

New Nixon Arguments Over Tapes

Washington

Attorneys for President Nixon argued yesterday that preserving the confidentiality of White House conversations is more important than convicting former presidential aides accused of criminal activities.

In a supplemental brief submitted to justify Mr. Nixon's refusal to surrender tape recordings subpoenaed by Watergate special prosecutor Archibald Cox, the attorneys also contended that the decision to put confidentiality ahead of successful prosecutions can be made only by the President.

"It is exclusively for the executive branch, and not for the courts, to decide whether other governmental interests outweigh the interest in a particular criminal prosecution," the 16-page brief said in part.

EXCHANGE

With this filing, the exchange of briefs between the White House and Cox came to a end. The stage now is set for oral arguments before U.S. District Judge John J. Sirica next Wednesday on whether Mr. Nixon can be ordered by the courts to hand over the tapes.

His defense, as outlined in yesterday's brief and an earlier 34-page memorandum, has wavered between two extremes—sometimes claiming a right to hold back evidence even if it means jeopardizing prosecutions, sometimes denying that Cox needs the tapes to press charges.

The brief filed yesterday sharply disputed the argument Cox made Monday that the President, "like the humblest citizen, has an enforceable legal duty not to withhold from the grand jury material evidence"

REPLY

"This notion that the extraction of the last ounce of flesh by the criminal process is the highest and most

important purpose of government, and that courts have the power to impose this goal on the chief executive . . . is not the law," Mr. Nixon's lawyers said.

Chiding Cox for failing to

Back Page Col. 1

From Page 1

back up his claims, the White House brief added:

"If there be any authority for the proposition that the courts have power to determine that the requirements of justice make it necessary that a prosecution continue, though the executive branch has determined to the contrary . . . , we are unaware of it (and) the special prosecutor has not cited it."

RELEVANCE

The White House also tried to play down the relevance of the tapes by challenging Cox's contention that their absence could "frustrate prosecution of wrong doers in high places."

More Watergate news on Page 7.

The brief said, "The grand jury investigation was in progress long before the existence of the tapes was known . . . there is much other evidence available to the grand jury."

Like Cox, Mr. Nixon's attorneys focused on a federal law, the Jencks Act, and a Supreme Court ruling, *Brady v. Maryland*, that require prosecutors to drop criminal cases if they are unwilling to turn over to a defendant government evidence that tends to show his innocence.

But while Cox predicted that these precedents, coupled with Mr. Nixon's stance, could mean "some possible indictments . . .

would have to be abandoned," the White House counsel said that outcome was "far from obvious."

The President's attorneys added, however, that even if Cox' assessment is correct, Mr. Nixon will not change his mind just because a judge orders him to yield.

Nowhere in the supple-

mental brief or in the first legal papers filed August 7 did the attorneys mention whether the President, if his rights are vindicated by the courts, might later submit the tapes voluntarily.

That possibility has been raised in legal circles by people who think great damage would be done to Mr.

Nixon's reputation and to the political prospects of the Republican party if he allows his former assistants to go free by holding back crucial evidence.

Similarly, the White House brief brushed over Cox' suggestion that the tapes might show that Mr. Nixon, as well as his aides, was involved in covering up the Watergate break-in. The brief, in fact, assumed Mr. Nixon's innocence.

REMARKS

The tapes may include remarks "that were part of a conspiracy . . . to obstruct justice" and evidence of perjury, the brief said, but "that does not alter the fact that the President's participation was pursuant to his duty to take care that the laws be carefully executed." He was merely trying to "satisfy himself that justice had been fully done in the Watergate affair" by sounding out his aides in the taped conversations, the brief added.

Mr. Nixon's attorneys also disputed Cox' argument that no precedent would be set by complying with the subpoena.

Citing Teapot Dome, scandals in the administration of President Ulysses S. Grant and other "lamentable instances in which persons in high office betrayed their public trust," the brief said "any suggestion that this case is unique . . . flies in the face of history." It predicted that such cases would arise again, and Mr. Nixon's action in this case could bind future Presidents.