

# Court Told It Can't Force F.P.O. 7/9/74 Nixon To Disclose Tapes

WASHINGTON (AP) — The Supreme Court cannot force President Nixon to disclose Watergate conversations even if they demonstrate criminal acts, Nixon's lawyer told the justices Monday.

Presidential attorney James D. St. Clair argued that only the Congress, through impeachment, has the power to bring criminal charges against Nixon. The judiciary should not be drawn into that process, he asserted.

St. Clair and special prosecutor Leon Jaworski fought the issues of executive privilege and presidential power before the eight questioning justices and a packed courtroom.

It was the first time, in a case that is titled "The United States of America vs. Richard M. Nixon," that the Watergate scandal had reached the nation's highest court.

In three hours of debate, Jaworski cast the argument in the narrow terms of a prosecutor seeking vital evidence for trial, while St. Clair put it in the broad scope of impeachment proceedings with political overtones.

The court gave no sign about when it will decide the case and its two key questions: whether Nixon must obey a lower court order to give up tape recordings and other records of 64 presidential conversations, and whether the Watergate grand jury had the right to name Nixon as an unindicted co-conspirator in the Watergate coverup.

Jaworski has subpoenaed the tapes as evidence in the cover-up trial of six former White House aides, including Nixon's two closest advisers, H.R. Haldeman and John D. Ehrlichman. U. S. District Judge John J. Sirica has ordered the President to turn over the tapes for his private inspection to determine what should be provided the prosecutor for the trial beginning Sept. 9.

At one point Justice Lewis F. Powell Jr. asked St. Clair, "what public interest is there in preserving secrecy in relation to a criminal conspiracy?"

"A criminal conspiracy is only criminal after it is proven to be criminal and we are not at that point yet," St. Clair replied.

St. Clair said the President must preserve the confidentiality of his office so he may receive "free and untrammelled information" about, for example, the selection of judicial nominees.

Justice Thurgood Marshall asked whether St. Clair would claim executive privilege protects the records of a hypothetical bribery deal between a President and a judicial nominee.

"I would think that could not be released," St. Clair said, adding that a President could be impeached for such wrongdoing.

"How are you going to impeach him if you don't know about it," Marshall retorted.

The President's attorney did not directly reply, and that ended the exchange.

All of the eight, black-robed justices asked questions of St. Clair and Jaworski.

The courtroom's only vacant seat was the high black armchair assigned to Justice William H. Rehnquist. He removed himself from the case, presumably because he held a policy-making Justice Department job during Nixon's first term.

Chairs in the aisle stretched the mahogany-and-marble hearing room's normal capacity to more than 300 seats accommodating lawyers, newsmen and members of the public.

Some waited in line through the weekend to insure seats. Haldeman was one of the spectators.

In rebuttal to St. Clair's argument, Jaworski's associate, Philip A. Lacovara, asserted, "A prima facie showing can be made that these conversations were not in the lawful conduct of public business, but in furtherance of a criminal conspiracy to defraud the United States and obstruct justice."

The subpoenaed conversations took place during three days of April 1973 at a time

when the Watergate cover-up was unraveling.

Defining the case as "a criminal proceeding against six defendants," Lacovara said, "It's really the obligation of the prosecutors to present all available evidence."

St. Clair devoted much of his time to the argument that the court has no right to intervene while the impeachment inquiry is proceeding.

"The special prosecutor is drawing this court into that proceeding inevitably and inexorably," St. Clair stated. "No one could stand here and argue with any candor" that the court's decision would have no impact on impeachment, he added.