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Echoes of History Heard In a Pillared Courtroom

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WASHINGTON, July 8—It seemed at times like a constitutional casebook come to life. Marbury v. Madison was not only cited but, for a moment, debated. What exactly had Chief Justice Marshall done in 1803 when he held that the Supreme Court was the ultimate interpreter of the Constitution? Had President Jefferson won or lost . . . ?

The echoes of history were there, and the lucky few hundred crowded into the pillared chamber did not miss them. College students had lined up overnight to be there for what they were sure would be a remembered moment. There also were H. R. Haldeman and five members of the House Judiciary Committee that is conducting the impeachment inquiry.

The Massive Supreme Court building has had its architectural critics; Justice Brandeis, who refused to move into his room when it was finished in 1935, said the Justices would be "nine black beetles in the temple of Karnak." But today, the courtroom's monumental friezes and red velvet and ceiling of red and blue and gold seemed appropriate.

Historic and Informal

The matter was historic, but the manner of the argument was informal, sometimes even folksy. The special prosecutor, Leon Jaworski, spoke in a soft Texas twang as he urged the Justices to exert their power as Chief Justice Marshall had. James D. St. Clair, for the President, had a casual air that removed any edge from his hard counsel that judicial power stopped at the White House.

"I thought it would be different," one person who had never been at a Supreme Court argument remarked afterward. "I thought they would, well, talk Latin or something. It was so . . . ordinary."

But the issues were not ordinary or casual. They were issues of final power in the American system, summarized in one question: Who is to decide whether a President must obey a subpoena, the courts or the President himself?

Mr. Jaworski wanted the Justices to follow Marshall's advice in the Marbury case that it was "emphatically the province and duty of the judicial department to say what the la wis."

Mr. St. Clair was forthright in telling the Court that it had no business in this area. The President, he maintained, had a constitutional power—unreviewable by any court—to determine what evidence to provide a criminal trial.

"The President is not above the law by any means," Mr. St. Clair said, "but law for the President has to be applied in a constitutional way, which is different. It can only be by impeachment."

He even indicated that the President might not comply with a decision of the Court ordering him to produce the subpoenaed tapes and documents. "If he were to comply . . . " Mr. St. Clair remarked at one point in discussing what might happen in future.

In the days of Marshall, arguments were spacious events. aDniel Webster went on for days.

Anyone who expected old-fashioned declamation today must have come away disappointed. The time was short—just three hours and two minutes for the whole argument—and the Justices cut into that with volleys of questions. They had all evidently read the briefs thoroughly and were primed.

Speculation after the argument inevitably focused on what the questions showed of the Justices' minds. Only informed guesses were possible.

One inference drawn by a number of observers was that Mr. St. Clair's main preliminary jurisdictional argument had fallen on stony ground. This was Mr. St. Clair's contention that there was really no case for the Court here because it was just a dispute inside the executive branch, between Mr. Jaworski and his superior, the President.

"Hasn't your client dealt himself out of that argument by what he has done?" Justice Potter Stewart asked. He referred to the regulations giving the special prosecutor broad independence from White House control.