

Jaworski Appeals To Supreme Court

Seeking Showdown On Tapes

5/25/74
By George Lardner Jr.
Washington Post Staff Writer

Watergate Special Prosecutor Leon Jaworski appealed directly to the Supreme Court yesterday in an effort to force President Nixon to surrender new evidence in the Watergate scandal.

Pressing for an immediate constitutional showdown, Jaworski said the controversy was "of imperative public importance." He predicted that the trial of the Watergate cover-up case would have to be delayed until the spring of 1975 unless the Supreme Court agreed to prompt review.

The high-stakes move came just about one hour after Mr. Nixon's lawyers asked the U.S. Court of Appeals here to uphold the President's claims of executive privilege.

In an effort to bypass the Court of Appeals, Jaworski said the intermediate court had already rejected similar assertions by the President last fall.

The key question that Jaworski raised was:

"Whether a federal court is bound by the assertion by the President of an absolute 'executive privilege' to withhold demonstrably material evidence from the trial of charges of obstruction of justice by his own White

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD M. NIXON, PRESIDENT OF THE
UNITED STATES, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
AND SUGGESTION FOR EXPEDITED SCHEDULE

A portion of the cover of the Watergate special prosecutor's petition to the Supreme Court

SUBPOENA, From A1

House aides and party leaders, upon the ground that he deems production to be against the public interest."

Even the title of the petition had an unprecedented ring to it: "United States of America, Petitioner, v. Richard M. Nixon, President of the United States, et al., Respondents."

U.S. District Court Judge John J. Sirica had ordered the President only Monday to surrender the disputed evidence: the tapes and records of 64 White House conversations believed to bear on the Watergate cover-up.

Sirica ruled that Jaworski had, in secret proceedings earlier this month, shown a need "sufficiently compelling to warrant judicial ex-

See SUBPOENA, A11, Col. 2

amination" of the subpoenaed evidence. The judge gave the White House until 4 p.m. yesterday to seek appellate review.

The President's lawyers met the deadline with a sealed petition asking the Court of Appeals to reverse Sirica's ruling. The dispute deals heavily on secret grand jury evidence that Jaworski submitted to show the relevance of each of the 64 conversations.

As a result, the most crucial documents in the case have been kept under seal and the arguments conducted in secret. Jaworski said in his petition that this was done "because of some especially sensitive matters" that he submitted.

The President's lawyer, James D. St. Clair, had asked that at least some of it be expunged, but Sirica refused and held that all the sealed documents were "a necessary part of the record in this matter."

All but one of the 64 subpoenaed conversations involved Mr. Nixon and one or another of former White House aides H. R. (Bob) Haldeman, John D. Ehrlichman, Charles W. Colson and John W. Dean III. The only

exception was a Nov. 15, 1972, meeting at the presidential retreat at Camp David, Md., between Haldeman, Ehrlichman and Dean.

Jaworski asked the Supreme Court to agree to take charge of the dispute under rules that permit such a step "only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court."

The rarely invoked technique has been used successfully on only a few occasions in the court's history—disputes involving emergency New Deal legislation, the habeas corpus petitions of World War II Nazi saboteurs, the 1974 national coal strike, and the 1952 seizure of the steel mills by President Truman.

Asking for an expedited schedule, Jaworski proposed that his brief on the merits of the controversy be filed by June 7 with the White House response to be filed by June 14.

"The case involves basic constitutional issues arising out of the doctrine of the separation of powers and the powers of the judiciary and the prerogatives of the

Chief Executive," Jaworski said.

But, he added, "perhaps more fundamentally, this case also presents a question of overriding concern to the full and impartial administration of justice—is our constitutional system of government sufficiently resilient to permit the executive branch to establish an independent prosecutor fully capable of investigating and prosecuting allegations of criminal misconduct by officials in the Executive Office of the President and validly authorized to resort to the judicial process to secure physical evidence from the President himself."

The 12-page petition, which was also signed by Jaworski's legal counsel, Philip A. Lacovara, and the chief of his main Watergate task force, James F. Neal, listed five basic issues that it said were "worth of review by this Court."

They were:

- "Whether the President is amenable to judicial process."

- "Whether the President or the courts have the ultimate authority to determine the applicability of 'executive privilege' to material evidence for judicial proceedings."

- "Whether executive privilege can be invoked in the face of a prima facie showing that the conversations at issue involved a criminal enterprise."

- "Whether any confidentiality privilege for Watergate-related conversations has been irretrievably waived by the President."

- "And whether the President has been properly ordered to comply" with the subpoena issued April 18 and upheld by Judge Sirica on Monday.

The first question before the high court, however, is whether to hear the case out of turn. Presidential counsel J. Fred Buzhardt said in a statement issued at the Florida White House: "The President, through his counsel, will respond to the special prosecutor's petition for certiorari [review] in a timely manner."

Charles Alan Wright, the University of Texas law professor who has been serving as consultant in constitutional law for the White House legal team, has indicated that he would strongly recommend against immediate Supreme Court review.