

# Historic Court Ruling

*Legal and Political Implications Wide,  
But Conclusion Is Technically Narrow*

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WASHINGTON, July 24—Five years ago Warren E. Burger was personally chosen by President Nixon for the job of Chief Justice of the United States. Today, Mr. Burger was the author of the Supreme Court's decision ordering Mr. Nixon to turn over White House tapes and records to the United States District Court.

News

Analysis

To most legal observers, there was no inconsistency at all. For the Supreme Court's decision was, more than anything else, a firm and unequivocal reaffirmation of the most basic principles of the American legal system.

It was a restatement of the principle established by the Court in 1803, that the Court was the final arbiter of the meaning of the Constitution. It was a repeat of a promise contained in the Bill of Rights, that defendants would get fair trials and that due process would prevail. It was an explanation of and an insistence upon the constitutional system of separation of powers.

And so, to many lawyers, it was properly and perhaps even necessarily written by the head of the nation's judiciary.

The Court's decision has obvious political implications for Mr. Nixon. If he had decided not to comply, his failure might have been considered grounds for impeachment. Assuming he now hands over the subpoenaed material, it may eventually find its way to the impeachment inquiry, and, if damaging, weaken his case.

President Nixon announced through his lawyer tonight that he would comply with the decision "in all respects." He said he was instructing the lawyer, James D. St. Clair, to proceed at once with all steps involved in processing the subpoenaed material. But those steps may take weeks or even months.

The decision also apparently makes new law: It says that there is a constitutional basis for a privilege for Presidential communications. Lower courts have suggested as much but the Supreme Court has not, until today, made it clear.

The decision has implications for the forthcoming trial the Watergate cover-up case as well.

The subpoena for the tapes and records of 64 White House conversations was issued at the behest of the special Watergate prosecution on the ground that the material was necessary for the trial. Any delay in turning over the material would cause the trial to be postponed.

Also, since some of the material was requested on the ground that it may be "exculpatory"—tending to prove the innocence of a defendant—a refusal to turn it over could have given the defendants a reason to ask that the charges be dropped.

Yet the Court's conclusion is technically a narrow one — "When the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands

of due process of law in the fair administration of justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal case."

The Court is not telling Mr. Nixon he has no right ever to withhold his papers on the grounds that they are privileged; it is telling him he must turn over a certain set of papers and records to Judge John J. Sirica so that Judge Sirica may examine them and see if they should be used in the Watergate cover-up case.

The immediate effect of the ruling is thus not to resolve the Watergate tapes case—that resolution will probably not come for months, because even if Mr. Nixon follows the decision, he may now make "particularized" claims of privilege to Judge Sirica as to specific items in the subpoenaed material.

In the legal battle over the first prosecution subpoena of White House tapes, more than two months elapsed between the basic Court ruling upholding the subpoena against a general claim of privilege and the subsequent ruling by Judge Sirica on the particularized claim of privilege. And in that case, only nine conversations were involved. Here there are 64.

Nor does the Court decision mean that Mr. Nixon must suddenly comply with the House Judiciary Committee's outstanding subpoenas. The case before the Court involved only in the prosecution subpoena.

#### Demonstration on Rules

The immediate effect of today's ruling is to demonstrate that traditional rules of law—and especially, constitutional rules—are to be applied whatever the circumstances.

Chief Justice Burger wrote his opinion in lucid, almost schoolbook style, as if he intended it for the general public rather than the lawyers who are generally the Court's only readers.

As he explained it, the President has a "presumptive" privilege for his confidential communications, based on his need to be able to carry out the duties of his office.

But courts have a duty to give full trials; fair trials are impossible unless relevant and necessary evidence be presented.

In some cases the two competing interests collide. So, Chief Justice Burger wrote, "It is necessary to resolve those competing interests in a manner that preserves the essential functions of each branch."

The President, when faced with a specifically defined and substantial need for some of his communications, does not automatically have to comply. Nor may he automatically refuse. A balancing test is applied.

#### Confidentiality vs. Justice

"The interest in preserving confidentiality is weighty, indeed, and entitled to great respect," Chief Justice Burger said. But, he went on, "The allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic functions of the courts."

Chief Justice Burger is not the only Supreme Court Justice to have rejected flatly the position of the President who appointed him. Tom Clark was an intimate of Harry S. Truman and was Attorney General, under President Truman, but when Mr. Clark was on the Supreme Court and the steel seizure case came up, Mr. Clark wrote a concurring opinion rejecting the Truman plan.

Such votes, in fact are not uncommon, and the phrases Chief Justice Burger used today help explain why. "The manifest duty of the courts," was one, for example, and "our historic commitment to the rule of law" was another.