

COX ASKS JUDGES FOR TAPE ACCESS

Plea to Appeals Court Seeks Delivery to Jury With No Screening by Sirica

By WARREN WEAVER Jr.
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WASHINGTON, Sept. 7—Archibald Cox, the Justice Department's special prosecutor, asked the United States Court of Appeals today to order President Nixon to deliver White House tape recordings directly to the Watergate grand jury, without any prior judicial screening.

Mr. Cox asked the court to set aside that portion of Judge John J. Sirica's ruling of last week that would permit the judge to examine the tapes in private and delete some "privileged" material before passing them on to the grand jury.

The special prosecutor also asked the Court of Appeals for the District of Columbia to establish what standards Judge Sirica should use in screening the White House tapes if the court decides that it is proper for him to do so.

Judge Sirica's decision was also appealed to the same court yesterday by President Nixon, whose attorneys contended that the judge had now power to compel the President to make his private records available.

Arguments on Tuesday

Both appeals will be argued before the full nine-judge court on Tuesday, following the submission of briefs on Monday. Final papers will be due on Friday, and the court is expected to decide the case within a week or 10 days, clearing the way for a final appeal to the Supreme Court.

In his petition filed late today, Mr. Cox said that "the core" of Judge Sirica's ruling was "entirely correct" but that some parts of the order he issued and the accompanying opinion "may create unnecessary confusion and resulting delay" if they are not corrected on appeal.

The correct action, the prosecutor said, is "the overruling of the claims of Presidential immunity and absolute prerogative to withhold evidence."

When the only White House claim of privilege is based on the need for confidentiality of Presidential conversations, Mr. Cox said, "the need of the grand jury for evidence in the impartial administration of justice is greater than the public interest served by secrecy."

As a result, he continued, Judge Sirica should have "overruled the claim as a matter of law and, since no other claim of privilege applicable to portions of the tapes or papers was presented, should have ordered such nonprivileged conversations turned over to the grand jury."

The prosecutor also argued that "the President has waived any confidentiality of the conversations that he otherwise might have been able to assert" by permitting his aides to testify about them, eliminating any need for private screening of the tapes by Judge Sirica.

Irrelevancy Disputed

Mr. Cox said that Judge Sirica's opinion could be interpreted to indicate that he planned to screen the White House tapes for relevant material, withholding any comments that he found irrelevant.

Evidence cannot be withheld from a grand jury because it may be irrelevant, the prosecutor said. If the Court of Appeals rejects this view and authorizes the deletion of "utterly irrelevant portions" of the tapes, then attorneys from Mr. Cox's staff should be present to advise the judge, he added.

"The District Court is not in a position to have accurate knowledge of the possible relevance of all portions of the tapes and documents," he declared, and would need guidance as to parts "which might superficially seem irrelevant to anyone not entirely familiar with the case."

When Judge Sirica announced his decision on Aug. 29, a Cox spokesman said, "We are very pleased." Subsequently, however, a closer examination of the judge's decision prompted the special prosecutor to announce on Tuesday that he would submit "suggestions for clarification or modification" to the court of appeals.

The papers filed with the court today, in the form of a petition for mandamus to nullify Judge Sirica's decision, indicated even less satisfaction with the ruling. They asked that the judge's power of review over the Watergate tapes be eliminated altogether, or at least regulated.

Mr. Cox said that if questions as to the judge's power to screen the tapes and the standards he must follow if he does are not resolved promptly the Watergate grand jury may be unable to complete its work before its term expires on Dec. 5. This, he said, would create a "serious and unnecessary delay in the administration of criminal justice."