

Nixon Plans To Appeal Tape Order

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President Nixon decided yesterday to appeal the order of U.S. District Court Chief Judge John J. Sirica requiring surrender of the disputed Watergate tapes for the judge's inspection.

The White House made the announcement in San Clemente after an hour-long meeting between Mr. Nixon and his top lawyers on the Watergate case, Charles Alan Wright and J. Fred Buzhardt.

The decision to carry the fight to the U. S. Circuit Court of Appeals here ended a day of intense speculation over Mr. Nixon's next step in his confrontation with the courts.

In an unprecedented ruling on a federal grand jury's subpoena for nine tape recordings of Mr. Nixon's conversations on the Watergate case, Sirica ordered the President to turn them over so that he could listen to them and decide whether any portions should go to the grand jury. Sirica handed down the order Wednesday, but gave Mr. Nixon's lawyers five business days to seek its reversal in a higher court.

Both Wright and Buzhardt, who had reportedly been scheduled to meet with the President after his return to Washington today, instead hurriedly flew to San Clemente after Sirica's decision.

In its first reaction to the ruling Wednesday, the White House had said that "appellate review" was not the only way to "sustain the President's opposition."

This statement took some White House officials by surprise because it seemed to imply that the President was thinking of ignoring Judge Sirica's order and inviting a contempt citation. Mr. Nixon and his lawyers have steadily insisted that he is immune from court orders so long as he remains President.

In light of the confusion, White House aides said, a decision was reached yesterday morning to issue another statement declaring

that an appeal would be taken.

The new statement said: "The President met today with his White house counsel and it has been decided that counsel will seek review in the Court of Appeals for the District of Columbia of Judge Sirica's order. Appropriate papers for obtaining review are being prepared and will be filed prior to the expiration of the stay of the order next Thursday."

Aides said that other steps that had been discussed ranged from asking Judge Sirica to reconsider his decision to appealing directly to the Supreme Court. They were ambiguous on the question of whether the possibility of ignoring the ruling had been contemplated.

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Deputy White House press Secretary Gerald L. Warren refused to elaborate on yesterday's announcement in any fashion.

"It would be in appropriate for me to comment on something the lawyers are handling," he told newsmen at a short, 11-minute briefing.

The nine-judge U.S. Circuit Court of Appeals here will resume its regular calendar business on Sept. 5 after summer vacations. Watergate Special Prosecutor Archibald Cox is hopeful that the case can be resolved with a Supreme Court decision by mid-October.

Cox has called the demand for the tapes especially urgent since the

Watergate grand jury's 18-month term will expire in early December. It can be extended only by an act of Congress, a spokesman for Cox said yesterday.

Meanwhile, Cox has said it would be "inappropriate to ask the grand jury to decide whether to indict or not to indict the principal figures in the Watergate matter until the courts have finally determined whether the grand jury may have access to the critical evidence" on the tapes.

The President has said that he would abide by a "definitive" Supreme Court ruling on the issue, but without giving any indication of what he would accept as definitive.

Cox' office, however, reportedly has no worries on that score. "Personally, I think the word 'definitive' has become inoperative," one staff member said.

The President and his Watergate advisers are said to be equally confident that the Supreme Court will uphold their contention that the constitutional separation of powers entitles Mr. Nixon to withhold the tapes, even from judicial review.

Judge Sirica rejected the White House claims and said a "watertight" division of powers between the executive, legislative and judicial branches of government was never intended by the framers of the Constitution.

He called Mr. Nixon's blanket claims of executive privilege for the tapes equally "unpersuasive." He said some of the conversations might be privileged, but that he could not tell without hearing the tapes.

The recordings involve Mr. Nixon's conversations about Watergate with top White House aides and campaign advisers between June 20, 1972—three days after discovery of the bugging and break-in of Democratic national headquarters here—and April 15, 1973.

The Senate Watergate investigating committee has also filed suit against Mr. Nixon for some of the recordings and other White House documents, but Judge Sirica yesterday formally denied a request by the committee's chief counsel, Samuel Dash, that it be consolidated with Cox's efforts to enforce the grand jury's subpoena.