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~~JUL 24 1974~~
OPINION BY BURGER

Name of President Is Left in Indictment as Co-Conspirator

By WARREN WEAVER Jr.
Special to The New York Times

WASHINGTON, July 24 — The Supreme Court ruled today, 8 to 0, that President Nixon must provide potential evidence for the criminal trial of his former subordinates, rejecting flatly the President's contention that he had absolute authority to withhold such material.

Eight hours later in California, the President announced through his attorney that he

*Text of the Court's decision
is on Pages 20 and 21.*

would accept the high court ruling and comply fully. Until today, White House spokesmen

had strongly indicated that Mr. Nixon might choose to defy the Justices.

As a result of the historic Court decision, announced by Chief Justice Warren E. Burger in a tense, packed chamber, the President will surrender tape recordings and other data involving 64 White House conversations for use in the Watergate cover-up trial, and possibly in impeachment proceedings as well.

Early Stand Reaffirmed

In a broader perspective, the Supreme Court reaffirmed with today's ruling its position, carved out in the early days of the republic, that the judicial branch decides what the law is and the executive branch is bound by that determination.

Not since its refusal in 1952 to permit President Truman to seize the nation's steel mills had the Supreme Court dealt so serious a blow to a President who read broader powers into his constitutional mandate than the Court was willing to recognize.

As an immediate consequence, today's one-sided decision appeared likely to sway some undecided Republicans on the House Judiciary Committee to vote in support of articles of

impeachment.

The Special Watergate prosecutor, Leon Jaworski, had sought the data on the conversations as evidence to use in the September trial of six former Nixon aides accused of conspiring to conceal the 1972 burglary of Democratic national headquarters in the Watergate complex here.

Three-Pronged Decision

Today's ruling was made with three of President Nixon's appointees joining in the vote against him. The fourth, Associate Justice William H. Rehnquist, had disqualified himself. The high court took the following actions:

¶ Told the President to comply "forthwith" with Judge Sirica's order to turn over the tape recordings and other

Continued on Page 22, Column 1

documents for screening and subsequent submission to Mr. Jaworski of all portions that provide relevant and admissible evidence for the cover-up trial.

Left standing the Watergate grand jury action naming President Nixon as an unindicted co-conspirator in the cover-up. The Justices ruled that the question whether the jury could name him was irrelevant and that they should not have agreed to review Judge Sirica's refusal to strike the President's name from the indictment.

Denied a motion by James D. St. Clair, the President's chief defense counsel, that the Justices examine the records of the Watergate grand jury to determine whether there was enough evidence to warrant the naming of Mr. Nixon as a co-conspirator.

Reading a condensed version of his 31-page opinion, Chief Justice Burger rejected every legal defense that the White House had attempted to erect in defense of the President's refusal to deliver the tape recordings to Judge Sirica.

The Court concluded unanimously, the Chief Justice said, that the President did not have an absolute constitutional right to keep his records confidential and that the interests of fairness in administering criminal justice outweighed the qualified privilege Mr. Nixon did enjoy.

"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 function of the courts," Mr. Burger declared.

"Without access to specific facts, a criminal prosecution may be totally frustrated," he continued, adding, "The President's broad interest in confidentiality of communications will not be vitiated by disclosure of a limited number of conversations preliminarily shown to have some bearing on the pending criminal cases."

The tapes, transcripts or memorandums that President Nixon was ordered to deliver to Judge Sirica would be screened by the District Court or any information considered relevant to the conspiracy trial of six former Nixon aides who are charged with covering up the Watergate burglary, the evidence would then be passed in by the court to the special prosecutor.

Mr. Jaworski expressed the hope after the Court session that any evidence involved would be available in time for the scheduled trial opening on Sept. 9.

It appeared unlikely, however, that any material on the tapes would become available for the purposes of impeachment before the full House votes on charges against Mr. Nixon that the Judiciary Committee is expected to adopt within the next few days.

The Supreme Court cautioned in its decision that Judge Sirica's screening must involve scrupulous protection against any release or publication of material not found by the court, at that stage, probably admissible in evidence and relevant to the issues of the trial for which it is sought.

