

Confused Alarms of Struggle

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As the wildly complicated battle for President Nixon's secret Watergate tapes grew even more complex last week, it became apparent that time may be running out for both of the probers who are trying to get them. For one thing, Special Investigator Archibald Cox's grand jury, which has been hearing evidence over the past 15 months, goes home on Dec. 4. It can be kept in session only by a special act of Congress. If it disbands with its work undone, Cox will have to start over again with a new jury. For another, the Senate wants to adjourn in mid-October, and the Ervin committee is trying to finish its hearings by Nov. 1.

Both Cox and Ervin Committee Counsel Samuel Dash therefore went to court last week to plead for speed. Only Cox got his wish—partly. The U.S. Court of Appeals for the District of Columbia took the highly unusual step of setting a date for arguments even before being formally notified that any party intended to appeal District Judge John J. Sirica's decision of the previous week. Sirica had ordered the President to submit the tapes to him so that he could determine which parts, if any, should be given to the grand jury. The oral arguments will be heard this week by the full nine-man D.C. court (which the President wanted), and the judges should come to a decision in time for the case to reach the Supreme Court when it reconvenes in early October.

Double Appeal. Both sides appealed Sirica's decision. The White House, represented by six attorneys, asked for a writ of mandamus ordering that the decision be vacated completely. In a relatively brief petition to the appeals court, the White House contended that Sirica's order was "clearly erroneous" because the President is not subject "to compulsory process for acts performed in his official capacity." The White House petition specifically challenged Sirica's authority to enforce a subpoena against the President and his right to review a presidential claim that the public interest would be damaged by disclosing a private conversation. Sirica has ruled that the judiciary, not the President, is the final authority on which conversations are protected by Executive privilege when they constitute evidence in a criminal case.

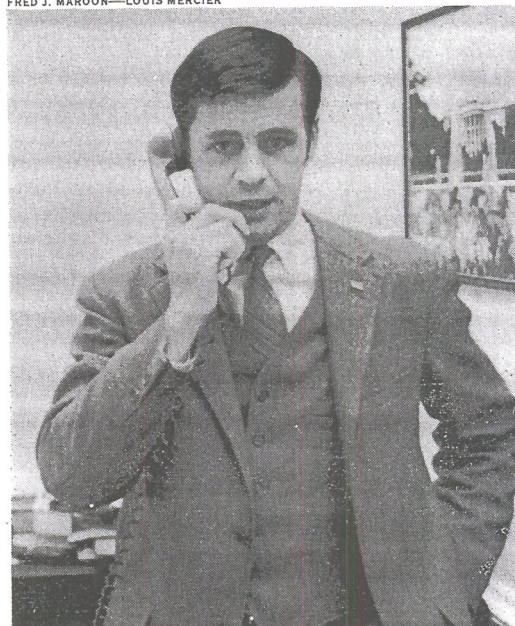
Cox at first had said that he was "very pleased" with the Sirica decision, but the pressure of time is making the decision less pleasing to him. Since Sirica wants to hear the tapes and then decide whether any of the conversations are privileged, his decision on that matter could itself be appealed by either party. That would set off another chase through the higher courts. To prevent this, Cox also filed an appeal from Sirica's decision. He, too, asked a writ of

mandamus—one that would direct Sirica to order the tapes turned over to Cox for the grand jury, and to annul those portions of the decision in which Sirica demanded the tapes for himself. Cox insisted, as he had before, that the claim of Executive privilege was invalid because discussions of crimes cannot be protected. Moreover, he claimed, Nixon has waived privilege by allowing his former aides to give their versions of the conversations. Warning that the grand jury's days are numbered, Cox declared that arguments over Sirica's inspection of the tapes might lead to "unnecessary confusion" and "serious delay in the administration of criminal justice."

While both sides appealed Sirica's decision on Cox's suit—and Sirica selected two lawyers to defend his own ruling before the appeals court—the judge also had to deal with Sam Dash's plea for the tapes. In this case, he appeared to be more favorably disposed toward the White House. He granted the large staff of White House lawyers (ten are now working full time on the Watergate defense) until Sept. 24 to respond to the Ervin committee's demand for the tapes. He set no date for oral arguments after that, and he rejected Dash's claim that the delay would amount to "ruling the Senate out of court." Sirica said that he would "not be pushed into a half-baked job" and that he had not yet even read the committee's 35-page motion seeking the tapes and documents.

Despite all the judicial activity and the appeals for haste, there still was no assurance from the President that he would abide by a Supreme Court decision when it does come. He has said

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PRESIDENTIAL ASSISTANT STEVE BULL
Contradicting the boss.



DON NIXON (FAR RIGHT) WELCOMES THE FAMILY

that he would bow only to "a definitive" decision, but he refused at his press conference last week to explain what he meant by the term. It "would not be appropriate" to do so, he said, since the matter was in the courts.

Nixon also avoided answering a pointed question on why he does not feel bound by a Supreme Court decision when "every other American" is subject to court rulings, whether definitive or not. The President merely repeated his arguments on why he thinks Executive privilege must be maintained, adding: "I will simply say that as far as I am concerned, we're going to fight the tape issue. We believe—my counsel believes—that we will prevail in the appellate procedure."

Puzzling Answer. Nixon then repeated, in response to another question, that "there is nothing whatever in the tapes that is inconsistent" with his repeated denials of personal complicity in the Watergate crimes. Yet his answer was puzzling because he said that he had listened to only two of the controversial tapes (Cox is seeking nine tapes), which would seem to be an inadequate base for his generalization that none of the tapes contradict his position.

Moreover, TIME has learned that Steve Bull, a presidential aide, has told Ervin committee investigators that he delivered eight or ten tapes of Watergate conversations to the President on June 4. Bull loaded the tapes onto at least five playback machines. He said that he carried the machines into the President's office in the Executive Office Building, set them up for the President and then left. According to Bull, Nixon kept the tapes for twelve hours, from 9 a.m. to 9 p.m., and when Bull retrieved them all of the tapes had been fully unwound. The significance of this discrepancy is not clear—except that once again a Nixon answer could not be automatically accepted as definitive.