From Time Magazine archives, June 17, 1974. Four Walls Close In on Nixon

Describes limiting JDE's access to his own files.

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The Nation

# Four Walls Close In on Nixon

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Jun. 17, 1974

Whatever psychic relief and favor able publicity are generated by the President's foreign travels, they cannot stop or even slow the machinery that threat ens the Nixon presidency. Last week, as Nixon prepared to go abroad, Capitol Hill and Washington courtrooms produced only bad news for him.

The House Judiciary Committee be gan to climb out of its rut and seemed ready to quicken the march toward impeachment. Charles Colson, a former member of Nixon's innermost circle, confessed his criminality and professed a desire to tell all that he knows about Watergate. It was revealed that a federal grand jury had named the President as an unindicted co-conspirator in the Watergate cover-up case — the first official citation of direct criminal association ever brought against a U.S. President. Adding to Nixon's judicial problems, a federal judge openly, threatened to cite him for contempt of court. Last week's major actors and their roles:

I. RODINO PROMISES ACTION

Alarmed at the President's previous success in slowing the impeachment inquiry by withholding evidence, House Speaker Carl Albert summoned Judiciary Committee Chairman Peter Rodino and urged him to push on despite that obstacle. Rodino replied that the com mittee was gaining momentum and should meet a target date of July 15 for taking its vote. That would be a month earlier than predicted two weeks ago. The House

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would then have time to decide the issue by Labor Day. If impeachment is voted — current estimates show a pro-impeachment margin of at least 70 members in the House — the Senate trial could begin in September.

Albert and other Democratic House leaders suggested that Rodino could avert any dilatory tactics by Nixon Lawyer James St. Clair if the committee completed its closed-door staff presentation of evidence and then voted with out calling witnesses. "St. Clair could keep every witness on the stand for three days," one top Democrat warned. But Rodino replied that Republicans on the committee will insist that such witnesses as John Dean, Charles Colson, John Ehrlichman, H.R. ("Bob") Haldeman and John Mitchell be called and tested under crossexamination. Rodino advised that this should be permitted, but that tight controls, including a one-day limit for each witness, should be imposed.

Key Democrats on the committee have advised party leaders that a Judiciary vote in favor of impeachment is now all but certain. "We've got enough to impeach the guy now," said one Democrat. "We're putting together a fail-proof case." TIME has learned that the committee staff has begun to prepare articles that will accuse the President both of offenses that are indictable in criminal practice and of broader violations that deal with a President's particular legal responsibilities. Each article will be accompanied by evidence of specific Nixon actions to support the charge.

The thrust of the six articles — which are still subject to change — is that Nixon has 1) failed to execute faithfully the laws of the U.S., 2) failed to fulfill other constitutional responsibilities, 3) subverted the Constitution, 4) participated in an obstruction of justice, 5) participated in the subornation of perjury and 6) defied the Congress in its proper constitutional authority and is in contempt of the Congress.

II. COLSON CONFESSES GUILT

No one seemed more surprised than Presidential Counsel St. Clair when David Shapiro, the attorney for Charles Colson in the Ellsberg burglary case, stepped up behind him in Judge Gerhard Gesell's courtroom and confided: "We're going to plead guilty to one count of obstructing justice." Incredulous, St. Clair asked Shapiro to repeat the statement. He did. A St. Clair aide, John Mc-Cahill, hurriedly borrowed a dime from another aide, and rushed to telephone the news to Nixon's top White House assistant, Alexander Haig.

A statement of Colson's confession was then read by Assistant Special Prosecutor William Merrill. It said that Colson had admitted having devised "a scheme to obtain derogatory information about Daniel Ellsberg," who at the tune was facing trial for leaking the Pentagon papers. Colson wanted Ellsberg to "be tried in the newspapers" even though this would have an "adverse effect on his right to a fair trial." Colson's aim was to "neutralize" Ellsberg as a critic of Nixon's Viet Nam policies. Colson also conceded having written a "scurrilous and libelous memorandum" about one of Ellsberg's attorneys.