Justice Burger also cautioned Judge Sirica to "discharge his responsibility to see to it that,

until released to the special prosecutor, no in camera [privately examined secret] material is revealed to anyone."

Once relevant excerpts of the White House tapes have been delivered to Mr. Jaworski, it is up to him to decide what information, if any, should be forwarded to the House Judiciary Committee for impeachment purposes, and whether any such transmittal should be delayed because of the cover-up trial.

Some Judiciary Committee members were arguing that the

impeachment proceedings be held up to take into consideration whatever evidence the new tapes may provide, but that would clearly require a postponement of six weeks to two months.

The Supreme Court decision did not recognize the interrelation between the Watergate trial evidence, officially before the Justices, and its possible applicability to impeachment, a connection that Mr. St. Clair had repeatedly urged it to weigh.

Voting against the White House position, in addition to Chief Justice Burger, were two other appointees of the President: Associate Justices Harry A. Blackmun and Lewis F. Powell Jr. The fourth Nixon appointee, Justice Rehnquist, declined to sit on the case, apparently because of his prior service in the Justice Department under Attorney General John N. Mitchell, one of the defendants in the cover-up trial.

Also concurring in the unanimous decision were Associate Justices William O. Douglas, William J. Brennan Jr., Potter Stewart, Byron R. White and Thurgood Marshall.

Pressure for Unanimity

Some Supreme Court observers had predicted that there would be strong pressure for a unanimous ruling by the Justices, in an institutional effort to discourage President Nixon from refusing to obey the Court.

For the second time in three weeks, the Court chamber was packed with lawyers, newsmen and spectators, many of whom had waited in line on the marble steps for hours. The palpable suspense was ended almost immediately, as Chief Justice Burger began announcing the ruling.

Observers had predicted that the Chief Justice would write the opinion in this politically sensitive case only if the deci-

sion was unanimous, and that the only unanimous decision possible, based on the July 8 arguments before the Court, would involve a ruling against the President.

For 17 minutes, Mr. Burger read carefully and unemotionally from the opinion. Only occasionally did he nod to emphasize a point, such as his assertion that "it is 'emphatically the province and the duty' of this Court 'to say what the law is' with respect to the claim of privilege presented in this case."

The Justices had obviously reacted negatively to Mr. St. Clair's argument that the high court had no authority to review a unilateral decision by the President that certain material was legally privileged.

Name Stays on Indictment

As a result of the Justices' decision that they should not have considered reviewing the unindicted co-conspirator question, Mr. Nixon's name will remain on the indictment, pursuant to Judge Sirica's refusal to expunge it.

The court held that Judge Sirica's ruling upholding the subpoena of the material was appealable because, otherwise, it could be reviewed only by citing the President for contempt and appealing that order, a method the Justices called "peculiarly inappropriate" under the circumstances.

Also rejected unanimously was Mr. St. Clair's contention that Mr. Jaworski did not have legal standing to sue the President. The special prosecutor's guarantee of independence upon his appointment, the Court ruled, made this "the kind of controversy courts traditionally resolve."

Chief Justice Burger pointedly denied the White House contention that the President, not the courts, had the ultimate right to make some legal determinations.

"The judicial power of the United States vested in the Federal courts by the Constitution can no more be shared with the executive branch than the chief executive, for example, can share with the judiciary the veto power, or the Congress share with the judiciary the power to override a Presidential veto."

The Court summed up its holding that Mr. Nixon does not have independent authority to decide which evidence he should withhold from the criminal justice system this way:

"To read the powers of the President as providing an absolute privilege as against a subpoena essential to enforcement of criminal statutes on no more than a generalized claim of the public interest in confidentiality of nonmilitary and non-diplomatic discussions would upset the constitutional balance of 'a workable government' and gravely impair the role of the courts."

It is standard Supreme Court procedure for the Justice who wrote the majority opinion in any case to deliver a brief synopsis of it from the bench, at the call of the Chief Justice. Mr. Burger's presentation today was much longer than is normal for less prominent cases.

Mr. Jaworski sat at one of the counsel tables with two of his assistants. Mr. St. Clair was not present, having flown to California over the weekend to confer with the President. He was represented by three White House staff attorneys.