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Nixon's Supreme Court Case Will Use Over 200 Court Precedents

WASHINGTON (AP) — Watergate issues will be argued before the Supreme Court for the first time Monday against a background of legal precedents ranging from the trial of Aaron Burr to an airplane crash in Georgia.

There are several distinct but related issues, revolving around the claim of Nixon's attorneys that a U.S. president, while not above the law, is "not treated by the law in the same fashion as are others."

In briefs filed with the Supreme Court, attorneys cited more than 200 previous court decisions, ranging in time from the early 19th century to last month.

One is an 1807 case in which Burr, a prominent political figure of the day, sought a letter written to President Thomas Jefferson which he believed would help him in trials on treason and misdemeanor charges. Although Chief Justice

John Marshall held the president subject to the subpoena, Jefferson responded with only an edited version of the letter.

Jaworski cited a 1951 decision of the Supreme Court in a case arising out of the death of three civilians in the crash of a B29 bomber near Waycross, Ga., in 1948. The plane was being used to test secret electronic equipment.

Families of the three men sought to obtain the Air Force's official accident investigation report, but the government argued that "department heads have power to withhold any documents in their custody from judicial view."

The court disagreed, saying that "judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers."

Nixon said in a case last year he would comply with a "definitive order" of the Supreme Court on production of tapes.

Presidential spokesman Gerald L. Warren has declined to clarify this statement while the case is pending in the high court.

At the heart of the dispute is the constitutional doctrine of separation of powers among the executive, legislative and judicial branches. Nixon contends this doctrine gives him the executive privilege to refuse to supply subpoenaed material relating to internal workings of the executive branch.

A similar question came up last year when Sirica ordered Nixon to produce other White House tapes for submission to the grand jury investigating charges that White House officials tried to block investigation of the Watergate burglary.

At that time, the Court of Appeals ruled that the doctrine of executive privilege had to be presumed to be valid unless those seeking the material could show a "unique and com-

elling need" for it.

The court also ruled that the then special prosecutor, Archibald Cox, had shown such a need.

Instead of appealing this decision further, Nixon set the wheels in motion for the dismissal of Cox. After the special prosecutor was fired, and amid a storm of controversy over this action, the President agreed to respond to the subpoena.

White House officials later reported that two of the conversations could not be found on the tapes, one definitely had never been made and one had an 18-minute gap in it.

Nixon's attorneys contend the appeals court ruling doesn't apply to this case, since it involves a trial instead of grand jury proceedings. They also argue that Jaworski has not shown a "unique and compelling need" and has not satisfied a federal court rule.