

Sirica Rejects Plea to Join Cox and Committee Suits

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WASHINGTON, Aug. 30 — Chief Judge John J. Sirica refused today to consolidate the parallel law suits being brought against President Nixon by Archibald Cox, the Justice Department's special prosecutor, and by the Senate Watergate committee.

Both the prosecutor and the committee, headed by Senator Sam J. Ervin Jr., are asking the court to compel the President to release tape recordings of White House conversations that involved the Watergate break-in and the subsequent cover-up.

Without issuing an opinion, the Federal District Court judge accepted requests by White House attorneys and Mr. Cox that the two law suits be kept separate. The Ervin committee had asked for the consolidation a week ago in a letter to Judge Sirica, saying that "the public interest would be better served."

Delay on Indictments

But the special prosecutor argued that joining the two suits would result in delaying a final decision on his case, and, thus, the handing down of indictments by the grand jury, which he has said must await a final determination by the courts of whether the tapes can be used by the jury members.

The term of the grand jury expires in December, and Mr. Cox said it would be "tragic" if even a few weeks' delay jeopardized the jurors' ability to take evidence and consider handing down indictments.

The White House lawyers opposed the consolidation on the ground that it would not give them enough time to prepare their legal responses in the Ervin committee action.

The Cox suit was decided at the District Court level yesterday when Judge Sirica ruled that the President must turn over the tapes to him for a private inspection, to see whether they contained unprivileged material that could properly be provided to the grand jury as part of its investigation.

Suit Began Later

The Senate committee suit, which was started several weeks later, has so far produced only an exchange of legal papers between the committee

and the White House and will probably not be argued and decided for another three weeks to a month.

In his decision yesterday, Judge Sirica not only ruled that President Nixon must surrender his White House tape recordings but also rejected the President's contention that impeachment is the public's only legal protection against abuse of Presidential power.

In a footnote to the historic decision that the Federal district judge handed down yesterday, he warned that impeachment cannot deter presidents from going beyond their constitutional powers except in "the most excessive cases."

The judge declared that there were "many possible situations in which only a few may suffer the consequences of abuse, situations where impeachment is not a reasonable solution."

The Argument Sketched

Although he did not detail the argument, Judge Sirica presumably referred to the reluctance of the members of the House of Representatives to vote impeachment—the equivalent of indictment—and the Senators to convict and remove from office for anything other than the gravest charges.

Congress has not removed an official from office by the impeachment process since 1936 when Halsted L. Ritter last held his post as Federal District Judge in Florida.

The issue arose in the Watergate-Tapes case during oral argument, when Judge Sirica asked President Nixon's attorney, Prof. Charles Alan Wright, whether there was not "potential great abuse" in making the President the sole judge of whether records of his office should be made available to a grand jury.

Mr. Wright, who teaches constitutional law at the University of Texas, replied that the authors of the Constitution had been aware that the powers granted the President could be abused, as they had in the past by kings.

"For the abuse of those powers," he said, "they created a remedy, the impeachment process. So long as the President is President, they wanted him to make those decisions for himself."

Judge Sirica rejected this reasoning.