

NY Times
**HIGH COURT GETS
JAWORSKI APPEAL
ON NIXON TAPES**

**Watergate Prosecutor Asks
Whether Privilege Exceeds
His Need for Evidence**

CONSPIRACY IS ALLEGED

**White House Deliberations
Termed Possible Effort
to Obstruct Justice**

NY Times MAY 25 1974

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Special to The New York Times

WASHINGTON, May 24—
Leon Jaworski, the special
Watergate prosecutor, appealed
to the United States Supreme
Court today for access to 64
recorded White House conver-
sations.

The President participated in
all but one of the conversations.
These conversations, Mr. Jawor-
ski said in his petition to the

*Text of Jaworski's appeal
appears on Page 12.*

Court, occurred in the course of
"the criminal conspiracy"
charged against the seven defen-
dants in the Watergate
cover-up case.

In the petition, Mr. Jaworski
asked the Court to decide the
following question:

"Whether a claim of execu-
tive privilege based on the gen-
eralized interest in the confi-
dentiality of Government delib-
erations can block the prosecu-
tion's access to evidence mate-
rial and important to the trial
of charges of criminal miscon-
duct by high Government offi-
cials who participated in those
deliberations, particularly
where there is a prima facie
showing that the deliberations
occurred in the course of the
criminal conspiracy charged in
the indictment."

Obstruction of Justice

The conspiracy charged in
the indictment includes the ob-
struction of justice.

The Jaworski petition does
not mention President Nixon
as one of the alleged co-con-
spirators. What it says is that
the prosecution has evidence
indicating that conversations
in which Mr. Nixon participated
were "deliberations" that were

carried out in the course of the
conspiracy.

Mr. Jaworski has already
made it clear that he feels a
sitting President should not be
indicted. The law is so unclear,
he has indicated, that an in-
dictment of a President would
be challenged in the courts as
improper, and the resulting liti-
gation on the issue could cause
delay and confusion.

Today's action marked the
first time in the almost two-
year-old Watergate affair that
a case was taken to the Su-
preme Court.

Mr. Jaworski's action jumps
over the United States Court
of Appeals and asks the
Supreme Court to consider the
matter in its current term, us-
ing typewritten briefs if neces-
sary.

Quick Action Urged

Mr. Jaworski said that the
issues at stake were of "im-
perative public importance"
and should be "resolved as
quickly as possible to permit
the trial in the Watergate cov-
er-up case . . . to proceed as
scheduled on Sept. 9, 1974."

Otherwise, he argued, the
trial could not be brought be-
fore the spring of 1975 on
issues "exceedingly important"
to the nation.

Today's action began on
April 16 when Mr. Jaworski
requested the tapes to prepare
the case for trial and to provide
any information possible on the
possible innocence of those
charged in the March 1 indict-
ment.

On May 20, Judge Sirica or-
dered the conversations turned
over.

At the 4 P.M. deadline today
for appealing the case, the

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White House filed a motion
with the Court of Appeals "in
camera," that is, in secret, ask-
ing that the subpoenas be set
aside.

Mr. Jaworski replied an hour
later with a petition for a writ
of certiorari—a request that the
Supreme Court agree to review
Judge Sirica's opinion. It was
filed with the Clerk of the Su-
preme Court, Michael Rodak,
and formally brought the issue
before the Justices.

The Justices can move about
as rapidly as they wish to on
the petition. In theory, at least,
they could decide over the Mem-
orial Day weekend whether
to hear the case and issue a
ruling.

However, such matters are
generally debated at a closed
meeting, called a conference,
and the next one is not sched-
uled until next Friday. Chief

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Justice Warren E. Burger could
call a special conference earlier
or even poll the Justices by
telephone as to their views on
taking the case.

Mr. Jaworski presented the
Court with these questions to
decide:

¶ Whether the President, who
assumed sole personal and phys-
ical control over the tapes,
is subject to an order of the
Court.

¶ Whether a Federal court is
bound by the President's claim
of executive privilege to with-
hold evidence "demonstrably
material" to a criminal trial.

