

Networks Petition to Air Tapes

11-15-74
By John P. MacKenzie
Washington Post Staff Writer

Should radio and television newscasters be allowed to copy and broadcast the White House tapes now being heard by the jury and courtroom spectators at the Watergate cover-up trial?

The three major networks put this question formally to the U. S. District Court yesterday. They staked their hopes on the First Amendment right of a free press, the Sixth Amendment right to a public trial, and the grace of the judges.

According to the networks, the tapes offer a unique opportunity to let electronic journalism cover the trial in its own way and a chance to bring the evidence to those unable to attend the trial, without violating anyone's constitutional rights.

An earlier request by TV reporters was rejected by the judges, who likened the proposal to long-forbidden photographing and televising of actual courtroom proceedings. Chief Judge George L. Hart Jr. said he would take up the networks' motion with his fellow judges.

Lawyers for the broadcasters told the court that playing the tapes would pose none of the problems that have prompted judges to ban cameras from the courtroom.

They said it was more akin to the court-authorized use of photographic evidence that was admitted at Judge John J. Sirica's hearing on the 18-minute gap in one of the tapes. For example, the lawyers recalled, viewers as well as newspaper and magazine read-

ers got a vivid idea, beyond the power of words to describe of Rose Mary Woods' explanation of how the gap might have occurred.

The networks argued further that no prejudice could result to the defendants since the jury, which is sequestered, will have heard the same tapes the broadcasters propose to air.

Printed transcripts already have been published, the lawyers said. Playing the tapes would allow the public to understand how the alleged conspirators talked to each other as well as what words they uttered.

Some cases involving television do involve the Sixth Amendment right to a speedy, public trial before an impartial jury, the lawyers said, but they added that "the striking thing about their current request" is that there is no Sixth Amendment argument to be made against it.

The motion said the public-trial guarantee is an argument for permission to use the tapes. According to the lawyers, the right to a public trial, ordinarily regarded as a right of the accused, also has been recognized as serving the broader purpose of informing the public about the administration of justice.

Thus far the tapes have been heard by the trial judge, the jury and a limited number of newsmen and public spectators. Last summer the House Judiciary Committee heard numerous tapes before voting articles of impeachment against former President Nixon.

The networks also contended that their free-press rights would be infringed because a refusal by the court would operate as a "prior restraint" on dissemination of news. They cited legal precedents in which the publishers already had possession of the information at the time courts were asked to stop them from publishing it.