

# SUPREME COURT AGREES TO DECIDE NOW IF NIXON CAN WITHHOLD EVIDENCE

## JAWORSKI VICTORY

### Ruling on Plea for 64 Tapes Possible by Middle of July

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WASHINGTON, May 31—The Supreme Court agreed today to decide quickly whether President Nixon can withhold evidence of possible crimes from the Watergate special prosecutor, Leon Jaworski.

Intervening in the historic case for the first time, the Justices voted to let Mr. Jaworski bypass the United States Court of Appeals for the District of Columbia Circuit in an effort to resolve the critical legal issue swiftly. Only yesterday, the White House urged the high court not to "rush to judgment" by accepting the case now.

#### Decision a Surprise

The Court laid down a timetable that could lead to a decision by mid-July. The special prosecutor had argued that he needed the 64 tape recordings that the President had refused to surrender as evidence in the Watergate cover-up trial, now scheduled to open in September.

Today's ruling could also have the practical effect of making large amounts of fresh evidence available for possible use in the House impeachment proceedings. If the Court had not agreed to review the case now, a final decision on the availability of the tapes might not have been reached until the impeachment procedure had been completed.

The decision surprised a number of lawyers and politicians who had thought the Supreme Court would be reluctant to invoke this special accelerated procedure—used only a half-dozen times in the nation's

history—to advance a trial date by some six months, no matter how important the trial.

#### New Charge Possible

As is customary on decisions to accept a case for argument and decision, there was no announcement of the vote. Under the Court's rules, however, a minimum of four Justices must have voted, in the closed conference that ended shortly after 3 P.M. today, to take the case.

Dean Burch, White House counselor, told reporters a little later, "We will file our briefs and make our arguments at the appropriate time." He declined, as have other White House officials in recent days, to predict whether the President would obey the final Supreme Court ruling.

When the earlier case involving subpoenaed White House tapes was in the Federal courts last year, Mr. Nixon said that he would abide by a "definitive" decision of the high court, but he never defined "definitive" or indicated whose definition he would accept.

If the President loses his case

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in the Supreme Court and then refuses to obey the Justice's ruling, he would be inviting another charge in the proposed bill of impeachment now being drafted by the House Judiciary Committee's staff.

Associate Justice William H. Rehnquist did not participate in today's decision, having disqualified himself without explanation, as Justices do from time to time when they feel their participation in a case might not be entirely unbiased.

Before he joined the Court, Mr. Rehnquist served in the Justice Department under Attorney General John N. Mitchell, who is one of the defendants in the Watergate trial for which Mr. Jaworski is seeking further evidence. As head of the Office of Legal Counsel, he was known informally as "the President's lawyer's lawyer."

With Mr. Rehnquist not participating, a 4-to-4 decision by the Justices could result from their attempting to resolve the controversy between the President and the special prosecutor. In that event, the lower court's

decision against the President would stand.

The Court's order, signed by Chief Justice Warren E. Burger, was written in four sentences. It was released about a half hour after the conference closed. Normally, decisions reached in the Friday conference are not announced until the following Monday morning.

By releasing the order today, the Court avoided the possibility that news of the ruling might leak out over the weekend and gave attorneys on both sides of the case two additional days to prepare their briefs. The order read:

"The petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit and the motion for an expedited schedule are granted.

"The parties shall exchange and file briefs by 1 P.M. on June 21, and any responsive brief shall be filed by July 1, 1974. Oral argument is set for July 8, 1974, at 10 A.M. Each party is allowed one hour for argument."

Mr. Jaworski had proposed an even tighter schedule, with briefs filed on June 7, replies on June 14 and oral argument as soon thereafter as the Court workload permitted.

The White House brief filed yesterday opposed this expedited schedule on the ground, among others, that the President's lawyers were involved full time in the impeachment inquiry. The Court's timetable will give them more breathing room than Mr. Jaworski's would have done.

Before the Supreme Court as a result of today's decision will be the ruling made on May 20 by Federal District Court Justice John J. Sirica that the

President must turn over 64 White House tapes for use by both the prosecution and the seven defendants in the cover-up trial.

Judge Sirica rejected the two principal White House arguments: that the courts have no authority to limit the scope of executive privilege claimed by a President in refusing to make records public, and that his disagreement with Mr. Jaworski was an "intra-branch controversy" among executive branch officials not reviewable by the judicial branch.

Although many uncertainties remained, it appeared that the Supreme Court's decision would probably precede by two weeks the opening of debate in the House on impeachment, assuming that the Judiciary Committee votes a bill containing charges.

The Court, its other business disposed of by late June, will probably rule on the tapes case by mid-July. The Judiciary Committee does not expect to get a bill to the floor before early August.

If the Supreme Court reverses Judge Sirica and supports the President's right to withhold the tapes, it would almost certainly make it that much more difficult for the committee or the full House to use any evidence in them. The House can amend on the floor any bill of impeachment approved by the committee.

#### A Separate Proceeding

The trial of the seven men charged with covering up the Watergate burglary of June 30, 1972, is a separate proceeding from the forthcoming trial of five men charged with conspiracy to violate the civil rights of Dr. Lewis J. Fielding, the former psychiatrist of Dr. Daniel Ellsberg, by breaking into his office.

Under ordinary circumstances, Judge Sirica's ruling would have been appealed to the United States Court of Appeals for the District of Columbia, and a motion to that effect was made by the White House a week ago.

But Mr. Jaworski asked the Supreme Court to take the case directly, without an intervening appellate decision, under the high court's rule permitting this procedure in cases of "imperative public importance."

Today's decision appeared to obviate, at least in part, a request by Senator Mike Mansfield to Chief Justice Burger that the Court remain in session through the summer rather than adjourn until Oct. 1 at the end of June.\*

Senator Mansfield, the Democratic majority leader, said that this would avoid "unconscionable delays in consideration of Watergate or related matters." Even if the Court does adjourn after ruling on the tapes case, it is subject to recall to consider any appeal of critical importance.

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