

Nixon and Cox Fail To Agree on Tapes

Issue Left For Courts To Decide

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The White House and Special Prosecutor Archibald Cox gave up yesterday on efforts to reach an out-of-court settlement over President Nixon's secret Watergate tapes.

Both sides tersely informed the U.S. Circuit Court of Appeals here yesterday afternoon of the "unsuccessful outcome" of their negotiations.

In virtually identical letters to the court, submitted after a final meeting during the day, Cox and the President's chief courtroom lawyer, Charles Alan Wright, said that "sincere efforts" had been made, but that they "were not fruitful."

The next step is up to the court, which emphasized last week that it would "discharge its duty of determining the controversy" if the compromise it proposed was not successful.

A decision is expected within the next two weeks, setting the stage for a final confrontation in the Supreme Court.

The Court of Appeals had voiced the hope last week that Mr. Nixon and Cox could agree on what portions of the recordings could be turned over to the Watergate grand jury here instead of forcing the issue to a constitutional determination.

If either Cox or the White House had considered asking for more time to reach an agreement, there was no hint of it in yesterday's reports, which were turned in just before the court-imposed deadline. Both sides refused to comment on whether any progress had been made in the talks.

"All participants in these conversations have agreed that we shall say nothing about them except to make this report to the court," Cox and Wright said in their three-paragraph letters to Circuit Court Clerk Hugh E. Kline.

They said little else except that the meetings prompted by the court's proposal had been "lengthy."

Cox met with White House special counsel J. Fred Buzhardt at the Executive Office Building on Monday and again on Tuesday.

A final session was held yesterday between Cox and his chief counsel, Philip A. Lacombe, on the one hand and Buzhardt, Wright and acting White House counsel Leonard Garment on the other.

Cox apparently was not permitted to listen to any of the recordings. The bargaining was believed to have been confined largely to haggling over how much of the disputed tapes the White House would let even the special prosecutor hear.

The recordings include nine of the President's conversations about the Watergate scandal with top White House aides and political advisers—eight in face-to-face meetings and one over the telephone with former Attorney General John N. Mitchell, then the director of Mr. Nixon's re-election campaign.

The President has said that he would abide by a "definitive" Supreme Court ruling in the case, but he has

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refused to say what he would regard as definitive. He has pointedly left open the possibility that he might voluntarily make relevant excerpts available if he wins the court fight, but any such step would clearly be subject to Mr. Nixon's own determination of what is relevant and what can be safely extracted from other conversations on the tapes that he might want to keep secret.

No further announcement is expected from the Court of

Appeals until the seven judges presiding over the case hand down their ruling. Oral arguments were heard Sept. 11 and the final brief was submitted by the White House Wednesday.

"They have it under consideration," Kline said. "Anything now in the way of meetings will be among themselves and private."

Cox has urged the court not to "shrink from entry of a coercive order" directing Mr. Nixon to turn over the recordings directly to the Watergate grand jury. At the least, he has asked that he and his prosecutors be permitted to join Chief U.S. District Court Judge John J. Sirica for the preliminary screening that Sirica has called for.

The President's lawyers have contended that the tapes are clearly privileged and that Mr. Nixon's judgments on that score are not subject to judicial review.

In their final brief, Mr. Nixon's attorneys said that he had recognized "the unique character" of Watergate by authorizing Cox' appointment and permitting him wide discretion in investigating the scandal.

But they added that the

President "has not delegated to the special prosecutor, and will not abrogate, his constitutional duties and prerogatives. That," they said, "would move beyond accommodation to irresponsibility."