

Subpoenaed Data

Judge Sirica Orders Nixon To Yield Tapes

Washington

U. S. District Judge John J. Sirica ordered President Nixon yesterday to turn over to the court the subpoenaed tapes and other records of 64 White House conversations relating to the Watergate coverup.

The tapes are to be processed by the court for use by both the office of special Watergate prosecutor, which initiated the subpoena, and the defendants in the coverup trial.

Sirica also disclosed what he called an "attempt" by President Nixon to "abridge" the independence of special prosecutor Leon Jaworski — an attempt, the judge said, that violated both law and the President's own assurances that the prosecutor would have full independence.

According to the judge's opinion, and to excerpts released by the judge from previously "sealed" briefs from the prosecution and the White House, Mr. Nixon's lawyer told the court that the fight between Jaworski and the President was an "intra-branch" dispute that the courts could not enter.

As both Sirica and the special prosecutor noted, how-

Back Page Col. 4

From Page 1

ever, the prosecutor's grant of authority includes the right to go to court to seek evidence from the President.

Sirica's ruling on the subpoena was a flat rejection of the President's motion to quash, and so, while the judge stayed his order pending appeal—an appeal that the White House said would be brought—his order came as a blow to Mr. Nixon.

The judge's disclosure of the President's arguments regarding the prosecutor's authority, though, may ultimately be even more damaging.

The special prosecutor charged in his legal brief that the President's arguments, submitted by his chief defense counsel, James D. St. Clair, were an attempt to "make a farce of the special prosecutor's charter and is in contravention of the understanding I had . . . at the time of my appointment."

Jaworski made a similar statement yesterday in a letter to the Senate Judiciary Committee, which had asked him to notify the committee whenever he met interference from the President.

As a result, a committee member said later, the committee will meet in executive session this afternoon to consider the developments and to determine whatever action might be taken.

The committee had approved the nomination of Attorney General William B. Saxbe last winter on the express condition that Saxbe agree to support Jaworski's right to independence.

The committee had also asked Jaworski to appear before those confirmation hearings, and to put into the record his understanding of his job and authority.

The committee's insistence upon these assurances was based in part on the history of the previous special prosecutor, Archibald Cox,

More Nixon news
on Pages 7 and 8

who was dismissed by the President because of Cox's insistence that he be allowed to go to court to seek evidence from the President.

Jaworski had notified the committee earlier this year that he was having trouble getting some information from the White House — information, in fact, that was subsequently included in the subpoena that Sirica upheld yesterday.

The prosecutor's letter yesterday, however, was far stronger than the earlier one.

It says, in part:

"The crucial point is that the President, through his counsel, is challenging my right to bring an action against him to obtain evidence, or differently stated, he contends that I cannot take the President to court. Acceptance of his contention would sharply limit the independence that I consider essential if I am to fulfill my responsibilities as contemplated in the charter establishing this office.

"As stated by counsel for the President in the argument before Judge Sirica, it is the President's contention that he has ultimate authority to determine when to prosecute, whom to prosecute, and with what evidence to prosecute," Jaworski wrote.

" . . . The position thus taken by the President's counsel contravenes the express agreement made with me by General Alexander Haig, after consulting with the President, that if I accepted the position of special prosecutor, I would have the right to press legal proceedings against the President if I concluded it was necessary to do so."

He added: "Counsel to the President, by asserting that ultimately I am subject to the President's direction in

these matters, is attempting to undercut the independence carefully set forth in the guidelines, which were reissued upon my appointment with the express consent of the President.

The 64 conversations covered by the Jaworski subpoena all relate to the cover-up of the break-in at Democratic National Headquarters at the Watergate office complex here on June 17, 1972.

All but one of the conversations were between the President and one or another of four of his former top aides, the exception being a conversation among some of those aides in which Mr. Nixon apparently did not take part.

The four are John W. Dean III, who is expected to be a key prosecution witness in the coverup trial, and three of the seven defendants in the case: H. R. Haldeman, John D. Ehrlichman and Charles W. Colson.

The four other defendants are Gordon Strachan, John N. Mitchell, Robert C. Mardian and Kenneth W. Parkinson.

The prosecution has contended that it needs the subpoenaed material either to prepare its own case or to satisfy its obligation to provide defendants with any government-held "exculpatory" material.

Portions of 20 of the 64 conversations were included in the edited transcripts of presidential conversations that Mr. Nixon recently released.

As Sirica said in his opinion, the transcripts themselves show that those 20 were relevant to Jaworski's case.

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