

Ex-Justice Opines Nixon's Tapes Should Be Released

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By Herbert H. Denton
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Former U.S. Supreme Court Justice Arthur J. Goldberg said last night that he did not believe that President Nixon had any "constitutional basis" for refusing to release White House tapes of Watergate conversations to the Senate Select Watergate Committee and Special Watergate Prosecutor Archibald Cox.

"Simply put, presidential tapes relating to criminal activities are not privileged," Goldberg said in remarks prepared for delivery

to the National Association of Women Lawyers.

But, Goldberg said, it is far from certain that the courts will rule to sustain subpoenas for the tapes that have been served on the White House by Cox and the Senate Watergate Committee.

In both cases, Goldberg said, there are "formidable technical objections" to the subpoenas. There is doubt, he said, that the courts have jurisdiction to rule in the dispute between the White House and the Senate Committee.

"With respect to (Harvard

law) Prof. Cox's subpoena, there is the obstacle that the special prosecutor is an employee of the President. The courts are notably allergic to arbitrating differences within the executive branch of the government," the former Supreme Court Justice said.

Despite those possible "technical" barriers to having the subpoena honored, Goldberg said, there are "authoritative decisions" of the Supreme Court making it clear that there is no constitutional basis for the President's refusal to release the tapes.

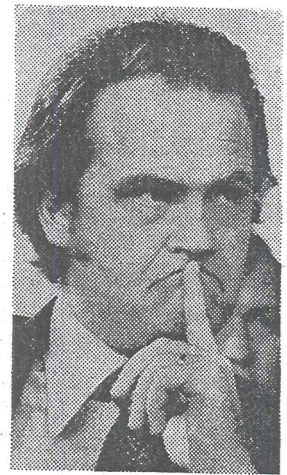
He cited recent among other Supreme Court cases the decisions involving former Sen. Daniel Brewster (D-Md.) and Sen. Mike Gravel (D-Alaska) in which the court held that members of Congress and their staffs are not entitled to confidentiality when alleged criminal conduct is involved.

Goldberg urged, however, that the tapes dispute be settled out of court, calling it a "situation that imperatively calls for a compromise."

"The nation cannot afford a constitutional confrontation precipitated by the President which, if continued, may well undermine the confidence of people, here and abroad, in our system of government," Goldberg said.

In a related matter, Fred D. Thompson, Republican Watergate committee counsel, speaking to a luncheon session of the American Bar Association convention here spoke to the lawyers of the absence of normal, courtroom methods in the conduct of the Watergate hearings.

"What we're about, in



FRED THOMPSON
... no safeguards

large part, is to help the American people understand what went on ... I think it's important to consider that we have many more housewives than lawyers watching," Thompson said.

"We don't have procedural safeguards, but neither do we have defendants," he said.

In other Watergate related events:

- A federal judge in Fort Wayne, Ind., has given the Fort Wayne News-Sentinel limited approval to check confidential birth records in connection with the "Fort Wayne story" mentioned by former White House chief of staff H.R. Haldeman in a memorandum revealed last week during the Watergate hearings. The Washington Post has reported that the reference is to a birth certificate listing a George S. McGovern of Mitchell, S.D., as the father of an illegitimate child. Sen. George McGovern (D-S.D.), the 1972 Democratic presidential candidate, has denied that he was the father of a child born out of wedlock.

- Sen. Daniel K. Inouye (D-Hawaii) told the Associated Press that he can't remember what he called former White House domestic chief John D. Ehrlichman. Inouye, a member of the Watergate Committee, said in Honolulu Friday that he might have said "What a lawyer," rather than "What a liar," when he pushed his chair back after lengthy questioning of Ehrlichman.