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Why Can't the Public Hear the Tapes?

With Watergate, Richard Nixon, and the notorious White House tapes back in the news again, it is a timely moment to ask why the crucial recorded evidence can be seen by the public but still not heard by it. It makes no sense.

For this peculiar, puzzling situation, we can thank Judge John Sirica, the celebrated jurist who presided over the major Watergate trials and who, earlier in the investigation of the great coverup, did so much to expose it.

In what seems to some students of the law an arbitrary, narrow decision, Judge Sirica denied the broadcasting networks and Warner Communications, a large recording company, the right to reproduce the tapes for nationwide public consumption, even though they already had openly been played in court and had been reported verbatim in the press.

As everyone who has listened to the tapes can testify, it is one thing to hear them and a much less thing to read them in cold transcript, minus all the nuances, significant pauses, and telling inflections of voice that distinguish the horrifying oral record. There is no substitute for hearing them as the jury did.

The Watergate trials, says historian John Hope Franklin, were, in a sense, "a test of the American public's capacity to grasp the full significance of what had transpired at the very highest level of government."

Even in the aftermath of the trials, he pointed out, "the public cannot know what actually transpired and, thus, cannot reach a satisfactory resolution of the issues involved with-



Congressmen listen to the presidential tape recordings.

out access to the same materials, including the tapes, to which the jury itself had access."

Warner Communications is presently appealing Judge Sirica's ruling to the U.S. Circuit Court of Appeals in Washington. Joseph Callano, attorney for the appellant, sees the case as presenting "a question fundamental to the operation of our democratic system and to our concept of public justice."

It tests, he argues, "whether the American public is to be trusted with the information it needs to understand fully the historic abuses of governmental power that has come to be

known as Watergate. The District Court has ruled that the public should not be trusted."

It must be kept in mind that Judge Sirica made his decision on April 4, 1975, well after the trial of the major Watergate figures, so there was no question of pretrial prejudicial publicity involved.

Moreover, none of the defendants at the trial has opposed release of the tapes to the public; neither has the Watergate special prosecutor. Only Richard Nixon is objecting to the public hearing them, and he, not being a defendant, has no legally recognizable interest in the case.

In his opinion denying oral reproduction of the tapes, Judge Sirica speculated about "mass merchandizing techniques designed to generate excitement in an air of ridicule to stimulate sales" and about "untold varieties of inappropriate and scandalous uses."

Sound recordings, says Callano, are no more subject to abuse than the verbatim transcripts, which have long been in circulation without being put to any "scandalous" use. In any case, the tapes were found by Judge Sirica to be relevant and material to the criminal charges against the Watergate defendants. He put them in the trial record.

"Why does the judiciary seem to be less trusting of broadcasters than of printed dissemination?" asks Benito Schmidt Jr., Columbia University's distinguished authority on constitutional law. And, he further asked, "Does the mandate that criminal trials should be 'public' apply only to the few who can squeeze into American courtrooms?"

Prof. Schmidt was noting that another federal jurist in Washington, Judge Gerhardt Gesell, also had a part in backing out the tapes. He initially upheld the appellant's right to copies of the tapes, but then conditioned release on a plan for distribution "which does not permit overcommercialization of the evidence," whatever that means.

Later, Judge Gesell transferred the matter back to Judge Sirica, who was too busy to handle it in the first instance, but made the decision now under appeal. With Watergate again gripping public interest it can only be hoped that the higher courts will act promptly.