STORIC SESSION

Courtroom Is Crowded for Arguments on Watergate Issue

By WARREN WEAVER JR.

Special to The New York Times

WASHINGTON, July 8—The grim battle between President Nixon and Leon Jaworski, the special prosecutor, over access to possible evidence of the Watergate criminal conspiracy went into its last round today in the Supreme Court.

After three hours of tense argument and persistent legal questioning, eight Justices of the high court reserved decision

Excerpts from the arguments are on Pages 24 and 25.

on two cases that could materially affect the possibility of both President Nixon's impeachment and the conviction of his former aides for concealing the 1972 burglary of the Democratic national offices at the Watergate complex here.

Although the Justices have imposed limits on Presidential authority in the past, no one on either side could recall the Supreme Court's deliberating a criminal case in which the President was not merely involved indirectly but actually accused of participating in a conspiracy.

Courtroom Crowded

As a result, the courtroom was crowded to capacity with more than 400 lawyers, newsmen and spectators. About 200 people had waited in line on the steps of the courthouse overnight and longer, and 136 of them got seats in the chamber to hear the long legal debate.

A decision by the Justices should come within the next few days, probably before the end of next week. But the question of whether President Nixon would obey an adverse ruling remained unresolved after today's hearing.

Asked by Associate Justice

Continued on Page 26, Column 2

NYT

7-9-74

Continued From Page 1, Col. 8

Thurgood Marshall if he was not submitting the Watergate cases to the high court for its decision, James D. St. Clair, the chief Nixon defense counsel, replied, "This is being submitted to this Court for its guidance and judgment with respect to the law."

"The President, on the other hand," he added, "has his obligations under the Constitution."

At the White House, Gerald L. Warren, deputy press secretary, refused once again to say that Mr. Nixon would abide by the Supreme Court's ruling in the dispute, even one that he regarded as definitive.

The basic issue before the high court is whether the President must surrender 64 more White House tape recordings for possible use as evidence in the Watergate cover-up trial scheduled for September. Also at stake is whether the grand jury had the authority to name him as an unindicted co-conspirator.

Maintaining the White House hard-line policy, Mr. St. Clair told the Justices that Mr. Nixon had an absolute right to refuse to make public confidential conversations, even if they related to criminal activity, to preserve "candor in discussions between the President and his aides."

"What public interest is there," Associate Jutice Lewis F. Powell Jr. inquired, "in preserving secrecy wtih respect to a criminal conspiracy?"

"The answer, Sir," Mr. St. Clair said, "is that a criminal conspiracy is criminal only after it's proven to be criminal."

Rehnquist Leaves

Associate Jutice William H. Rehnquist entered the courtroom with his colleagues for the announcement of a single decision but then left. He had disqualified himself from sitting on the Watergate cases, apparently because he served under John N. Mitchell, one of the cover-up defendants, in the Justice Department.

In the course of arguments in support of the special prosecutor, Philip Lacovara, his counsel, disclosed that the Watergate grand jury had named 18 other persons besides President Nixon as unindicted co-conspirators. He did not identify any of the others.

Mr. Lacovara also maintained that the President could not claim executive privilege as the basis of refusing to surrender the tapes because of evidence that "these conversations were not in pursuance of legitimate governmental processes or the lawful deliberation of the public's business."

Mr. St. Clair urged the Justices to reverse the order of Judge John J. Sirica of Federal District Court requiring the President to surrended the tapes on the ground that affirming that ruling would involve the courts in the impeachment process and thus violate the Constitution.

Affirming Judge Sirica, he said, "would involve this Court inexorably in a political process which has been determined by the Constitution to be solely the function of the legisaltive branch."

Offers 20 Tapes

In the course of his argument, the chief White House defense counsel offered to provide Mr. Jaworski with 20 of the 64 tapes sought in the subpoena—those for which edited transcripts have already been made public by the President—as soon as "some method of validating the accuracy of those tapes" has been approved by the Federal district judge.

