Court Orders Nixon to Yield Tapes;
President Promises to Comply Fully

Justices Reject Privilege Claim In 8-to-0 Ruling

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The Supreme Court ruled yesterday, unanimously and definitively, that President Nixon must turn over tape recordings of White House conversations needed by the Watergate special prosecutor for the trial of the President's highest aides.

Ordering compliance with a trial subpoena "forthwith," the court rejected Mr. Nixon's broad claims of unreviewable executive privilege and said they "must yield to the demonstrated, specific need for evidence in a pending criminal trial."

The President said he was "disappointed" by the decision but said he would comply. His lawyer said the time-consuming process of collecting and indexing the tapes would begin immediately.

Chief Justice Warren E. Burger delivered the historic judgment in a packed and hushed courtroom. His 31-page opinion drew heavily on both the great cases of the court's past, as well as the pro-prosecution edicts of a court dominated by Nixon appointees.

Only a few times in its history has the court grappled with such large assertions of governmental power. As in most of those encounters, the justices concluded that the judiciary must have the last word in an orderly constitutional system even though its view of the Constitution is "at variance with the construction given the document by another branch."

Brushing aside warnings by presidential lawyer James D. St. Clair that it was in an impeachment thicket, the court handed down its 8-to-0 ruling hours before the House Judiciary Committee was scheduled to open debate on proposed articles of impeachment.

One justice, William H. Rehnquist, disqualified himself because of his previous association with former Attorney General John N. Mitchell in the Justice Department.

The decision itself had implications for the impeachment proceedings. Although the court said it was not concerned with "congressional demands for information," the ruling weakened the White House legal argument against Judiciary Committee subpoenas.

Calls for prompt compliance with the Supreme Court decision came from Congress. A few voices were heard for slowing down the impeachment drive long enough to explore the remote hope that Congress could obtain the tapes from U.S. District Court Judge John J. Sirica or Watergate Special Prosecutor Leon Jaworski.

Jaworski, who has denied St. Clair's charge that his office is a mere conduit of evidence for pro-impeachment forces, was restrained in expressing satisfaction at the ruling. "It doesn't leave any doubt in anyone's mind," he said.

Only one of St. Clair's arguments came close to persuading the justices. The court declared, in its most extensive discussion of the issue to date, that executive privilege is "constitutionally based" even though it is not specifically mentioned in the Constitution.

But while communication between the President and his advisers is "presumptively privileged," the court said that this presumption can be outweighed by the demonstrated needs of the judicial process.

The court recognized a privilege for matters dealing with diplomatic or national security secrets, but stressed that federal judges may inspect such material in chambers in the course of selection evidence the prosecutor should have.

No such security claims have been advanced in the current dispute over subpoenaed tapes and documents covering 64 conversations most of which implicate the President himself in the Watergate cover-up conspiracy, according to Jaworski—between June, 1972, and April 26 of this year.

Any national security arguments must now be advanced directly to Judge Sirica, whose May 20 order to produce the material for his inspection was affirmed in all respects.

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The judge initially gave St. Clair 11 days to produce the original tapes and documents along with an index showing what portions the White House contended were irrelevant, together with copies of 20 tapes for which Mr. Nixon published edited White House transcripts on April 30.

This screening process may consume most of the seven weeks that remain before the Sept. 9 trial of John N. Mitchell, H.R. Haldeman, John D. Ehrlichman and other Nixon confidants. Evidence introduced at that trial would be available to Congress, too late for the scheduled House impeachment vote but in time for a Senate trial if that occurs.

If White House lawyers disagree with any ruling by Judge Sirica on relevance or executive privilege, they are free to attempt piecemeal delaying appeals to the U.S. Court of Appeals, but the high court indicated that the judge's rulings should not be lightly overturned.

St. Clair in a statement last night at the Western White House in San Clemente indicated that collecting and organizing the tapes for submission to Judge Sirica had not yet begun. In a brief statement he told newsmen the process "will begin forthwith."

During the oral argument July 8, Justice Thurgood Marshall suggested that the process should have begun some time ago. St. Clair said he hadn't started because he did not expect to lose the appeal from Judge Sirica's order.