¶ Whether executive privilege
based on the need to keep
Presidential conversations confi-
dential can block access to
evidence, particularly when
there is evidence that those
conversations may have oc-
curred during the course of a
criminal conspiracy.

¶ Whether the claim of ex-
ecutive privilege was waived
by President Nixon when he re-
leased publicly 1,216 pages of
edited transcripts.

Whether the material sought
is relevant to issues in the trial
and would be admissible in evi-
dence.

Critical Dispute

Mr. Jaworski also asked the
Supreme Court, in effect, to
take up the critical dispute that
arose only last Monday between
the special prosecutor and the
President.

That argument was raised by
James D. St. Clair, Mr. Nixon's
chief lawyer, who said that Mr.
Jaworski was an employe of the
President's in the executive
branch of Government, and that
such arguments can only be
settled internally in the execu-
tive branch, not in the courts.

Mr. Jaworski replied that Mr.
Nixon's argument was an at-
tempt to undercut his authority.
He went to the Senate Judiciary
Committee to explain his predic-
ament.

He won from the committee
a resolution supporting him,
and Attorney General William
B. Saxbe said that he would
also support Mr. Jaworski's
position as an independent
prosecutor.

Today, in the petition to the
Supreme Court, Mr. Jaworski
said that this dispute was an
issue that the Court should
hear.

Judge Sirica, he said, had em-
phasized the unique character
of the special prosecutor's of-
fice and "found that there
exists sufficient independence
to provide the Court with a con-
crete legal controversy between
adversary parties and not sim-
ply an intra-agency dispute over
policy."

"Perhaps more fundamen-
tally," Mr. Jaworski told the
Supreme Court, "this case also
presents a question of over-
riding concern to the full
and impartial administration of
justice:

"Is our constitutional system
of government sufficiently re-
silient to permit the executive
branch to establish an independ-

ent prosecutor fully capable of
investigating and prosecuting
allegations of criminal miscon-
duct by officials in the execu-
tive office of the President, and
validly authorized to resort to
the judicial process to secure
physical evidence from the
President himself?"

The Supreme Court stopped
hearing arguments for its cur-
rent term a month ago, but
could set a special hearing
whenever lawyers for both
sides were prepared and then
decide the case in a day or
two, with or without an opinion.

Heavy Court Schedule

If four of the nine Justices
vote to take jurisdiction of the
case, the Court must do so.
But a majority of five is re-
quired thereafter to decide the
case on its merits, assuming
that none of the justices dis-
qualify themselves.

A speedy decision of the Ja-
worski appeal could be slowed
somewhat by the Court's sched-
ule. This is the busiest time
of the year for the Justices. It
is the last month before they
adjourn until October, and some
60 remaining cases must be
decided and opinions written
and handed down.

In a related Watergate mat-
ter, Chief Judge George L. Hart
Jr. of United States District
Court directed former Com-
merce Secretary Maurice H.
Stans to comply with another
special prosecutor subpoena.

The subpoena sought finan-
cial records of Mr. Stans
thought to be among some of
his personal papers. Twenty
file folders of "personal" pa-
pers were turned over to Judge
Hart for examination, and he
ruled that all but three and
portions of three others should
go to the special prosecutor for

his investigation into illegal
campaign contributions.

All but one of the White
House conversations covered
by the subpoena were conver-
sations between Mr. Nixon and,
variously, one or more of four
of his former aides: John W.
Dean 3d, Charles W. Colson,
John D. Ehrlichman, and H. R.
Haldeman. The one exception
was a conversation between
some of these aides in which
Mr. Nixon apparently did not
participate.

Mr. Dean has pleaded guilty
to obstruction of justice and is
expected to be a key prosecu-
tion witness in the cover-up
trial. The three others are defen-
dants in the cover-up case.

The four other defendants
are: John N. Mitchell, Robert
C. Mardian, Kenneth W. Park-
inson and Gordon C. Strachan.