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Enter the High Court

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By Tom Wicker

IN THE NATION

WASHINGTON, June 27—Watergate, Watergate everywhere: John Ehrlichman on trial in Federal court, the House Judiciary Committee getting down to the tough stages of impeachment; the Senate Watergate committee about to issue its report; the Senate Judiciary Committee raking over the coals of the early Watergate investigation. And waiting in the wings, for what could be the most important entrance of all, the Supreme Court.

On July 8, the Court will hear Special Prosecutor Leon Jaworski and White House counsel James St. Clair argue the question whether Richard Nixon has to turn over 64 more tapes to Mr. Jaworski for use in the prosecution, and possibly the defense, of those charged with crimes as a result of the Watergate investigation.

The Court also will hear the question whether the Watergate grand jury had the right to name Mr. Nixon a co-conspirator without indicting him. The White House contends that since the Constitution assigns impeachment solely to the House of Representatives, a grand jury has no power to act in a way that tends toward impeachment, or impinges upon that process.

But the main questions before the Court lie in the tapes issue. Can Mr. Nixon properly withhold evidence, or what might be evidence, in criminal prosecution? Can he decide for himself whether such material in his possession is useful or relevant to those prosecutions, particularly when it might bear on his own possibly criminal conduct? The lower courts have answered these questions negatively. That the Supreme Court has agreed to hear them under an accelerated judicial schedule that bypasses the Court of Appeals suggests that the justices are moving toward a definitive ruling on Presidential privilege and the separation of powers.

Mr. Nixon's spokesmen once suggested that he would obey such a ruling, but there has been no clear statement of his intention in the event the Supreme Court rules against him—as many lawyers expect that it will. His defense would be bolstered, of course, if the high court overruled lower courts and held in his favor. It is possible that he could successfully defy a narrow decision against him. But a unanimous or near unanimous decision against him probably would be as severe a setback as any he has undergone.

On the one hand Mr. Jaworski's pursuit of the additional tapes, and his comments about them, clearly sug-

gest that they may be damaging to Mr. Nixon, not only in the courts but, practically speaking, in the House impeachment inquiry. On the other hand, if Mr. Nixon refused to obey a Supreme Court decision, the public and Congressional support for his impeachment and removal would be greatly enlarged.

There is a certain rightness about the Supreme Court's belated but probably powerful—perhaps decisive—entrance into the Watergate matter. This unique body is not one of the most powerful of our institutions—as it showed again this week in upholding freedom of the press against the deceptively plausible "right of access" theory. The Court is also, in this era, the most stable of the three branches of Government; it has had its ups and downs—following the Dred Scott decision in the nineteenth century, in the Court-packing battle of the nineteenthies—but its authority, while often denounced, is seldom denied or defied, even in such difficult decisions as those affecting racial equality.

So at a time when the Presidency has been brought into the gravest disrepute of the century, and when Congress is struggling not only with impeachment but to regain power and prestige that it had relinquished either voluntarily or unknowingly, it was all but inevitable that the third, co-equal branch, with its integrity and authority under no serious challenge, should play a part in the resolution of this profound crisis of American government.

The Supreme Court's relatively undisputed authority raises another possibility. The impeachment and removal from office of Government officials appears to have been thought of by the Founders as exclusively a political function, devolving on Congress, not on the judicial branch; on the face of the matter, therefore, the impeachment and removal of a President does not appear to be subject to review, much less reversal, by the Supreme Court.

But if Mr. Nixon is impeached, convicted and appeals to the Supreme Court for review on grounds that he was unconstitutionally or unfairly treated, could the Court refuse? The American people fundamentally accept the Supreme Court as the final arbiter of practically everything, and have come to depend so heavily upon its ultimate judgment that they may well demand that ultimate judgment in the case of Richard Nixon, as in any other.