

# Sirica Would Like Cox to Hear Tapes

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By George Lardner Jr.  
Washington Post Staff Writer

Federal Judge John J. Sirica said yesterday that he would welcome a court order permitting Watergate Special Prosecutor Archibald Cox to join him in listening to President Nixon's Watergate tapes.

Sirica made the concession to Cox just one day ahead of an unprecedented hearing in the U.S. Circuit Court of Appeals here on the President's confrontation with the judiciary.

In preliminary pleadings filed by his own lawyers,

Judge Sirica said that he still considers private judicial review of the tapes essential before any portions can be turned over to the federal grand jury investigating the Watergate scandal.

But he added that he would have no objection to the special prosecutor's help, and in fact would "welcome it, in determining whether any of the conversations might be legitimately privileged from disclosure.

With the hearing before the full bench of the nine-judge appellate court scheduled to

begin at 1 p.m. today, the clerk's office was blitzed yesterday with motions, briefs and other pleadings in the case.

Mr. Nixon's lawyers submitted a 95-page brief contending that the President would no longer be "master in his own house" if the tapes must be given up even for inspection by Judge Sirica alone.

Cox maintained in his own brief, however, that he has already made enough of a showing before Sirica to indicate that the tapes contain evidence of "some fraud or criminal misconduct" by White

House aides and political advisers.

If the tapes contain any other irrelevant or legitimately privileged conversations, he argued, the burden is on the White House to submit an affidavit singling them out.

"Regardless of the President's wish," Cox said, "the law cannot and does not recognize a privilege that would shield a miscreant adviser from prosecution for a criminal offense in violation of the President's confidence as well as his public trust."

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The controversy was prompted by a grand jury subpoena for the tapes that Cox secured on July 23, but the fight in the appeals court centers on Judge Sirica's Aug. 29 order directing Mr. Nixon to surrender the recordings to him for secret "in camera" inspection.

Overriding Mr. Nixon's claims of absolute immunity from court orders, Judge Sirica held that some of the conversations might be privileged, but that it was up to the courts to sort them out.

The White House went into the appellate court last week, asking for a writ of mandamus that would direct Judge Sirica to cancel his Aug. 29 ruling.

Cox countered the next day with his own petition, asking that the tapes be turned over to the grand jury directly. As an alternative, he said that he and his prosecutors should at least be permitted to listen to the recordings with Judge Sirica and help him single out the relevant evidence.

Responding to that suggestion, Sirica's lawyers, American University law professors George D. Horning Jr. and Anthony C. Morella, told the Appeals Court yesterday that the judge "has no objection to the alternative relief requested."

Mr. Nixon's lawyers, led by his chief constitutional adviser, Charles Alan Wright, said in yesterday's brief that even Judge Sirica's initial or-

der "came down squarely on the side of breaching the wall of confidentiality of presidential communications."

They protested that "the heat and excitement of an unprecedented political scandal" were on the verge of twisting the Constitution and striking at the heart of the President's rightful powers.

Urging the Appeals Court to ignore the pressures, the President's attorneys complained "that the revelations of Watergate have so sharpened the public appetite for more revelations that the claim of a presidential right and responsibility under the Constitution . . . must run the gamut of a broadly held popular sentiment that the claim is probably unjust and is therefore presumably unsound."

Mr. Nixon, the White House lawyers maintained, was doing no more than asserting a right claimed by "every President since George Washington" and yet his stand in the atmosphere of Watergate "is likened to the absolute claim of kings . . . viewed in many places with suspicion or even hostility."

The President's attorneys also objected to the hurry-up schedule set by the Court of Appeals which has called for final written memos and arguments by Friday.

The Senate Watergate committee, which has also filed suit against Mr. Nixon for some of the tapes and other White House documents, had also asked for a chance to be

heard briefly at today's hearing, but the Appeals Court denied the motion yesterday afternoon. It also rejected a companion request from consumer groups to be heard at the same time on their fight for some 67 White House memos concerning the dairy industry and a controversial 1971 increase in milk price supports.

The tape recordings Cox is seeking involve nine of Mr. Nixon's discussions with White House aides and campaign advisers about Watergate

—eight in face-to-face meetings and one by phone—between June 20, 1972, and April 15, 1973.

Pressing his argument that a fair showing has already been made that the tapes contain criminal evidence, Cox said the sworn testimony of ousted White House counsel John W. Dean III before the Senate Watergate committee alone was "more than sufficient" to establish that point for five of the conversations.

The special prosecutor emphasized that the grand jury needs the recordings not simply to resolve conflicting accounts of the conversations at issue, but for any other purposes, "such as showing the initiation, duration and thrust of any conspiracy on the part of alleged participants. . . ."

Cox also maintained that Mr. Nixon's lawyers have asserted nothing more than a sweeping, absolute privilege for the tapes and made no pre-

cise claims of immunity for certain portions that might contain military or diplomatic secrets.

The White House replied sharply that such an impression was "quite simply . . . in-

accurate." Not only did Mr. Nixon's lawyers protest in earlier briefs that the tapes include "sensitive issues of national security" and discussions of Mr. Nixon's "constitutional duties on matters other than Watergate," they said, but Wright, in arguments before Judge Sirica on Aug. 22, told the court that one discussion was "so highly sensitive" that Mr. Nixon wouldn't even give him a hint of what it was about.

Most of the tapes, by the President's own account, have apparently not been played back by anyone. Mr. Nixon told a news conference last week that he listened to only two of the nine recordings himself. Wright has said he never listened to any of them.

The White House lawyers contended, however, that "all of the tapes are subject to a claim of executive privilege because they contain material on a variety of subjects so inextricably intertwined that it would be impossible for any man, including the District Judge, to separate out those things that relate to possible out criminal conduct in connection with Watergate."