

St. Clair Contends Nixon *F.P. 7/2/74* Is Entitled To Immunity

WASHINGTON (AP) — Citing the spectre of "a President exercising his great powers from a jail cell," White House lawyer James St. Clair argued Monday that the chief executive is entitled to immunity from judicial orders.

On a brief filed with the Supreme Court, St. Clair declared that President Nixon is not only the head — but the embodiment — of the co-equal executive arm of government.

And, "If he could be enjoined, restrained, indicted, arrested, or ordered by judges, grand juries or marshals, these individuals would have the power to control the executive branch," St. Clair wrote.

But special prosecutor Leon Jaworski countered in a later brief that there is nothing in the Constitution to exempt an incumbent President — even from indictment.

As for the issue at hand, Jaworski said the White House should be ordered to turn over evidence for the Watergate cover-up trial because "The grand jury has already found reason to believe that crimes — involving the President — have been committed and the tape recordings have been found to be material to the guilt or innocence of defendants already indicted."

The high court will hear oral arguments next Monday in the dispute over Jaworski's subpoena for the evidence.

Jaworski, in his brief, also took issue with St. Clair's contention that the Watergate grand jury exceeded its powers in naming Nixon an unindicted co-conspirator in the cover-up.

"It is regrettable that the thrust of the evidence in the grand jury's view encompasses an incumbent President, but it would not be fair to our legal system or to the defendants and other unindicted co-conspirators to blunt the sweep of the evidence by excluding one person, however prominent and important, while identifying all others," said Jaworski.

St. Clair argued that "The President is not merely an individual, to be treated in the same way as any other person who has information that may be relevant in a criminal prosecution."

He cited an 1867 decision in which the Supreme Court declared that "the President is the executive department of government."

"The central idea of the Constitution is the distribution of powers among the separate branches ... the presidency cannot function if the President is preoccupied with the defense of

a criminal case, and the thought of a President exercising his great powers from a jail cell boggles the mind."

St. Clair said Nixon's claim of executive privilege is "based squarely on the Constitution."

For this reason, he said, it should not be compared as Jaworski has done, with the late President Harry S. Truman's assertion of executive power in seizing struck steel mills during the Korean War.

In that case, he said, the Supreme Court held that Truman's action "exceeded all expressed and inherent power of the presidency."

U.S. District Judge John J. Sirica has ordered Nixon to surrender material relating to 64 presidential conversations for possible use as evidence in the trial of six men charged with trying to cover up the Watergate scandal. The six, including former close associates of the President, are scheduled to go on trial Sept. 9.