

Cox Plans Appeal for Tapes

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Watergate Special Prosecutor Archibald Cox plans to ask the U.S. Circuit Court of Appeals here to go beyond Judge John J. Sirica's ruling and guarantee grand jury access to President Nixon's Watergate tapes.

Cox signaled his intentions as the appellate court set up a rush schedule for consideration of the case. Oral arguments are to be heard Sept. 11 and final papers submitted by Sept. 14.

The chief judge of the U.S. District Court bench here, Sirica ordered Mr. Nixon last week to submit the tapes to him for private judicial review.

The decision was favorable to Cox, but Judge Sirica still held out the possibility that he might keep the recordings from the Watergate grand jury.

"If privileged and unprivileged evidence are so inextricably connected that separation becomes impossible," Judge Sirica ruled, "the whole

must be privileged and no disclosure made to the grand jury."

Mr. Nixon's lawyers, contending that surrendering the tapes even to the judge would violate the separation-of-powers doctrine, announced their plans to appeal the decision last Thursday, the day after it was handed down.

In a letter promising quick review to both Cox and White House lawyer Charles Alan Wright, the Circuit Court of Appeals disclosed yesterday that Cox also intends to appeal.

Cox refused to elaborate beyond confirming that he would ask for "the clarification or modification of the standards and procedures to be followed in determining what parts of the evidence will be submitted to the grand jury."

Judge Sirica said he would give the grand jury "only unprivileged matter" but he gave no hint of the standards he has in mind for deciding what is privileged and what is not.

In announcing its expedited

schedule, the Court of Appeals said it was aware that the Watergate grand jury that subpoenaed the tapes will come to the end of its 18-month term in early December. It said an early hearing would be appropriate to provide time for carrying the case to the Supreme Court. Both Cox and the President's lawyers were asked to submit briefs on Sept. 10, one day ahead of the appellate court hearing.

The disputed tapes involve nine of Mr. Nixon's conversations with top White House aides and campaign officials about the Watergate scandal, but according to the President's lawyers, they also include discussions of other topics, including at least one bearing on "national security."

Mr. Nixon has maintained through his lawyers that he is beyond the jurisdiction of the courts so long as he remains President and that only Congress can hold him to account through its impeachment powers.

In a related case on that is-

sue, U.S. Circuit Court Judge Otto Kerner of Chicago, who was convicted on bribery charges earlier this year, asked for a reversal yesterday on the grounds that the impeachment provisions of the Constitution should also have barred his indictment.

Filing their brief in the U.S. 7th Circuit Court of Appeals in Chicago, Kerner's lawyers protested that "criminal indictment works a de facto forfeiture of office designed to be brought about solely by the impeachment mechanism." They maintained that "where a judge is chargeable with an impeachable offense, the impeachment process must be conducted first."

The Justice Department has yet to respond to the Kerner appeal. But Attorney General Elliot L. Richardson has the same issue confronting him in connection with the Justice Department's criminal investigation involving Vice President Agnew. He said yesterday that he has yet to resolve it.