Among the numerous defeats suffered by Mr. Nixon was the high court's decision to ignore St. Clair's contention that the grand jury had no constitutional right to brand the President an unindicted co-conspirator in the cover-up case.

The court said the validity of Judge Sirica's order could be decided without tackling that question, so it dismissed "as improvidently granted" the writ of review it had issuec on that point.

As a result, the White House must go to the U.S. Court of Appeals with its motion to expunge the grand jury's 19-to-0 vote to name the President as a conspirator. The finding will stand in the meantime.

More important than the label of "conspirator" was the indication in Burger's opinion that the evidence at trial may link Mr. Nixon to the alleged conspiracy. If that happens, Mr. Nixon's taped statements are easily admissable as evidence against the defendants. Burger said Judge Sirica did not err in his preliminary, pre-trial estimate that the evidence was admissable and therefore should be produced now.

Burger said the pre-trial test of executive privilege was especially appropriate in this case because, although no President is "above the law," it would be "unseemly" to frame the dispute as a case of contempt for violating a court order.

The impact of the court's decision was increased by the fact that it was delivered by Burger, appointed to the nation's top judicial post by President Nixon.

Equally impressive was the court's unanimity on every issue in the case—a tricky question of the court's jurisdiction, the enforcement of the subpoena under conventional criminal law standards and the merits of the executive privilege controversy.

The issue of jurisdiction, considered by some legal scholars to be St. Clair's strongest point, also raised a storm in Congress over whether the administration had renege don its piedge giving Jaworski independence and the right to take the President to court over disputes on executive privilege.

St. Clair argued that the pledges, contained in published Justice Department regulations, did not and could not guarantee that the courts would have the legal power to decide contests between President Nixon and his executive branch subordinate, Jaworski.

Jaworski replied that this argument would make a "mockery" of his role, which was worked out to prevent a repetition of the "Saturday night massacre" firing last October of his predecessor, Archibald Cox.

Burger easily disposed of St. Clair's argument. He said the unique job security and authority granted to Jaworski under regulations having "the force of law" made the case far more significant than the mere "intra-branch" squabble St. Clair said it was.

Even assuming the President once had the power to order Jaworski fired, Burger said, he denied himself that authority with the regulations. And while "it is theoretically possible" to revoke the regulations, the attorney general "has not done so. So long as this regulation remains in force the executive branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and to enforce it."

This reasoning also appears to mean it was illegal to fire Cox last fall, since a similar regulation was in force then. A decision in U.S. District Court here declaring the Cox firing illegal is currently on appeal.

Although Burger did not mention it, is is widely assumed that any move now to dismiss Jaworski would result in another "firestorm" of protest and hasten President Nixon's impeachment.

Burger said that looking beneath the formal titles of the parties and their formal relationship within the same branch of government, the case was clearly "the kind of controversy courts traditionally resolve," especially since it comes up in the course of a criminal trial in a federal court.

Moving to the propriety of the subpoena under ordinary criminal law rules, Burger said Judge Sirica clearly acted within his powers in finding the requested evidence relevant to the prosecution, probably admissible as evidence and sufficiently specific to avoid being characterized as part of a "fishing expedition."

Burger said Jaworski was able to show where each of the 64 conversations fits into the prosecution's case, aided by White House logs, testimony from last summer's Watergate hearings and grand jury evidence.

Burger said St. Clair's "most cogent objection to the admissibility of the taped conversations" was that they were "hearsay" statements by individuals "who will not be subject to cross-examination," at trial.

It was here that the chief justice appeared to acknowledge that President Nixon could be treated as a co-conspirator for purposes of admitting his statements in evidence, even if the President was correct in contending tha tthe grand jury lacked power to label him a conspirator in a formal vote. Burger said:

"Declaration by one defendant may also be admissible against other defendants upon a sufficient showing, by independet evidece, of a cospiracy among one or more other defendants and the declarant and if the declarations at issue were in furtherance of that conspiracy."

Burger said a blend of deference to the trial judge and to the President was apropriate in handling this delicate question. Trial judges are afforded wide discretion in ordinary cases, he noted, but added that reviewing courts "should be particularly meticulous to insure that the standards" of criminal law have been correctly applied "where a subpoena is directed to a President of the United States."