

Nixon Ordered To Yield Tapes

F.P. Pool
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WASHINGTON (AP) — A unanimous Supreme Court said Wednesday that President Nixon must yield White House tapes and papers wanted by the Watergate prosecutor and the President said he would comply in all respects with the order.

By an 8-0 vote, the high court said Nixon's claim to executive privilege was valid in principle but must give way to the necessities of criminal justice which had a stronger constitutional claim.

Eight hours after the high court's decision, presidential lawyer James D. St. Clair said in a nationally broadcast announcement from the Western White House in California that Nixon had ordered that "compliance begin forthwith."

"While I am of course disappointed in the result," Nixon said in a statement read by St. Clair, "I respect and accept the court's decision. I have instructed Mr. St. Clair to take whatever measures are necessary to comply with that decision in all respects."

Some Republican members of the House Judiciary Committee, which is debating impeachment articles against the President, called immediately for a postponement of any final vote until the new materials are made available to the committee.

But the Democratic committee leadership announced it intended to go ahead with the hearings.

Although past tapes delivered to the special Watergate prosecutor have been forwarded to the Judiciary Committee at the request of a federal grand jury, there is no guarantee the new materials also would be turned over.

The House Judiciary Committee wants some of the tapes for its own inquiry but Jaworski has no authority to turn them over. Chairman Peter W. Rodino Jr. said the decision would not postpone the committee's debate.

Reacting to the court deci-

sion, Sen. Barry Goldwater, R-Ariz., and several other conservative senators said if Nixon failed to comply, it would hurt him badly in his fight to avoid impeachment.

Jaworski indicated outside the court that he felt the decision was definitive enough to require obedience, saying he was particularly pleased it was unanimous "because that doesn't leave any doubt in anybody's mind as to what the law is."

The court also seemed to be signaling something of the same message. Unlike other recent important decisions, it issued only one document on behalf of all participating justices with no separate concurring opinions to cloud the issue.

All eight justices participating in the case voted for the decision, written and read from the bench by Chief Justice Warren E. Burger, a Nixon appointee to the court. Justice William H. Rehnquist did not take part in the case.

Reading in an unemotional, steady tone, Burger acknowledged the gravity of the situation but said this was one of those rare times in history when the court, and the court alone, must decide where powers reside among the branches of government.

Citing the court's 1962 ruling on apportionment of state legislatures, Burger said the Nixon case also contained "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

In his oral arguments before the court, St. Clair had said

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Nixon was willing to submit the question to the court "for its guidance and judgment with respect to the law" but that "the President, on the other hand, has his obligations under the Constitution.

The court swept aside this claim, declaring "it is emphatically the province and duty of this court to say what the law is with respect to the claim of privilege presented in this case."

"In the performance of assigned constitutional duties each branch of the government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others," Burger said.

However, the court noted that since the historic 1803 Marbury vs. Madison case, the Supreme Court has held that it is its right and duty to interpret the Constitution in its final analysis.

"Notwithstanding the deference each branch must accord the other, the judicial power of the United States vested in the federal court by Article III Section 1, of the Constitution can no more be shared with the executive branch than the chief executive, for example, can share with the judiciary the veto power, or the Congress share with the judiciary the power to override a presidential veto," the court said.

"Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government."

The judges refused to rule on a question raised by the President, whether the Watergate grand jury exceeded its authority as naming him as an unindicted co-conspirator. The court said it "improvidently granted" the President's petition to de-

cide the issue, indicating it should not have considered the case.

The justices said they sympathized with Nixon's desire to preserve the right to receive confidential and candid advice, without the chilling prospect of it later being publicized.

"A president and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately," the court nodded. "These are the considerations justifying a presumptive privilege for presidential communications.

"The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

The court observed that nowhere in the Constitution is there any explicit grant of executive privilege but conceded that insofar as is reasonably needed for the discharge of a president's duties it "is constitutionally based."

"On the other hand," the court said, "the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts.

"A president's acknowledged need for confidentiality in the communications of his office is general in nature, whereas the constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication of a particular criminal case in the administration of justice.

"Without access to specific facts a criminal prosecution may be totally frustrated."

Moreover, Burger wrote, the limited review of selected materials by a federal judge in this case and use of some of them by the prosecutor would not seriously impair Nixon's need for confidentiality in any legitimate sense.

"We conclude that when the grounds for asserting privilege as to subpoenaed materials sought for use in criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice," the court said.

"The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial."

"Neither the doctrine of separation of powers nor the need for confidentiality of high-level communications ... can sustain an absolute, unqualified presidential privilege of immunity from judicial process under all circumstances," the court said.

The court recognized the constitutional right of Nixon or any president, to the privacy necessary for making important decisions. But it said these rights must be carefully weighed against other constitutional commands and exercised within strict bounds.

The decision has the effect of ordering Nixon to turn over tapes and records of 64 White House conversations for possible use in the Watergate cover-up trial scheduled to start in U.S. District Court here Sept. 9.

The tapes cover conversations from June 20, 1972, a few days after the Watergate break-in, to June 4, 1973, the

day Nixon listened to several earlier tapes.

At the Western White House in San Clemente, Calif., Press Secretary Ronald L. Ziegler had no immediate comment. He said Nixon and his attorney were meeting to review the situation.

Special Watergate prosecutor Leon Jaworski, whose petition to the high court had brought the landmark ruling, said he expected the White House to comply and begin delivering the materials in the next few days.

The President has insisted that he has the authority and duty under the Constitution to

decide his constitutional role and should have final say over whether he should give up any confidential communications.

As late as Monday night, presidential lawyer James D. St. Clair said Nixon had not yet decided whether he would follow a Supreme Court demand to turn over the tapes.

As St. Clair had argued before the high court on July 8, the question has important implications for the impeachment proceedings in Congress, since several congressmen have said defiance of the court would constitute strong impeachment grounds.