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Nixon's Lawyers Ask Court to Quash Jaworski Writ for Tapes and Records

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WASHINGTON, May 1—President Nixon's lawyers asked the United States District Court today to quash the special Watergate prosecution subpoena for tapes and records of 64 White House conversations relating to the Watergate cover-up.

The lawyers strongly suggested, in legal papers filed this afternoon, that the President was prepared to take the matter to the Supreme Court if the lower court refused the request.

The lawyers' response to the prosecution subpoena thus increased the likelihood of another major confrontation between the White House and the Watergate prosecution.

The legal brief filed by the White House today did not spell out this path of resistence. However, it was accompanied by a personal statement by the President in which he claimed executive privilege—on the grounds of the need to protect the confidentiality of Presidential communications—for all of the subpoenaed conversations that were not included in the 1,308 pages of edited transcripts that Mr. Nixon released yesterday.

Court Session Set

Judge John J. Sirica, who refused yesterday to disqualify himself as judge in the cover-up trial, asked the lawyers for the White House, the prosecution and the seven defendants to appear before him at 10 A.M. tomorrow.

Leon Jaworski, the special Watergate prosecutor, declined this afternoon to say whether he planned to ask Judge Sirica to order the President to comply and to cite him for contempt if he refused.

But John Barker, a spokesman for the special prosecution, said the prosecution had no intentionnof letting its request lapse. "This is all material that we need very much," he said, "and we'll do everything we can to secure it."

The subpoena, served on the White House on April 18 by order of Judge Sirica, calls for all records and memorandums relating to conversations involving Mr. Nixon and four of his former top aides: John W. Dean 3d, Charles W. Colson, John D. Ehrlichman and H. R. Haldeman. Mr. Dean is expected to be the chief prosecution witness in the cover-up trial. The other three are defendants in the case.

Unwilling to Wait

The prosecution would have been able to have a subpoena issued on its own behest, without going to Judge Sirica, if it had been willing to wait until the start of the trial for the response to the subpoena.

The prosecution wanted the subpoena to be answerable several months before the start of the trial, now scheduled for Sept. 9, and therefore asked Judge Sirica to order the issuance of such a subpoena. In its legal brief to the court April 16, the prosecution contended that an early return date was necessary if the trial was to start on schedule, because, among other things, the President might contest it and such litigation could last several months.

The prosecution said it needed the material to prepare its own case for the trial, and to be able to turn over to the defendants any material helpful to them. It said that each of the 64 items contained material that could be used in one or the other of these ways.

The President's response today flatly rejected this line of argument.

Prosecution Disputed

The White House legal memorandum said the prosecution had not shown that the materials were either relevant as evidence or admissible at the trial. It also, said that the special prosecutor did not need the subpoenaed materials to fulfill his obligation to provide defendants with exculpatory material.

The brief said that the failure of the prosecution to show "relevance" and admissibility of the materials it subpoenaed was, in itesIf, enough to justify quashing the subpoena.

The lawyers also rageud taht Presidential communications were "privileged" and not vulnerable to subpoena.

They asserted executive privilege for all portions o fthe subpoenaed materials not yet been made public. By the President's own count in his "formal claim of privilege" today, he released "portions" of 20 of the 64 subpoenaed conversations yesterday.

Earlier Ruling Noted

The White House brief conceded that the President's original conception of an absolute executive privilege had been rejected last fall by the United States Court of Appeals for the District of Columbia in its decision on the Watergate prosecution subpena for tapes and records of nine specific conversations.

But the President's lawyers said they continued to believe that "it is for the President of the United States, rather than for a court, to determine when it was constitutionally permissible for a President to refuse to produce information."

The lawyers added that they did "not now press these points," but that they were including them in their brief "should it be necessary for this case to reach a court" in which the appeliate court ruling fall "is not a controlling precedent"—in other words, the Supreme Court.

Unclear Response

The White House response to Mr. Jaworski's contention that he needed the material because it might include some exculpatory material—material helpful to the defense—was somewhat unclear.

Under the law, defendants are generally considered to be entitled to all exculpatory material that the government dismisses. If the defendants do not get it, they can win dismissal of their cases.

In the legal brief submitted this afternoon, the lawyers brushed aside Mr. Jaworski's arguments regarding the legal rule requiring disclosure of exculpator ymaterials. The brief said the rule applied only to materials in the hands of the prosecutor or investigative agency in the case, and that the rule did not require disclosure of material over which executive privilege had been asserted.

Several legal experts interviewed recently have said that the law is unclear on these points, and that the defendants might have a good chance of getting their cases dismissed if the exculpatory material held by the President is withheld.

The brief went on to say, however, that the President "woud be will ing to consider" specific requests by defendants for exculpatory material.