Colson thus did not admit that he had been part of a conspiracy to burglarize the Los Angeles office of a psychiatrist consulted by Ellsberg, as charged by a federal grand jury. That count against Colson was dropped, as was his indictment as a conspirator in the Watergate coverup. But Colson's confession undercuts any defense claim that the Los Angeles burglary had a public-spirited purpose; it was plainly part of an attempt to smear Ellsberg. As a result of his guilty plea, Colson faces a possible prison sentence of five years and certain disbarment.

Colson explained in a statement read to reporters that he had "watched with a heavy heart the country I love being torn apart these past months by one of the most divisive and bitter controversies in our history." Clearly refer ring to impeachment, he said that "the prompt and just resolution of other proceedings, far more important than my trial, is vital to our democratic process. I want to be free to contribute to that resolution no matter whom it may help or hurt — me or others."

Still, there was skepticism about Colson's motives (see following story) and some uncertainty about any testimony he may now give. "I think he'll help the President," said a Colson intimate. "And he'll knock hell out of John Dean."

That may yet happen, but TIME has learned from knowledgeable people close to Colson that as he began telling his story to investigators last week, the initial outlines contradicted Nixon's public Watergate defense. Colson is saying that he talked with Nixon in both January and February of last year about a Watergate coverup. In January, he says, he told the President: "Something is going on here that is very wrong. There's got to be an investigation." Colson quotes Nixon as replying: "What do you think we ought to do?" Colson's answer: "I'll see what I can find out."

By February, Colson contends, he had learned of John Mitchell's approval of payments to the original Watergate defendants. Colson promptly warned the President that these payoffs were taking place. Nixon's alleged reply: "What do you mean? Mitchell says he is innocent." Colson claims that he then told Chief of Staff Haldeman that Mitchell must step forward and take the blame for the payoffs. According to Colson, Haldeman answered: "If Mitchell goes, he's going to take you with him." Colson said he was not worried about that. He asserts that he also warned Ehrlichman and Dean about the cover-up —and got unconcerned responses.

Colson made similar statements in an interview with the New York Times a year ago—but he interpreted the alleged conversations with Nixon as evidence that the President had been unaware of the coverup. Nevertheless the Colson account conflicts with Nixon's claim that he first learned about the cash payoffs and cover-up from Dean on March 21. As Colson tells it, Nixon was warned two months earlier—and took no action.

When Nixon finally accepted the resignations of Ehrlichman and Haldeman in April 1973, Colson now says, the President told him: "God bless you—you were right all along." Colson may, however, put his statements about the President in a less damaging light under crossexamination.

Colson is also telling investigators that he and the President discussed clemency for Watergate Conspirator E. Howard Hunt shortly after Hunt's wife Dorothy died in an airplane crash in December 1972. Whether Colson contends that Nixon approved such clemency could not be learned. Nixon has denied giving any such approval but is quoted in his tape transcripts as admitting to "somebody" that "commutation should be considered on the basis of his [Hunt's] wife's death." There is no practical difference between commutation of sentence and Executive clemency.

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IV. THE GRAND JURY'S VOTE

After months of rumor, it was final ly confirmed last week: the main Watergate grand jury

had cited Nixon as an unindicted co-conspirator when it returned criminal indictments against seven former Nixon men on March 1. The vote to name Nixon was 19 to 0.

Normally, prosecutors use the some what distasteful tactic of naming an in dividual as a co-conspirator without actually charging him with a crime when they do not have enough evidence to support an indictment or wish to use his testimony in their case against others. In this instance, however, Jaworski's be lief that a President could not constitutionally be indicted but had to be impeached by Congress was the reason that Nixon was listed as only a coconspirator. As a practical matter, the jury's decision may buttress Jaworski's Supreme Court suit to secure Nixon tapes for the conspiracy trial since their relevance is further established.

Conceding that Nixon had been cited, St. Clair quite properly pointed out that "grand jury allegations are far from proof." When all the evidence is in, St. Clair argued, Nixon's innocence will be proved. However, all the evidence may never be acquired by the law ful authorities because the President is spurning subpoenas from both Jaworski and the House Judiciary Committee.

