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The Jaworski Subpoena

The dominant note in Special Prosecutor Jaworski's subpoena of 64 tapes and documents related to the Watergate cover-up is the reluctance with which he found himself driven to this distasteful confrontation. His decision to resort to a court order is another somber milestone along an investigative road made slow and arduous by White House obstruction of the kind that culminated in the firing of Archibald Cox, Mr. Jaworski's predecessor.

Relying on pledges of Presidential cooperation, Mr. Jaworski patiently explored all possible avenues toward an amicable agreement with the White House, provided only that such an agreement would not sanction the withholding of crucial evidence. The record furnishes scant indication that the White House even tried to meet the special prosecutor half-way in these efforts.

In his State of the Union address on Jan. 30, President Nixon said: "As you know, I have provided to the special prosecutor voluntarily a great deal of material. I believe that I have provided all the material that he needs to conclude his investigations and to proceed to prosecute the guilty and to clear the innocent."

But Mr. Jaworski has now disclosed, in his affidavit to the court, that his request to the White House for much of the subpoenaed material was made as early as Jan. 9—three weeks before the President made his claim of compliance to Congress and the country. Since then the request was twice repeated, without satisfactory response. Yet, the President has persisted in public statements designed to create the impression that he was turning over all the information needed by either Mr. Jaworski or by the House Judiciary Committee in its consideration of impeachment.

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Part of the President's strategy has been to make it appear that he alternately could not satisfy the committee's and the prosecutor's demands without interfering with the prerogatives of one or the other investigation. Mr. Jaworski termed his and the committee's requests "distinguishable both factually and legally" thus removing any valid excuse for withholding needed materials from either investigation.

The President's position is rendered untenable by his persistent unresponsiveness to reasonable proposals aimed at protecting legitimate claims to the confidentiality of conversations unrelated to the Watergate investigations. Virtually identical offers to have the President's lawyers work with the respective legal staffs of the two investigative groups in screening tapes and documents for relevance were put forward by Mr. Jaworski and by Representative John Rhodes, the House Republican leader and a staunch Nixon supporter.

The White House simply has not budged from the unacceptable position that the President alone determines what constitutes relevant evidence, both in the trial of other Watergate defendants and in the inquiry into his own impeachment. Since Mr. Nixon himself insists that specific tapes might be subject to misleading interpretations, only examination of the complete record, including the relationship between various taped conversations, can answer the crucial questions of innocence or guilt.

The President's lawyers may still be resting their defiance on expectation that the President cannot constitutionally be forced to obey a subpoena. Such a gamble needs weighing against the possibility that, when defiance becomes tantamount to obstruction of justice, it may in itself constitute an impeachable offense.