

NYTimes MAY 29 1974
**JUSTICES WILL GET
 WHITE HOUSE VIEW
 ON BID FOR TAPES**

St. Clair Likely to Oppose
 Jaworski's Move to Go to
 Supreme Court Directly
 MAY 29 1974
FAST DECISION AWAITED

Rehnquist Will Not Join in
 Any Decision — Position
 of Burger Is Not Known

By WARREN WEAVER Jr.

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WASHINGTON, May 28—

The Supreme Court announced today that President Nixon's lawyer had agreed to respond within the next two days to the request by the Watergate special prosecutor, Leon Jaworski, for an immediate ruling by the high court on his right to obtain more White House tape recordings.

James D. St. Clair, the President's chief defense counsel, is expected to oppose Mr. Jaworski's attempt to bypass the United States Court of Appeals and carry the issue directly to the Supreme Court. He indicated that he would press for the full judicial process.

"Cases that are concerned with constitutional issues ought to be carefully considered by the courts," he told reporters outside the Federal Courthouse later in the day, "and I think it would be appropriate that these matters not be short-circuited."

The brief statement issued by the Court this morning indicated that a decision whether to take direct jurisdiction of the tapes dispute would be forthcoming soon. With Mr. St. Clair's views in hand, the Justices could decide this preliminary question at their closed conference Friday.

Early Decision Possible

Meanwhile, lawyers for the House Judiciary Committee are drafting a letter warning President Nixon that his refusal to honor subpoenas from the impeachment inquiry might give rise to the conclusion that the President was withholding incriminating evidence, according to officials close to the inquiry.

If the high court agrees to

review Judge John J. Sirica's decision that the President must surrender the tapes, the case could be argued in about three weeks and decided by late June or early July.

The Supreme Court's announcement also indicated that Associate Justice William H. Rehnquist would not participate in any decisions relating to Mr. Jaworski's petition. There was no indication that Chief Justice Warren E. Burger planned any similar action.

The Court's statement, read by Barrett McGurn, the information officer, said merely that

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Justice Rehnquist "took no part" in the invitation to Mr. St. Clair to file a response with the Court. Mr. McGurn declined to explain the reasons for Mr. Rehnquist's decision.

Presumably, however, this means that the Court's most junior member will not vote on whether to review the Sirica decision or, subsequently, on whether to affirm or reverse it.

In the absence of any explanation, there were two theories for Mr. Rehnquist's withdrawal from the tapes case, both involving his service as an Assistant Attorney General in the Justice Department before joining the Court in early 1972.

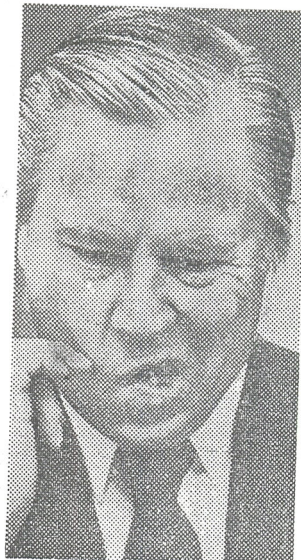
As head of the Office of Legal Counsel, he appeared before Congress on several occasions to argue the President's position that executive privilege enabled him to refuse to provide White House information to the legislative branch, a major issue in the tapes case.

In the eyes of some lawyers, Mr. Rehnquist was also, at that time, in effect a law partner of Attorney General John N. Mitchell, although in a public rather than private sense. Mr. Mitchell is a defendant in the Watergate conspiracy trial for which Mr. Jaworski is seeking the tapes as evidence.

Federal law requires a judge to disqualify himself in a case in which he is "so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit."

The absence of Justice Rehnquist will mean that three rather than four men named to the high court by President Nixon will participate in the decisions on Mr. Jaworski's proposal. The three are Chief Justice Burger and Associate Justices Harry A. Blackmun and Lewis F. Powell Jr.

The reduction in the size of



Associated Press

John J. Rhodes, House Republican leader, discussing impeachment inquiry.

the Court from nine to eight Justices will not affect the number of votes needed to put the case on the Court's calendar. That figure remains at four. It drops to three only if the Court is reduced to seven members or fewer.

There had been speculation in legal circles in Washington that Chief Justice Burger might decide to disqualify himself in the tapes case because it involved some issues likely to arise in a Senate trial of President Nixon over which the Chief Justice would preside.

Mr. Jaworski asked the Supreme Court last Friday to take jurisdiction of the tapes case without awaiting an intermediate ruling from the Court of Appeals because of his need to obtain 64 recorded White House conversations in time for their possible use in the Watergate cover-up trial.

The trial is set to open on Sept. 9, and the special prosecutor said that it would be delayed at least six months if the high court refused to hear a direct appeal.