

High Court Widens Tapes Case to Include Jury's Naming Nixon as Coconspirator

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WASHINGTON—Impeachment surfaced as a more visible factor in the Watergate tapes case the Supreme Court has agreed to review.

It emerged as an indirect result of the high court's weekend action broadening the scope of the case. The central question the court will consider is whether President Nixon must surrender 64 tape recordings Special Prosecutor Leon Jaworski says he needs to try six former presidential aides indicted for covering up the Watergate Affair.

But on Saturday, the high court granted Mr. Nixon's request to include another issue in the case: whether a grand jury can charge a sitting President as an unindicted coconspirator in a criminal proceeding. Mr. Nixon wants an answer because the same grand jury that indicted his former aides also named him as a coconspirator without indicting him. In another Saturday action, the Supreme Court generally refused requests by Mr. Nixon and Mr. Jaworski to make public sealed grand jury records in the case. Instead, the Justices released only

a paragraph-long extract showing that Mr. Nixon had been cited by the grand jury.

President's Arguments

Impeachment edged into the picture because of an argument the President's attorneys used in seeking high court review of the grand jury citation. The lawyers asserted, without much elaboration, that the grand jury action "seriously impinges" on the constitutional authority of the House to carry on impeachment proceedings. The attorneys also said the action might encourage other grand juries across the country to take "similar action," adding that "the prejudicial nature and irreparable effect of such a grand jury finding cannot be seriously questioned."

The impeachment issue hasn't been far from the Watergate tapes case since May 31, when the Supreme Court initially agreed to review the dispute. However, it has been mainly peripheral speculation—stated in terms of whether the court's decision might affect the House impeachment panel's own efforts to secure White House tapes. The court's latest action presumably means the Justices will have to deal directly with the presence of an impeachment inquiry, at least in the context of Mr. Nixon's legal argument.

While that isn't likely to make their task any easier, the high court took still another action on Saturday that suggests it does want to consider any easy way out of the case. The Justices asked attorneys for both sides, in presenting their arguments, to deal with the question of whether the Supreme Court can even consider the case at this juncture.

Briefs Asked

The case moved toward the Supreme Court on May 20, when Federal District Judge John Sirica ordered the White House to hand over the tapes for private court inspection. Under that order, Judge Sirica would examine the tapes and turn over to the special prosecutor's office all the evidence he considers relevant to the cover-up trial. Normally, the next step would be for the federal appellate court here to review the case. However, Mr. Jaworski asked the high court to take the case on an expedited basis, saying normal procedures would delay the cover-up trial until next spring.

On Saturday, the high court asked attorneys to "brief and argue" the question of whether Judge Sirica's action is "an appealable order." Generally, lower court actions aren't appealable unless they can be defined as "final" orders. Presumably, the Justices want to consider whether Judge Sirica's action fits within that definition.

The Supreme Court didn't indicate the vote or reasoning behind any of its actions. It said the additional issues would be argued at a hearing on July 8, the date previously set for oral arguments on the Watergate tapes case. It also noted that Justice William Rehnquist, who formerly held a high Justice Department post in the Nixon administration, didn't participate in any of the Saturday actions. He had taken a similar posture in prior high court actions on the tapes case.

Ehrlichman's Trial

In a related development over the weekend, it appears that John Ehrlichman will stand trial along with the other defendants

in the White House "plumbers" case after all.

Gerhard Gesell, a federal district court judge, ending a three-week dispute with the White House over the release of certain documents, set the new trial date for June 26. The trial originally had been scheduled to begin today.

After a series of conferences with White House lawyers, Judge Gesell said he is satisfied Mr. Ehrlichman, President Nixon's former chief domestic aide, has sufficient access to White House data that might aid in his case. He is charged in connection with the plumbers' burglary of Daniel Ellsberg's psychiatrist.

During the dispute over the documents, Judge Gesell had severed Mr. Ehrlichman from the trial and threatened to charge Mr. Nixon with contempt of court.