

High Court Agrees To Hear Tape Case

Summer Ruling Expected

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The Supreme Court yesterday granted Watergate Special Prosecutor Leon Jaworski's plea for prompt review of President Nixon's claim of executive privilege for White House tape recordings and documents.

In an action it reserves for cases "of imperative public importance," he justices bypassed the U.S. Court of Appeals and set an expedited schedule for briefs and set oral arguments for July 8.

Only five previous times in history has the court broken with its tradition of concluding its term in June in order to hold emergency summer hearings. Those occasions, too, were moments of national crisis.

White House lawyers, who had told the court that "normal channels of appellate review" would suffice despite the delay they would cause in the Watergate cover-up conspiracy trial, were rebuffed by the court's move.

A final ruling, which could influence the entire course of impeachment proceedings, could come any time this summer and undoubtedly will be issued well in advance of the Sept. 9 trial date for seven former high Nixon administration and campaign officials.

The case started toward the high court May 20, when U.S. District Court Judge John J. Sirica decided to enforce a subpoena for recordings and documents of 64 Watergate-related White House conversations. If the Supreme Court upholds his ruling, President Nixon would be forced to answer the question—now termed too "hypothetical"

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by counsel James D. St. Clair—of whether to obey or defy the Supreme Court.

In keeping with custom, the court's three-paragraph order did not identify which justices voted in Jaworski's favor, but at least four votes were required under court rules. With Justice William H. Rehnquist announcing that he was not participating, four votes is all Jaworski needs to affirm Judge Sirica. President Nixon cannot win unless he persuades five of the eight sitting justices.

The court called for filing of the first round of legal briefs by 1 p.m. on June 21 and for any responses by July 1, with a two-hour oral argument to follow one week later.

This schedule met a major part of St. Clair's objection to a "rush to judgment" when the court, "in the closing days of a busy term" is already "under grueling pressure to complete its action on difficult cases argued months before."

More than 50 cases, some of them very complex and important, remain to be decided in the term, which

normally would end in three or four weeks. Thus the justices will be clearing their docket while the lawyers on both sides are doing the careful preparation and writing of legal briefs that the White House said the case requires.

Rejection of Jaworski's petition for prompt review would have handed the case back to the Court of Appeals, where the President's lawyers took the case a week ago. Delay at that level would have stalled a Supreme Court showdown until midsummer at the earliest. Jaworski said that in turn would force postponement of the conspiracy trial until sometime in 1975.

Even a speedy affirmation of Judge Sirica's ruling could leave the judge and opposing counsel hard-pressed to make the September trial date. Under the judge's order he must screen the evidence to decide what should be turned over to the prosecution and defense. Further appeals from such pretrial rulings are also possible.

Yesterday's order was issued several hours after Senate Majority Leader Mike Mansfield (D-Mont.) released a letter to Chief Justice Warren E. Burger urging the court to skip its usual summer recess to be "at the ready" to handle "Watergate and related matters" that might arise.

Traditionally the high court has discouraged lawyers from attempting to bypass intermediate federal courts, preferring to have the benefit of the research and opinions of appellate judges. Jaworski said the appellate judges here already have written lengthy opinions on the subject of executive privilege.

The bypass technique was employed in some of the court's most famous cases—to strike down key New Deal legislation, to consider and reject the habeas corpus petitions of World War II Nazi saboteurs, to settle the postwar national coal strike, and to declare unconstitutional President Truman's seizure of steel mills during the Korean War, and in other critical legal disputes.

Even rarer is the special summer hearing. Special terms of court have been held four times and in 1957 the court extended its term to decide whether the Defense Department had the right to turn an American serviceman over to Japanese authorities to be tried for murder. (The court upheld the turnover.)

The special terms were held in 1942 for the Nazi saboteur case; in 1953 to overrule Justice William O. Douglas' stay of execution for convicted atomic spies Julius and Ethel Rosenberg; in 1958 during the school desegregation crisis at Little Rock, Ark., and in 1972 when the justices blocked enforcement of lower court orders on the seating of delegates at the Democratic National Convention.