

Nixon's Plea

To Court On Tapes

Washington

President Nixon's lawyers told the U.S. Court of Appeals yesterday that an order requiring the President to release his tape recordings to Watergate-related conversations will be a long step "toward government by judiciary."

The brief, filed in advance of oral arguments today, nullify the August 29 order asked the appeals court to by Chief U.S. District Judge John J. Sirica that the tapes be turned over to him for screening what portions the Watergate grand jury can hear.

Sirica filed his own answer with the court and responded also to a cross petition by special Watergate prosecutor Archibald Cox. The prosecutor asked that the judge's order be changed to produce the tapes in their entirety to the grand jury.

Mr. Nixon's lawyers argued that Sirica's decision, if allowed to stand, would do great damage to the constitutional principle of separation of powers.

"Today it would be the presidency that would be lessened and crippled in its ability to function," said the

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brief by the President's attorneys. "Tomorrow it would be Congress, for if presidential privacy must yield to a judicial determination, it is difficult to think of any ground on which congressional privacy could continue to stand.

"Surely this is far too high a price to pay for the atonement of Watergate."

'ALONE'

The White House argued in its 95-page brief that "it is the President alone who has discretion to determine whether the public interest permits the tapes' produc-

tion and that this discretion cannot be reviewed or overridden by a court or by Congress."

Cox, in a brief half the length, quoted a 1952 decision by the appeals court that "some authority must determine whether a specific act is within the official capacity of the executive and so immune from interference; that authority is the judiciary."

Sirica, named as respondent in both petitions, said he relied on decision as far back as 1803 that courts may decide what evidence must be produced.

Sirica said he was confronted with a difficult decision in the historic case and "attempted to walk a middle ground required," by insisting on a private review rather than simply ordering the entire tapes turned over to the grand jury.

The appeals court said earlier it would give the case priority so that any appeal from its decision can go to the U.S. Supreme Court when it returns from recess on October 1.

The White House called Sirica's ruling "utterly without precedent" and said:

"As recently as a year ago such a ruling would have been unthinkable . . . The change in the climate of legal and popular opinion . . . is the result of Watergate.

"The hydraulic force arising out of that sordid and unhappy episode has led men of great distinction to suppose that the Constitution means something different today than it meant throughout all of our history . . .

"It is no exaggeration to say that the revelations of Watergate have so sharpened the public appetite for more revelations that the claim of a Presidential right and responsibility . . . to maintain the confidentiality of presidential conversations must run the gamut of a broadly held popular sentiment that the claim is probably unjust and is therefore presumably unsound."

FRAMERS

The White House brief, like Sirica's opinion, traced the powers of the President to the discussions of the issue by the framers of the Constitution.

"To further argue, as we shall, that the President is not subject to compulsory process from the courts," Nixon's lawyers said, "is not to suggest in the slightest that the President has the attributes of a king . . .

"He is immune, unless and until he has been impeached, from the sanctions of the criminal law. Impeachment is the device that ensures that he is not above justice, and trial of impeachments is left to the Senate and not to the courts."

Associated Press