

Nixon Lawyers, in Appeal, Contest Release of Tapes

President's Discussions of Watergate Crimes With Aides Held Exempt From Jury's Scrutiny—Cox Files Brief

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WASHINGTON, Sept. 10—President Nixon's lawyers said today that any discussions of Watergate crimes that he might have held with White House aides were in line with "his constitutional duty to see that the laws are faithfully executed" and thus exempt from any grand jury scrutiny.

The contention that the President has no responsibility to disclose to a grand jury the tape recordings of these conversations was made in a 95-page legal brief filed with the United States Court of Appeals for the District of Columbia.

The White House lawyers asked the appellate court to nullify the ruling Aug. 29 of Judge John J. Sirica that the tapes must be submitted to him for a private screening of what evidence in them can go to the Watergate grand jury.

Cox Also Files Brief

Archibald Cox, the Justice Department's special prosecutor, also filed a brief asking the court to order the tapes delivered directly to the grand jury, without any judicial inspection, or to provide Judge Sirica with some specific guidelines as to what he could properly delete as privileged information.

Under a relatively unusual legal procedure, both the Nixon and Cox actions were directed against Judge Sirica, so the judge, with the assistance of two lawyers, also filed papers with the Court of Appeals, defending his decision against attack from both parties.

Judge Sirica said that he had no objection to the special prosecutor's suggestion that the appellate court provide him with guidelines for screening the tapes, but he maintained that both parties should have made a "usual and normal appeal" of his decision instead of suing him to set it aside.

'Confidentiality' Called Key

The President, his attorneys maintained, is not trying to protect his former aides but "the right of himself and his successors to preserve the confi-

dentality of discussions in which they participate in the course of their constitutional duties, and thus ultimately to protect the right of the American people to informed and vigorous leadership."

"The President is keenly interested in having the truth of Watergate emerge and in having those who may have committed crimes dealt with appropriately by the law," the White House lawyers declared.

"But he is also determined that it is more important that the privacy of the Presidency be preserved than that every possible bit of evidence that might assist in criminal prosecutions be produced. The judicial branch is absolutely without power to reweigh that choice or to make a different resolution of it."

The Nixon lawyers charged that Judge Sirica's decision "was reached by casting the Constitution in the mold of Watergate rather than by applying constitutional practices and restraints to the facts of Watergate."

A Detailed Document

The longest document yet filed in the historic case, the White House appellate brief included substantial excerpts from earlier papers, detailed historical review of the drafting of the Constitution and the 1807 subpoenaing of Thomas Jefferson and references to 50 court decisions and 60 books and articles.

In his 46-page brief, Mr. Cox called it "intolerable" that the President would invoke executive privilege to keep the tape recordings from the grand jury but permits his aides to testify

fully as to their recollection of the same conversations.

The Cox brief described the President as insisting "that any evidence given must be subject to the defects of human recollection and to the charge that the witness is lying." It continued, "He is unwilling to permit the use of the one virtually incontrovertible form of evidence to supplement faulty recollections, to resolve issues of credibility and to bring us closer to the truth."

The special prosecutor told the appeals court that Mr. Nixon could not claim any privilege with respect to information on the tapes that were relevant to the grand jury investigation because "the predominant public interest" makes law enforcement more important than Presidential privacy.

Since no privilege can apply, he continued, there is no need for Judge Sirica to screen the tapes to delete privileged material. They should go directly to the special prosecutor, Mr. Cox maintained, who would then submit relevant portions to the grand jury.

But if the Court of Appeals upholds Judge Sirica's authority to screen, Mr. Cox added, he should be present with the judge at the otherwise private session "to advise and aid the court in determining what matters are pertinent to the grand jury's investigations."

Defending his decision before the Court of Appeals, Judge Sirica said that his assumption of jurisdiction had been based on "nature, deliberation and consideration of the authorities" and that he had power to enforce a subpoena served on the President and to conduct a private inspection of the tapes.

But Judge Sirica said he would "welcome any assistance afforded him during any further proceedings in the District Court with respect to establishing guidelines, standards and procedures." He did not respond to Mr. Cox's suggestion that the special prosecutor participate in any screening.