

Cox Seeks Priority Over Milk Plaintiffs In Tapes Decision

By George Lardner
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Watergate Special Prosecutor Archibald Cox joined the Justice Department yesterday in urging the courts to give top priority to his "direct confrontation with President Nixon over information about the Watergate scandal that Mr. Nixon has refused to give up.

Cox' lawyers and Justice Department regulars made their appeal to U.S. District Court Judge William B. Jones in hopes of delaying earlier appellate court resolution of a companion dispute over White House records involving the dairy industry and a controversial 1971 increase in milk price supports.

Judge Jones, who had already ordered production of those records over government protests, said he would issue a ruling by Monday.

Consumer groups led by Ralph Nader's Public Citizen, Inc., obtained a subpoena for White House records in the milk fund case last April. They have charged that the government's 1971 increase in milk supports was a payoff for early campaign contributions to Mr. Nixon's 1972 reelection effort.

Acting on direct orders from President Nixon, the White House invoked executive privilege July 10 in seeking to keep the dairy industry documents secret. Jones subsequently rejected the claim, however, and ordered that the papers be turned over to him so that he could determine for himself which ones, if any, were relevant.

The Justice Department asked Jones Wednesday to stay his order so that it could contest it before the U.S. Court of Appeals here.

The attorney for the consumer groups, William A. Dobrovir, asked Jones at a hearing yesterday to deny the request or at least condition it with an order directing the government to give their appeal rush treatment.

Acting Assistant Attorney General Irving Jaffe, however, made it plain that the Justice Department wants to take its time. He maintained that Special Prosecutor Cox's attempts to secure nine tape recordings of Mr. Nixon's conversations with White House aides about the Watergate scandal for federal grand jury here was a more sharply drawn dispute and "the one that should take precedence." He argued that the issues were "sufficiently similar in both cases."

Cox' spokesman, Watergate Special Prosecution Force counsel Philip A. Lacovara, supported the suggestion. He told Jones that chief U.S. District Court Judge John J. Sirica is expected to issue a ruling on the tapes by the end of next week—before Sirica goes on vacation.

By then, Jaffe added, "there is no doubt in my mind that it will be ripe for

appellate review, no matter how Judge Sirica rules."

The joint presentation, Jaffe conceded, however, was an awkward alliance at best. Insisting that "no man is above the law," Cox has maintained that Mr. Nixon "has no constitutional power to withhold the evidence." Cox has proposed that Judge Sirica review the tapes at issue privately and excise any portions that are irrelevant.

Jones had already approved that procedure for the dairy industry memos that acting White House counsel Leonard Garment is holding back. But the Justice Department then weighed in on the administration's side, claiming Wednesday that inspection of White House papers by the judiciary—even in secret—would "do irreparable injury to the principle of the separation of powers."

Jaffe acknowledged that this leaves the Justice Department, which also pays Cox' salary, close to "fighting with itself."

"The special prosecutor is part of the Justice Department but somewhat independent and were on the other side of the issue," Jaffe said.

For his part, Dobrovir protested that the issues raised in the milk suit, as well as those involved in the Senate Watergate committee's suit for five of Mr. Nixon's tapes along with other documents, were different in many crucial aspects from Cox' battle.

For instance, he said, it is far from clear that the President, who has taken possession of the tapes with the assertion that he is not subject to compulsory process from the courts, could be cited for contempt and jailed. By contrast, Dobrovir said, White House counsel Garment "is not named in the Constitution," and could more easily be held accountable.

In addition, Dobrovir said, Cox' petition centers on show-cause orders involving criminal law; the Senate suit is for a declaratory judgment involving separate branches of government; and his case involves a subpoena in a civil suit brought by private plaintiffs.

"All three cases may go to the Supreme Court together on appeal," he said, "but I don't want to wait."