

Nixon Fights Showdown Over Tapes

5/29/74
By George Lardner Jr.
Washington Post Staff Writer

White House lawyer James D. St. Clair said yesterday that President Nixon will resist an immediate Supreme Court showdown over his Watergate tapes even if it means delaying the Watergate cover-up trial.

St. Clair told reporters that he felt the constitutional issues involved "ought to be carefully considered" first by the U.S. Circuit Court of Appeals here.

The Supreme Court, meanwhile, announced that the White House will respond formally by Thursday to Watergate Special Prosecutor Leon Jaworski's attempts to have the high court consider the case out of turn.

At issue is Jaworski's subpoena for the tapes and any other records of 64 White House conversations, almost all of them involving Mr. Nixon.

Pressing for an immediate constitutional confrontation, Jaworski appealed directly to the Supreme Court on Friday in an effort to force the President to surrender the evidence for the Watergate cover-up trial of seven of Mr. Nixon's former top aides and campaign advisers.

Jaworski predicted that the trial, now set for Sept. 9, would have to be delayed until the spring of 1975 unless the Court of Appeals can be bypassed.

In a quick followup to Jaworski's petition, the Supreme Court said yesterday that it had asked St. Clair for a

See SUBPOENA, A6, Col. 1

SUBPOENA, From A1

Clair had promised it "by Thursday."

The justices have a conference each Friday. A decision on whether they will grant review and agree to consider the merits of the case could come then.

The court's brief announcement also indicated that Associate Justice William H. Rehnquist has decided to disqualify himself from any rulings on the issue. The court said Rehnquist "took no part" in the request to St. Clair.

The court gave no reason for Rehnquist's decision, but he had told a group of students last year that he probably would not participate in any cases involving former Attorney General John N. Mitchell, who is one of the defendants accused of the cover-up conspiracy. Rehnquist was an assistant attorney general under Mitchell when President Nixon appointed him to the Supreme Court in the fall of 1971.

Officially, the new tapes dispute is still before the Court of Appeals.

U.S. District Court Judge John J. Sirica ordered the President last week to surrender the records of all 64 conversations for his private inspection. He said Jaworski had made a sufficiently compelling case at secret court hearings to warrant their production.

Mr. Nixon's lawyers went to the Court of Appeals Friday afternoon with a sealed petition asking that the President's claim of executive privilege be upheld and that Sirica be directed to vacate his order. Jaworski leapfrogged the move an hour later by asking the Supreme Court to take over under rules governing cases of "imperative public importance."

In remarks to reporters at the U.S. courthouse here yesterday, St. Clair confirmed that the White House would protest immediate Supreme Court review. Reminded that the President had said months ago that "one year of Watergate is enough," St. Clair replied:

"As far as these cases are concerned, they raise constitutional issues that ought to be carefully considered by the courts. And I think that it would be appropriate that these matters not be shortcutted."

St. Clair said he did not know whether this would delay the Watergate cover-up trial, but when reminded of Jaworski's statements that it would, the White House lawyer replied:

"So be it. There is still an important constitutional issue that must be resolved and resolved properly."

Jaworski contends that the Court of Appeals settled essentially the same issues before it when it ordered Mr. Nixon last fall to surrender the records of nine Watergate conversations for the Watergate grand jury here. Speaking of the 64 conversations at issue this time, the prosecutor said that he has already shown Judge Sirica probable cause to believe that the discussions, all but one of them involving Mr. Nixon, occurred in the course of a "criminal conspiracy."