

President Appeals Order for Tapes

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President Nixon's lawyers asked the U.S. Circuit Court of Appeals here yesterday for an order that would prevent federal Judge John J. Sirica from inspecting the President's Watergate tapes.

Calling Sirica's demand for the tapes "clearly erroneous," the White House attorneys filed their petition against the judge directly and against Watergate Special Prosecutor Archibald Cox as an interested party.

The step put Judge Sirica in the unusual position of looking for his own lawyer. Cox might have been expected to represent him but the prosecutor was not entirely satisfied with the judge's ruling on the tapes and is planning to ask that it be modified.

Mr. Nixon's lawyers said the case was of "grave importance" and suggested a hearing before all nine circuit court judges instead of the usual three-member panel.

The appellate court quickly agreed and ordered both Sirica and Cox to submit written replies by noon

Monday. The hearing before the full court was set for Tuesday at 1 p.m.

Circuit Court Clerk Hugh Kline served Judge Sirica with the order in Sirica's chambers at the U.S. Courthouse here shortly after 4 p.m., little more than an hour after the President's petition was filed.

Sirica read it and said, "Well, I'll have to get a lawyer. It isn't everybody who gets sued by the President of the United States."

The historic confrontation was touched off by Cox's efforts to secure the tapes for

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Judge Clears 2 Juries' Way

U.S. District Court Judge John J. Sirica yesterday indicated that John Ehrlichman should be prepared to testify before two Watergate grand juries next week—despite Ehrlichman's lawyer's charge of "persecution."

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the federal grand jury here that has been investigating the Watergate break-in and cover-up.

Judge Sirica declined to go that far, and instead ordered Mr. Nixon to submit the tapes to him so that he could listen to them himself and decide whether any portions could be turned over to the grand jurors. He said some of the conversations might be legitimately privileged and he held out the possibility that the grand jury would get none of the tapes.

The President's lawyers contended yesterday, however, that even in camera (in chambers) inspection of the recordings by Sirica is "beyond the power of the judicial branch in that it purports to subject the President of the United States to compulsory process for acts performed in his official capacity."

The disputed tapes involve nine of the President's conversations with top White House aides and campaign officials about the Watergate scandal between June 20, 1972, and April 15, 1973.

In their petition yesterday, Mr. Nixon's lawyers asked for a writ of mandamus directing Judge Sirica to nullify his Aug. 29 ruling.

They said a routine appeal was not open to them since this would have required Mr. Nixon first to have refused to comply with Judge Sirica's ruling, and thus invited a contempt citation.

The President's lawyers said this was "unnecessary and would only delay a resolution of this important and extraordinary case."

The White House petition said "the paramount question" at stake was whether Judge Sirica has the constitutional power to demand the recordings "in the face of a formal and valid claim of presidential privilege."

Mr. Nixon has contended that the tapes contain nothing crucial to successful prosecution of the Watergate conspiracy although he acknowledged at his press

conference Wednesday that he has listened to only two of the recordings. The President maintains, however, that forced production of any of them would destroy his right to confidential conversations.

The Senate Watergate committee has also filed its own suit for some of the tapes, but it is several steps behind Cox and the grand jury. In a ruling on the Senate litigation yesterday, Judge Sirica gave the White House until Sept. 24 to file its answer and rejected a request by the Watergate committee that it be speeded up. "The court is not to be rushed into a half-baked job," Sirica said.

Cox is expected to submit his request for modifications in Judge Sirica's order to the appeals court today. He has declined to spell out his strategy in advance, but he clearly wants a better guarantee that the grand jury will wind up with the tapes.

As a result, the courtroom debate next week seems likely to be a three-sided argument, with the White House asking for reversal of Sirica's order, Cox seeking to stiffen it, and an attorney for Judge Sirica defending it as it stands.

The Court of Appeals is also expected to rule today on still another motion involving a separate but related battle of executive privilege.

In that case, prompted by a Public Citizen, Inc., lawsuit contesting the Nixon administration's controversial 1971 increase in milk support prices, the White House is seeking reversal of an order that it produce some 67 White House memos concerning the dairy industry and the 1971 price increase.

William Dobrovir, the attorney for Public Citizen, Inc., asked the Court of Appeals to hear arguments on that issue next Tuesday, too.

"Both cases involve in camera inspection of documents," Dobrovir said. "Our raises the same question of executive privilege as the Cox case and they should be decided together."