

Legal Muddle Over Tapes

Washington

The controversy over grand jury access to secret White House tape recordings was snared in legal uncertainty yesterday as the case was argued before the U.S. court of appeals here.

Two members of the court disqualified themselves, and the remaining seven judges directed a running fire of questions for three hours at Archibald Cox, the Watergate special prosecutor; at Professor Charles Alan Wright, the President's lawyer, and at two attorneys representing U.S. District Judge John J. Sirica, who were defending his decision of August 29 that Mr. Nixon give him the tapes.

Many questions went unanswered, indicating that both the White House and the special prosecutor have had difficulty interpreting Judge Sirica's ruling and how it would be put into effect if the courts ultimately uphold it.

Even Sirica's own lawyers did not seem entirely clear as to what his opinion means.

DELAY

As a result, the court of appeals may have to spend more time reaching a decision than had been anticipated, making fairly extensive changes in the district court ruling.

Originally a decision had

and Wright or their legal aides because they would have much more knowledge than he as to what information might prove relevant.

The President's lawyer, Wright, called the Sirica ruling "a non-decision" and revealed that the White House had considered making a motion for reconsideration and clarification in the district court two weeks ago, rather than appealing, because of the legal uncertainty.

LAWYERS

Sirica was represented in the court of appeals by two law professors from American University, Anthony C. Morella and George D. Horning Jr., because he was technically being sued by the President and the special prosecutor, both of them asking the court to nullify his decision.

Morella denied a pub-



AP Wirephoto

MR. AND MRS. CHARLES WRIGHT
The President's lawyer was on his way to court

appeared possible by the end of next week.

Questioning from the bench, while it covered a broad area, raised consider-

able doubt that the appellate court would reverse Sirica and find that President Nixon has an absolute legal privilege to keep the Water-

lished report that Sirica had agreed to Cox' request for admitting a representative of the prosecutor to any screening session.

All Sirica had said, his lawyer declared, was that he would welcome the court of appeals providing him with screening guidelines, as Cox had suggested.

The two judges who did not sit on the case were Roger Robb, a Nixon appointee, and Edward Allen Tamm, who was named to the court by President Lyndon B. Johnson.

Robb reportedly disqualified himself because a former law partner of his had worked for the Committee for the Re-Election of the President.

No reason was given for Tamm's action.

Generally, Cox and Wright repeated the legal arguments they had made in the district court and amplified in briefs filed with the court of appeals Monday.

gate tape recordings secret, even if they contain criminal evidence.

On the other hand, the atmosphere of judicial uncertainty was so pervasive that there was little evidence the judges would comply with Cox' request to order the tapes submitted directly to the grand jury, without any intermediate inspection by the judge.

Last week Sirica ordered the President to submit to him the nine tapes Cox was seeking, for an inspection "in camera," to see what portions of them should be kept secret as private presidential communications and then to relay the rest of the information to the grand jury.

Among the ensuing problems, however, was the fact that Sirica appeared to rule that some form of executive privilege exists but he did not define it and thus did not say what standards he would apply in reviewing the tapes.

TERM

In addition, as Judge Harold Leventhal pointed out during yesterday's arguments, the judge did not define what he meant by "in camera."

Ordinarily, the term refers to acts by a judge in complete privacy, without any representatives of the parties in a case present.

If Sirica's proposed screening was designed to eliminate irrelevant material, Leventhal observed, he might want to admit Cox