

New Battle In Court on Nixon Tapes

Washington

President Nixon's lawyer and the Justice Department's special Watergate prosecutor clashed yesterday in court over whether the President has the right to withhold tape recordings of his conversations from a grand jury.

After two hours of pointed argument, Chief Judge John J. Sirica reserved decision on the dispute between Mr. Nixon and Archibald Cox, the special prosecutor.

He said he hopes to hand down a ruling within the next week.

At his news conference in San Clemente, meanwhile, President Nixon said that he would comply with "a definitive order of the Supreme Court" disposing of the Cox lawsuit argued yesterday, but that he does not want to discuss it further while the issues are pending in the courts.

Charles Alan Wright, the Texas law professor who represented the President

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BATTLE ON TAPES

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before Sirica, refused to turn over tape recordings of nine White House conversations to Sirica for his private determination as to whether they contain relevant criminal evidence.

Wright argued that the President is the sole judge of whether such White House records should be made available and that no court has a right to substitute its judgment for Mr. Nixon's, particularly when there is a risk of revealing important national security information.

The President's lawyer said Mr. Nixon had told him that one of the tapes sought by Cox includes "national security information so highly sensitive that he did not feel free to hint to me what the nature of it is."

COURTS

Based on Sirica's indication of a ruling within a week, legal authorities estimated that an appeal could be carried to the U.S. Court of Appeals during September, with the case reaching the Supreme Court shortly after the justices return from their summer recess on October 1.

Arguing that the grand jury needs the relevant sections of the White House tapes, Cox said there is "strong reason to believe that the integrity of the executive office has been corrupted, although the extent of the rot is not yet clear."

Cox was critical of Mr. Nixon for permitting "testimony" by administration aides before the grand jury on White House conversations, evidence that would be "open to the defects of human recollection," while at the same time refusing to make available through the tapes "evidence not subject to that defect."

POWER

In addition, Cox took particular exception to a contention in Wright's most recent brief filed with the court that the President has the power to suspend the entire Justice Department Watergate inquiry rather than provide it with his tape recordings.

"If he wants to leave this matter to the courts," Cox declared, "he should leave it to the courts. If he wishes to

dismiss the case, if he has the power, he should exercise it, and the people will know where the responsibility lies."

JUDGE

After each lawyer presented his case, Sirica asked him a series of prepared questions, warning that the questions should not be interpreted as indicating any inclination on his part toward the position of the President or of Cox.

But reporters noted that the judge questioned Wright for 17 minutes and Cox for only eight minutes, with the queries addressed to the President's lawyer appearing somewhat sharper as well as more lengthy.

"As a practical matter," Sirica asked Wright, "isn't it likely that withholding of the tapes may thwart any further prosecutions in the case?"

Wright said he does not believe that would happen because evidence advantageous to a criminal defendant must be made available to him, under a 1963 Supreme Court decision, if it is also available to the prosecution, and the tapes would go to neither.

"Suppose," Sirica said, "any president got evidence about a criminal investigation that had nothing to do with his official duties or any confidential discussion, but he felt it was unfair to a friend of his, could a court subpoena to produce that information?"

"Under those circumstances, the President would have no privilege," Wright replied.

CROWD

The unprecedented legal challenge to a President attracted a capacity audience of more than 300 to the U.S. District courtroom, about a third of whom were newspaper, radio and television reporters.

The White House attorneys have maintained that the President is immune from both civil process and criminal indictment as long as he remains in office, with Congress free to impeach and convict him if it wishes to remove this legal barrier.

Other legal authorities disagree.

New York Times