



# Supreme Court And the 64 Tapes

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**B**Y A STRANGE circumstance, the Supreme Court has entered Watergate without the public knowing any details of the case it will review.

The Supreme Court has been addressing itself to the substantive merits of the case as well as the legalistic aspects. So the court's decision to hear arguments next month is a far more serious blow to the President than seems generally realized.

The Supreme Court decision to enter Watergate grew out of a request by Special Prosecutor Leon Jaworski for White House tapes of 64 conversations. All of them figure in the main Watergate case — the charge of conspiracy to obstruct justice.

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**T**HE ARGUMENT as to whether the tapes should be subpoenaed was made on May 13 before Judge John Sirica. Since the argument involved evidence highly prejudicial to the President, Jaworski asked that it be heard in secret. The White House counsel, James St. Clair, joined that petition. Judge Sirica went along.

On May 20, Judge Sirica ruled that the 64 tapes were subject to subpoena. Except for releasing a few excerpts, he kept the pleas which had been made to him the week before under judicial seal. Thus to this day, the public does not know the exact nature of the argument between the White House and Jaworski. All we have are the clues offered by the Sirica decision.

One issue which the Sirica decision identified is the issue of executive privilege. The White House apparently argued that the President could withhold the

tapes as part of his executive privilege. Judge Sirica overruled that claim on the grounds that executive privilege could not cover criminal activities.

A second issue which the Sirica decision identified is the issue of standing. St. Clair apparently argued that since Jaworski was an employee of the President, he had no right, or standing, to come into court against Mr. Nixon. Judge Sirica ruled against that argument on the grounds that it made a farce of the special prosecutor's role.

But there is, aside from executive privilege and standing, a far more potent issue — the issue of relevance. While we do not have the record, the merest surmise makes it certain that Jaworski placed at the heart of his plea to Judge Sirica the claim that the 64 tapes were absolutely essential to a criminal trial of the first magnitude. The White House apparently did not contest that claim.

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**I**N DECIDING when to hear the case of the subpoenas, the Supreme Court probably did not pay much attention to the legalistic arguments which hardly affect the timing of a ruling. The court almost certainly focused on the relevance of the issue to a major case due to come to trial on September 9.

Since the Supreme Court decided to hear the subpoena case in July, the argument of relevance must have been weighty. That means the President is in a bad pickle. Mr. Nixon will either have to defy the court — which would be sure grounds for quick impeachment — or yield up evidence highly relevant to charges that he obstructed justice.