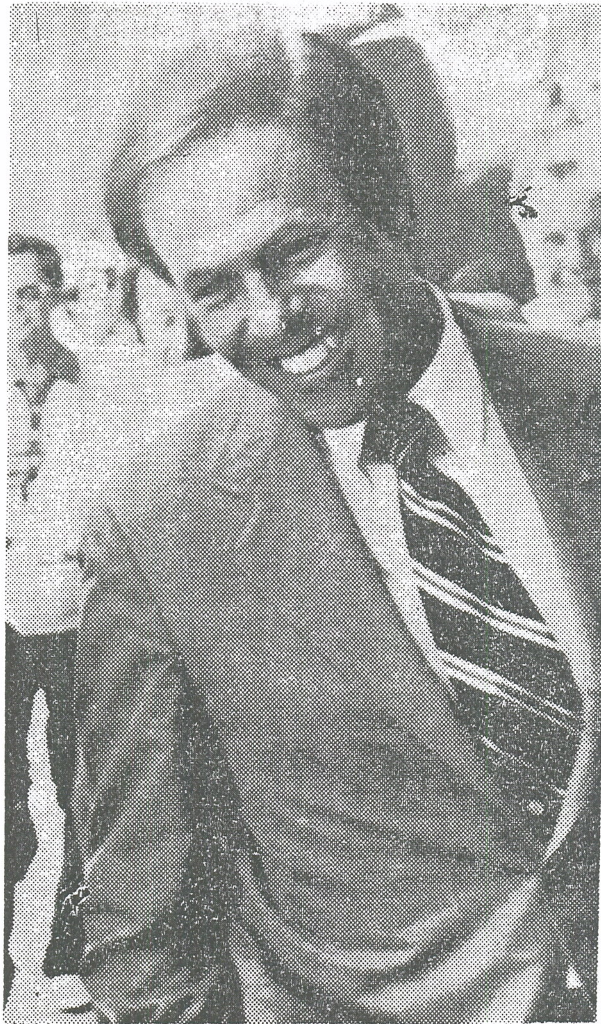
The high-ceilinged, pillared courtroom was packed with an overflow audience of more than 400 lawyers, newsmen and spectators; many of the last had waited in line overnight to get seats. Among those with tickets were Justice Department officials, members of the House Judiciary Committee and H. R. Haldeman, one of the Watergate cover-up defendants.

The basic arguments by Mr. St. Clair and Mr. Jaworski offered few surprises, so the attention of the audience was concentrated on the Justices, the questions they asked and their apparent reactions to the answers.

Among those most closely watched were Associate Justices Potter Sewart, an appointee of President Eisenhower; Byron R. White, was was named to the High Court by President Kennedy, and Lewis F. Powell Jr., one of the four Justices appointed by President Nixon.

With Justice Rehnquist disqualifying himself, these potential "swing" votes appeared likely to play a critical role in decidirg whether the high court would permit President Nixon to retain control of the White House tapes and order his name stricken from the Watergate cover-up indictment.

Mr. Jaworski, a 68-year-old Houston lawyer, spent just under an hour addressing the Justices and attempting to field their questions, followed by Mr. St. Clair for an hour and 20



Associated Press

H. R. Haldeman leaving Supreme Court yesterday

minutes. Then Philip Lacovara, an assistant special prosecutor, responded for 35 minutes, and Mr. St. Clair summed up for another 5.

The special prosecutor concentrated his attack on the President's contention that he alone can decide what White House records are protected by executive privilege and need not be surrendered to provide evidence for a criminal investigation.

"Now, the President may be right in how he reads the Constitution," Mr. Jaworski said in a soft Texas drawl. "But he may also be wrong. And if he is wrong, who is there to tell him so? And if there is no one, then the President, of course,

"In our view," he continued, "this nation's constitutional form of government is in serious jeopardy if the President—any President—is to say that the Constitution means what he says it does, and that there is no one, not even the Supreme Court, to tell him otherwise."

All three attorneys spoke from notes, with the Justices interrupting them frequently with questions, as is their custom. Within the first half-hour of argument, all eight sitting Justices had posed at least one question, and from then on the interrogation was heavy, nearly continuous.

Mr. Jaworski said that the Watergate grand jury had named President Nixon as an unindicted co-conspirator "in order to prove this conspiracy and in order to provide all of the links in the conspiracy," not as part of any effort to advance the Congressional impeachment proceedings.

From their comments, the Justices obviously differed widely as to whether the grand jury's naming of Mr. Nixon was really an integral part of the basic tapes-subpoenas issue at all and whether they needed to deal with it.

Associate Justice William O. Douglas and Justice White questioned the relevancy of the grand jury's action to the issue ow whether the President must surrender the recordings, but Justice Stewart maintained it was "at least tangentially before us."

Associate Justice Thurgood Marshall said that "whether or not they had the authority, they did it." He went on, "It is a fact that the grand jury did it and so I don't see how we have anything to do with whether they had the authority or not."