

NIXON'S LAWYERS INSIST HE CAN END A CRIMINAL CASE

Reply to Cox Says President
Can Act if Other Interests
Outweigh Prosecution

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WASHINGTON, Aug. 17—

President Nixon's lawyers declared today that the executive branch, not the courts or a grand jury, had the exclusive right to drop a criminal prosecution when "other governmental interests" outweighed its pursuit.

In their latest legal brief in defense of the President, his attorneys dismissed the argument that Mr. Nixon had no

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right to interfere with a criminal investigation like the Watergate efforts of Archibald Cox, the Justice Department's special prosecutor, by withholding information.

Mr. Cox has asked a Federal District Court judge to compel the President to make available to a grand jury tape recordings and related White House documents, arguing that Mr. Nixon had no authority to protect possible criminal activity by refusing to make evidence available.

Deny Power of Jury

The Nixon lawyers told the court:

"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 on the basis of other governmental interests, we are unaware of it. The special prosecutor has not cited it and it would be in the teeth of the authorities here cited."

A grand jury, such as the two panels organized by Mr. Cox, "does not have power... to decide that it is more important that a particular prosecution go forward than that other important Governmental inter-

ests be protected," they said.

The other Government interest that President Nixon seeks to protect in refusing to make the tapes available is his ability to communicate confidentially with his aides to promote free discussion in the White House on major issues.

"This notion," the lawyers said, "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

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goal on the Chief Executive though he believes that to pursue it will harm other important governmental interests, is not the law."

The brief filed by the White House today is the last of a series of legal exchanges between the President and Mr. Cox before their case is argued next Tuesday before Chief Judge John J. Sirica in District Court here.

Series of Conversations

To defend the theory that confidentiality is essential to Presidential discussions, the Nixon lawyers posed a series of imaginary conversations in the Oval Office, each of which could determine whether or not a crime had been committed, some of which seemed entirely possible.

"A high constitutional officer is informed that he is under investigation by a grand jury," the brief suggested, "quite properly he discusses this with the President. Are testimony, recordings or notes about that conversation now to be subpoenaed by the grand jury making the investigation, on the theory that any incriminating remarks made by the officer would be usable against him as admissions while, if his remarks were exculpatory, they might be part of a conspiracy to obstruct justice?"

"A group of businessmen visit the President to urge him to act in a particular way in some economic decision he must make. Is the grand jury to have access to that meeting to study it for possible antitrust violations?"

"The President, in consultation with his highest advisers, determines that it is necessary to bomb enemy sanctuaries in a supposedly neutral country adjacent to a battle area but that for diplomatic reasons this bombing must be kept secret. Will those conversations go to a grand jury if it is subsequently claimed that a high official perjured himself in denying the bombing in testimony before a Congressional committee?"

Examples Indicated

The hypothetical examples suggest a recent discussion between Mr. Nixon and Vice President Agnew over the latter's

involvement in a Baltimore grand jury investigation of kickbacks and bribery; the involvement of Administration officials with the antitrust problems of the International Telephone and Telegraph Corporation, and Secretary of State William P. Rogers's testimony before Congress on the bombing of Cambodia.

The White House brief was submitted by Leonard Garment, counsel to the President; J. Fred Buzhardt, special counsel; Prof. Charles Alan Wright of the University of Texas, legal consultant, and three staff lawyers working for the President.

The timetable for resolution of the special prosecutor's suit remains uncertain, but Judge Sirica could hand down a decision within two weeks or more after the oral arguments, unless he asks for submission of more legal papers, which would necessitate further delay.

Legal authorities expect that it will probably take a month for the losing side to carry its case through the United States Court of Appeals for the District of Columbia, so that the lawsuit will probably not reach the Supreme Court until after it reconvenes on Oct. 1.