

# Supreme Court Told Nixon Is 'The Final Authority'

WASHINGTON (AP) — President Nixon's lawyers told the Supreme Court Friday that he is "the final authority" as to what presidential materials may be used in the Watergate case or other prosecutions.

Special prosecutor Leon Jaworski countered that Nixon's claim, if upheld, would allow the President "to accomplish indirectly what he cannot do directly: secure the abandonment of the Watergate prosecution."

The arguments were made in 318 pages of briefs, which traced the basis for the President's claim of executive privilege throughout American history and as far back as the Greek philosopher Aristotle.

The papers were filed a few hours before the deadline set by the court.

It will hear oral arguments July 8 in a review of District Judge John J. Sirica's order directing Nixon to surrender tapes and documents involving 64 White House conversations.

Sirica wants to examine the material to see if it should be turned over to the special prosecutor for use in the trial of six men, including former close associates of the President, charged in the Watergate cover-up. The trial is scheduled to start Sept. 9.

The two sides agreed that Sirica's order is subject to appeal, a question which the court

had asked them to discuss.

Such an order ordinarily could not be appealed unless the person to whom it was directed had refused to obey it and been held in contempt of court.

"Although it is an open question whether the President is legally and constitutionally subject to citation for contempt of court, no one would question that such a course would be radical and ... should be avoided if at all possible," Jaworski wrote.

The presidential attorneys said the order must be overturned or "the constitutional balance would be altered in ways that no one alive today could predict or measure."

Nixon's lawyers said the court process was being used as a "tool for the impeachment proceedings" being conducted by the House Judiciary Committee.

"This is so because of the particular relationship which has evolved among the special prosecutor, the district court and the House Judiciary Committee," they wrote.

"The President is not subject to the criminal process whether that process is invoked directly or indirectly," his lawyers argued.

Their argument relied heavily on the doctrine of separation of powers, which they said "is

deeply rooted in the history of political theory, finding its early expression in the works of Aristotle."

"The whole Watergate problem has illustrated how truly complex the right decision can be," the Nixon attorneys said. "It is thus all the more necessary that a president have the ability to freely discuss issues, think out loud, play the devil's advocate and consider alternatives, free from the threat that a probing statement will one day form the basis for an allegation of criminal liability."

The President's lawyers called the action of the Watergate grand jury in naming him as an unindicted co-conspirator in the cover-up "nothing less than an attempt to nullify the presumption of innocence."

Jaworski said it would "stand the Constitution on its head" to rule that the doctrine of separation of powers give the President authority to withhold the material.

"The framers of our Constitution, concerned as they were about the abuses of royal prerogative, were very careful to provide for a presidency with defined and limited constitutional powers and not the prerogatives and immunities of a sovereign," he told the court.

"Under our Constitution, the people are sovereign, and the President, though chief executive and chief of state, remains subject to the law."