



Burger's 41-Day Ordeal Told; Early Doubt on Nixon

Special to The New York Times

WASHINGTON, Aug. 5 — A spokesman for the Supreme Court described today the 41 straight days of work put in by Chief Justice Warren E. Burger on the case of President Nixon's tapes and, in the process, indicated that the Chief Justice had proposed Mr. Nixon's position starting immediately after the case was argued.

There have been many reports to the contrary, including reports that Justice Burger tried hard but unsuccessfully to get a number of the other Justices to go along with him in support of Mr. Nixon's asserted right to withhold the tapes from Special Prosecutor Leon Jaworski.

Barrett McGurn, the official spokesman for the Court said, however, that when the Jus-

tices met on July 9, the day after the oral argument in the case, it was decided that the Chief Justice should write the opinion.

A Different Procedure

Under normal Court procedure, the justices discuss their tentative views after hearing the arguments, and two Justices who had opposing views are assigned by the Chief Justice to draft opinions on each side. The Chief Justice can and often does assign himself to write opinions.

After the two conflicting opinions are written, the Justices confer again and no one is held to the position he tentatively took at the first conference on the case.

Ordinarily, what the Supreme Court Justices do in their conferences is kept entirely secret, and Mr. McGurn protested that he was not "pen-

trating the conference" with his comments.

He noted, however, that the Court's published schedule of meetings discloses that there was no conference of the Justices held between July 9 and July 23. The latter date was the day before the opinion was handed down, in the tapes case, *Nixon v. United States*, which is far too late to start writing an opinion.

Therefore, Mr. McGurn said, "it is obvious that the opinion was assigned to the Chief Justice on July 9."

Chief Justice's Work

Mr. McGurn would not state whether anyone was ever assigned to draft an opinion upholding the President's position.

The Chief Justice's 41 straight days of work, Saturdays and Sundays included, began before the oral argument, Mr. McGurn said, as the Chief Justice read

the briefs and petitions in the case.

He often worked from 8 o'clock in the morning until midnight with his two law clerks, Timothy Kelly, who just started the job, having just graduated from the University of Minnesota Law School, and Kenneth Ripple, a University of Virginia Law School graduate, who is beginning his second year with the Chief Justice.

The three men often worked without every leaving the Chief Justice's office, eating a picnic lunch that was generally prepared by Mrs. Burger.

The cleaning crews for the Court were permitted to enter the room only once a week, a day on which all the papers related to the tapes case—and to the Detroit school busing case, which simultaneously faced the Court—were locked away.