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Privilege Issue

Supreme Court Agrees to Hear Tapes Appeal

Washington

The Supreme Court yesterday ordered a special mid-summer hearing on President Nixon's right to withhold Watergate tapes subpoenaed for the upcoming conspiracy trial of his former aides.

In a brief order released after their regular Friday conference, the justices granted the special Watergate prosecutor's request that they take the case away from the U.S. Court of Appeals here and decide it on a speeded-up basis.

Prosecutor Leon Jaworski had told the justices that letting the case travel the normal route, through the appeals court and then up to the high court, would delay until next spring the trial of seven former presidential aides on coverup charges. The trial is scheduled to open September 9.

The justices' action was a setback for President Nixon, who had opposed an expedited review. His lawyers had argued that the case required more careful deliberation.

A high court ruling against the President could set off a constitutional battle of the greatest magnitude. Mr. Nixon's Watergate counsel, James D. St. Clair, has declined to say whether the President would comply with a definitive order from the court.

As is customary when the high court grants review, there was no announcement of how individual justices voted.

Only four votes are needed to get a case heard.

The order directed the parties to submit their briefs by June 21, with written responses due July 1. The court set July 8 for oral arguments. Each side was assigned an hour for its presentation—twice the time normally allotted attorneys.

Jaworski overcame the justices' well-known distaste for hurried review.

They sometimes deliberate for nine months on an appeal and ordinarily would have recessed for the Summer on June 17.

But there was great pressure on them to resolve the tapes issue now, for a postponement would have meant the case could not have come up for review again until the high court reconvened in October.

In deciding to bypass the appeals court, the justices invoked a rarely used procedure that permits direct appeals of cases that are "of such imperative public importance as to . . . require immediate settlement."

The last case to be heard under this procedure was a challenge of President Har-

Back Page Col. 1

From Page 1

ry S. Truman's seizure of the steel mills in 1952.

The current dispute began with Jaworski's subpoena of 64 Watergate tapes from Mr. Nixon for use as evidence at the coverup trial of H. R. Haldeman, John D. Ehrlichman, John N. Mitchell and four others.

On May 20, U.S. District Judge John J. Sirica upheld the subpoena and ordered the President to submit the tapes to the court so Sirica could screen them in his chambers and give what he considered relevant sections to Jaworski. The President then appealed to the circuit court.

The case will be decided by an eight-man court. Justice William H. Rehnquist has disqualified himself, ap-

More Nixon news
on Pages 6 and 7.

parently because as an assistant attorney general from 1969 to 1971, he worked directly for Mitchell and developed a close friendship.

Chief Justice Warren E. Burger, who signed yesterday's order, will participate in the case, it appears. Some lawyers have suggested that Burger, who will preside over the Senate trial if Mr. Nixon is impeached, should disqualify himself to avoid any suggestion of bias.

A decision by the justices, expected by the end of July, will probably settle the long debate over the doctrine of executive privilege, which Mr. Nixon has invoked peri-

odically to shield documents and tapes.

If the justices accept a jurisdictional argument made by the President's lawyers, they could avoid a definitive ruling on executive privilege. That argument is that Jaworski, as a presidential employee, has no right to take Mr. Nixon to court. According to this view, the dispute is only a family squabble within the executive branch and the courts have no jurisdiction.

The high court's decision to hear the tapes case came only hours after Senate majority leader Mike Mansfield (Dem-Mont.) asked the justices to forego their usual three-month summer recess because of the "troubled times" and the pending Watergate appeal.

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