

# APPELLATE COURT ASKS COMPROMISE IN TAPES DISPUTE

## Bids Nixon Voluntarily Yield Portions of Recordings to Cox and Wright for Study

### REPLIES DUE IN A WEEK

### Unusual Plan Is Designed to Avoid Clash—Prosecutor Is Willing to Discuss It

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Special to The New York Times  
WASHINGTON, Sept. 13—

An out-of-court compromise solution to the dispute between President Nixon and the Watergate grand jury over the White House tape recordings was proposed today by the United States Court of Appeals for the District of Columbia Circuit.

In a highly unusual move, the seven judges who heard the case issued a unanimous memorandum urging the President and lawyers for both

Text of court memorandum is printed on Page 23.

sides to avoid a constitutional confrontation by themselves settling the issue of the nine recordings sought by the grand jury.

More specifically, the court recommended that Mr. Nixon voluntarily submit portions of the recordings to Archibald Cox, the Justice Department's special prosecutor, and Prof. Charles Alan Wright, the chief White House attorney, for their examination.

#### Suit Could Be Dropped

The two attorneys, together with the President himself or his delegate, would decide what parts of the tapes could properly go to the grand jury. Presumably, if they agreed, the lawsuit to force Mr. Nixon to produce the recordings would be withdrawn.

In New York City, meanwhile, attorneys for former Attorney General John N. Mitchell have issued a subpoena for any White House tapes that might be related to the charges of obstruction of justice that he faces. The Government moved to quash the subpoena. [Details on Page 22.]

The tapes at issue in the Appeals Court here involve conversations, between the President and key White House aides, about the burglary of Democratic headquarters in the Watergate complex in June, 1972, and subsequent efforts to cover up high-level participation in the crime. The court heard arguments in the case earlier this week.

#### Statement by Cox

The court asked the White House and the special prosecutor to advise it within a week, by next Thursday, "whether the approach indicated in this memorandum has been fruitful."

Mr. Cox announced almost immediately that he would be "more than glad to meet with the President or his delegate or any of his attorneys in a sincere effort to pursue the Court of Appeals suggestion to a mutually satisfactory conclusion."

The Cox statement was not an unqualified acceptance of

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the court's proposal. It merely committed the special prosecutor to discuss the idea with the President or his representatives to see, if they could agree on more detailed ground rules as to who would screen what sort of material out of the tapes at what time.

The White House said only that the court's memorandum had been received and was being studied by the office of the White House counsel. Professor Wright has returned to Austin, Tex., to resume his teaching schedule at the University of Texas Law School.

The Court of Appeals proposal apparently originated spontaneously with the judges. Aides to Mr. Cox reported that the prosecutor had made no such suggestion, and Professor Wright said in a telephone interview that the White House legal team was not responsible.

In the 600-word memorandum issued late today, the Court of Appeals judges declared, "The doctrine under which courts seek resolution of a controversy without a constitutional ruling is particularly applicable here."

#### Could Narrow Issues

The court said that out-of-court settlement of the intense legal and political contest over the tape recordings would be in the national interest. Even if agreement could not be reached between the parties, the judges predicted, "the issues remaining for resolution might be substantially narrowed and clarified."

The Court of Appeals did not suggest that Chief Judge John J. Sirica of the Federal District Court here should take any part in the screening of the tapes. In his ruling of Aug. 29,

<p>which was appealed by both sides, the judge ordered the President to submit the tapes to him for private examination to determine which parts, if any, could be transmitted to the grand jury.</p> <p>The court specifically avoided attempting to draw any guidelines for its proposed unofficial screening of the tapes by the President, Mr. Cox and Professor Wright.</p> <p><b>Could Excise Parts</b></p> <p>All the judges said was that the success of their plan depended on "a voluntary submission of such portions of the tapes to the two counsel as satisfies them."</p> <p>Such a solution would apparently permit Mr. Nixon to satisfy his legal position that the doctrine of executive privilege gives him the power to</p>	<p>withhold any of his private communications when he regards such action as in the public interest.</p> <p>As suggested by the court, he would be able to excise from the tapes any material involving national security and any remarks that dealt with the exercise of his constitutional duties as President. Thus, the decision as to what was privileged would remain with Mr. Nixon.</p> <p>In the bare outline it put forward, the court did not specify whether the President would physically cut privileged sections out of the tapes themselves or merely delete the sections from a printed transcript.</p> <p>Then the special prosecutor and the President's attorney for this case would examine the remaining portions of the White House conversations and</p>	<p>pass on to the grand jury all information that was relevant to its criminal inquiries.</p> <p>"If the President and the special prosecutor agree as to the material needed for the grand jury's functioning," the court said, "the national interest will be served. At the same time, neither the President nor the special prosecutor would in any way have subverted the principles for which they have contended."</p> <p>The Court of Appeals would resume consideration of the case and "discharge its duty of determining the controversy with the knowledge that it has not hesitated to explore the possibility of avoiding constitutional adjudication."</p> <p>One key to the success of the Court of Appeals com-</p>
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<p>promise would be the willingness of Mr. Cox to accept President Nixon's assurance that deleted portions of the tapes did not include any potential evidence of criminal activity.</p> <p>Some observers believed that the proposal might offer the White House a way out of the controversy, which it has been seeking. Mr. Nixon hinted at his last news conference that he might make the tapes public voluntarily if the Supreme Court upheld his right to keep them private.</p> <p>Under normal judicial procedure, courts attempt to resolve disputes on the narrowest grounds possible and to avoid, in the process, any more interpretation of the Constitution than is absolutely necessary to reach a decision.</p> <p>It is a rare occurrence, however, for a Federal appel-</p>	<p>late court to issue a memorandum advising the parties to undertake an out-of-the-court settlement to eliminate the necessity of the judges' reading a new meaning into the lean language of the Constitution.</p> <p>The seven judges emphasized that their compromise plan should not be taken as an indication of how the court would rule on jurisdiction, executive privilege or any other issue if it was ultimately required to decide the case.</p> <p>An unsigned "per curiam" statement, such as the one issued by the court today, represents the views of all the judges who heard the case.</p> <p>They are Chief Judge David L. Bazelon and Circuit Judges J. Skelly Wright, Carl McGowan, Harold Leventhal, Spottswood W. Robinson 3d, George E. Mackinnon and Malcolm Richard Wilkey.</p>
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