House has sometimes made available some of the

Back Page Col. 1

From Page 1

other tapes that the prosecution has requested informally. On other occasions, the White House has contended that a tape was irrelevant but has given Jaworski an opportunity to listen to the tape to hear for himself.

Jaworski's motion to the court is expected to be granted quickly, probably without a hearing.

Chief Judge John J. Sirica, the trial judge in the case and thus the judge to whom the motion would ordinarily be received, is currently on vacation but has been informed that the prosecution motion has been filed.

Normally, subpoenas issued in connection with a trial — unlike those issued in connection with a grand jury investigation — are processed almost automatically. Generally, papers must simply be submitted to, and signed by the court clerk.

Such subpoenas, however, are not returnable until the trial begins. To obtain material via subpoena prior to the opening of trial, a motion, such as Jaworski made yesterday, must be made to the court asking it to order the issuance of a subpoena.

Jaworski told the court in an affidavit that he was asking for a subpoena that is returnable prior to trial "solely for the purpose of preventing any postponement of the trial or delay during the conduct of the trial."

More tapes news  
on Page 8

If the White House complies with the subpoena and turns over the material the prosecution is seeking, Jaworski explained, it will have to be carefully examined and analyzed.

Then, he said, transcripts will have to be made for the judge and jury of the tapes that are to be used at trial — "an arduous and time-consuming task," he said, basing his assessment on "our experience with tapes of other presidential conversations."

"Moreover," he said, raising the prospect of another constitutional clash between the White House and the judiciary, "if litigation should ensue with respect to the subpoena it would be best for all concerned that such litigation be initiated promptly in order to avoid the possibility of postponing the trial."

Last summer, in the only other instance in which the Watergate prosecution has gone to the courts to seek access to presidential information, the prosecution subpoenaed tapes and memoranda relating to nine conversations. That subpoena led to months of unprecedented litigation, the firing of Archibald Cox, Jaworski's predecessor, and the resignation of Attorney General Elliot L. Richardson.

The Court of Appeals here ruled in October that Mr.

Nixon must comply with the subpoena. At first the President announced that he would not comply; then, in the wake of massive adverse public reaction, he reversed himself. But then the White House announced that two of those conversations were never recorded, and the tape of a third conversation had an 18½ minute gap — announcements which led to further, still unresolved legal proceedings.

Last week, in another unprecedented development, the House Judiciary committee issued a subpoena directing President Nixon to turn over tape recordings and other records of more than 40 conversations.

Of the 64 conversations for which Jaworski is seeking tapes and documents, 24 were listed in the Judiciary Committee subpoena.

The 64 conversations listed by Jaworski in the schedule attached to his motion are conversations between Mr. Nixon and, variously, John W. Dean III, his former counsel; Charles W. Colson, a former special counsel; H. R. Haldeman, Mr. Nixon's former chief of staff, and John D. Ehrlichman, once Mr. Nixon's chief domestic adviser.

The latter three are among the defendants in the coverup trial, which is scheduled to begin September 9. Dean has pleaded guilty to obstruction of justice and is expected to be the key government witness at the trial.

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