Ironically, the fact that Nixon was named by the grand jury as a co-conspirator may work indirectly to keep him in office longer because it presents a solid obstacle to his resignation. If he were to step down after impeachment by the House but before a Senate trial, for example, he would have to make some deal with Jaworski to avoid an out right indictment in the cover-up case or at the least face unchallengeable orders to appear as a star witness in the trial.

But Nixon is not expected to take his own advice in the matter. According to the released White House tape transcripts, Nixon asked Assistant Attorney General Henry Petersen on April 17, 1973, what it means to be cited as an unindicted coconspirator. Told by Petersen that this amounts to a serious allegation of complicity, Nixon declared: "Anybody that was an unindicted co-conspirator would then be immediately put on leave."

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WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

# *Memorandum*

TO : The File

DATE: Oct. 3, 1974

(Dictated but not read)

FROM : James F. Neal

SUBJECT: Motion to Quash Nixon subpoena.

This memorandum is being written in anticipation of a motion to quash the subpoenas issued to Nixon and anticipation that the motion will be accompanied by a report concluding that Mr. Nixon is not now and will not be in the foreseeable future physically able to travel to this city and testify in person.

The subpoena and motion raise two questions: First, what position should be taken with respect to its own subpoena, and second, the position the Government should take with respect to the subpoena issued by defendant Ehrlichman. Mr. Nixon is not an essential witness for the Government. While his testimony would be important to help establish a complete chain of custody of certain White House recordings, the Government is satisfied it will be able to prove the integrity of the recordings it seeks to have admitted in evidence without his testimony. Thus, the position we should take with respect to our own subpoena is that being satisfied of Mr. Nixon's unavailability to testify in person we would not press the issue were this the only question. (It should be noted that establishing Mr. Nixon's unavailability is an important element of our ability to prove the integrity of the tapes without his testimony.)

The Government has a duty, however, to insure, to the extent possible a fair trial for every defendant. Consequently, we cannot wash our hands of the matter if a defendant pushes his subpoena to Mr. Nixon. We must take a position that is supportable in the law. I believe we should suggest that the Court promptly determine if Mr. Nixon "may be unavail-

able" to appear in the foreseeable future as a witness in this cause. If the answer is affirmative, the Court should determine if Mr. Nixon is physically able to be deposed and his testimony preserved. If the answer is negative, the matter is resolved, at least for the present. If, on the other hand, the answer is that Mr. Nixon is, or in the near future will be, able to submit to a deposition, the Court should order him to appear at a prescribed time and place for the purpose of giving such deposition. In the event this takes place, the Government should be allowed to propound its questions to Mr. Nixon and the defendants should be allowed to cross-examine him on this testimony. Then the defendants should propound their questions with Mr. Nixon as their witness and the Government should be allowed to cross-examine.

The remaining question, and perhaps the most sensitive one, is the procedure for determining Mr. Nixon's ability to appear in person as a witness or to give a deposition. I suggest the Court appoint a panel of distinguished physicians of this area to make an investigation and to report to the Court the answer to the following questions:

1. Is Mr. Nixon presently able to travel to this city and testify?

2. Will Mr. Nixon be available to testify in person in this city in the foreseeable future?

3. If Mr. Nixon is not able to travel to this city to testify in person and with the physicians concluding he will not be able to do so in the foreseeable future or conclude they cannot make such a finding at the present time to a reasonable degree of medical certainty, then they should determine if Mr. Nixon is presently able to be deposed at an appropriate time and place in California. The report on this question should specify the circumstances and precautions that should be taken in respect to such a deposition. If Mr. Nixon is unable to give a deposition at the present time, physicians should report whether he will be able to be deposed in the foreseeable future, again specifying the conditions and precautions surrounding such a deposition. Finally, if

the doctors can come to no conclusion on any of the above questions, they should report to the Court their opinion whether and when it would be appropriate for them to conduct a further investigation in an attempt to answer these questions.

It is my suggestion the Court leave to the panel of physicians, at least in the first instance, the type of investigation they conclude necessary and appropriate. Thus, if these physicians determine it is sufficient simply to review and analyze the medical reports and records on Mr. Nixon's present physicians, we should accept such a view. If, on the other hand, the physicians determine they should conduct their own examination and testing of Mr. Nixon they should be authorized and empowered by the Court to do this.