

Nixon Answers Tapes Subpoena

Washington

White House lawyers told a U.S. District judge yesterday that the courts have no power to force President Nixon to provide a grand jury with tape recordings of his conversations if the President believes it is not in the public interest.

In a 10,000-word legal brief, the President's attorneys maintained that, even if those conversations involved details of a criminal plan, Mr. Nixon has the right to withhold them to protect the confidentiality of Presidential communications.

The brief was the first detailed statement of Mr. Nixon's grounds for refusing to make public the tapes sought by Archibald Cox, the special Watergate prosecutor.

It was disclosed during the Senate Watergate hearings that the President had regularly recorded conversations in his various offices. Tapes of the conversations have been subpoenaed by both Cox and the Senate Committee. Mr. Nixon has refused to comply with the subpoenas.

The statement contended that Congress has a constitutional right to impeach the President and that the people could vote him out of office but that he is otherwise immune from the court or-

ders applicable to other citizens as long as he is in office.

The six-man Nixon defense team also contended, for the first time, that the President could not be prosecuted for any crime until after he might be impeached, convicted and removed by Congress.

This question is not directly involved in the lawsuit over the tapes but has been in the forefront of recent political speculation.

If there were any question of Presidential involvement in the crimes the special prosecutor is investigating — and the President's statements have categorically denied any such involvement — the brief stated, "This would not be within the jurisdiction of this court, the special prosecutor or the grand jury.

"The President of the United States is not above the law. He is liable to prosecution and punishment in the ordinary course of law for crimes he has committed, but only after he has been impeached, convicted and removed from office," the brief said.

In a three-minute ceremony in U.S. District Court here, J. Fred Buzhardt, special counsel to the President, filed his brief with Chief Judge John J. Sirica, who set dates for a further

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exchange of legal papers and ordered Cox and the White House lawyers to hold oral arguments before him on August 22.

Whatever the judge's ruling may be, an appeal to the U.S. Court of Appeals for the District of Columbia and then to the Supreme Court seems inevitable. Depending on the pace of judicial action, the high court could get the case in September or October.

The claim of presidential immunity from legal process raised the question of whether Mr. Nixon would abide by any Supreme Court decision ordering him to turn the tapes and other documents over to Cox and the grand jury investigating the Watergate affair.

White House spokesmen have said that the President would obey a "definitive decision" by the high court, but his attorneys argued today that he is not required to do so because the judicial branch is not superior to the executive branch.

In the brief signed by six of them, the President's lawyers made the following major contentions:

- The courts have the power to subpoena the President, but this does not create any obligation on his part to produce the information being sought.

- Presidents from the days of George Washington to the present have refused to provide information to Congress, a practice recently called executive privilege, and repeated usage has confirmed the practice as constitutional.

- The White House tapes contain "information of a highly confidential nature not relevant to this inquiry"; if they were to be released, "no person could ever be assured that his own frank and candid comments to the President would not eventually be made public."

- The President, in his

statement of May 22 on the Watergate scandal, did not agree to suspend executive privilege as to the tapes but only as to "testimony concerning possible criminal conduct."

- Mr. Nixon has not waived his right to exercise executive privilege with respect to the tapes, either by any statement of cooperation with the grand jury or by allowing them to be heard by "a very few people in and out of government, in whom he has confidence and from whom he seeks advice."

The Nixon brief declared that withholding the tapes would not prevent the prosecution of "any who have betrayed his confidence by committing crimes" because Cox should be able to produce enough other evidence.

"But the President has concluded," his lawyers said, "that even if he should be mistaken about this in some particular case, the public interest in a conviction, important though it is, must yield to the public interest in preserving the confidentiality of the President's office."

Submitting the brief in addition to Buzhardt were Leonard Garment, counsel to the President; Professor Charles Alan Wright of the University of Texas, a White House legal consultant; and three staff attorneys, Douglas M. Parker, Robert P. Andrews and Thomas P. Marinis Jr.

Judge Sirica ordered Cox, who was in the courtroom, to file an answer to the White House brief by August 13 and gave the President's lawyers until August 17 to respond to that.

Later this week, a second Watergate lawsuit will be initiated when attorneys for the Senate committee headed by Senator Sam J. Ervin Jr. (Dem.-N.C.) go into the same court seeking to force the President to provide the taped conversations to them.

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