

Nixon's Legal Position

--Details of His Offer

Washington

The White House will contend, in a written statement to be delivered to Judge John J. Sirica today or tomorrow, that the President's plan to give the court a summary of the contents of the Watergate tape recordings "satisfies" the judge's order that President Nixon turn over the tapes themselves.

The statement is entitled "response of the President" and is purely "advisory," Leonard Garment, the President's counsel, said yesterday.

"It will describe the procedure that we intend to undertake," Garment said. It includes the role that Senaot

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John C. Stennis had agreed to play in listening to the tapes and "authenticating" the summary of their contents. The document will also advise the court that this procedure will probably take two to three weeks to complete.

According to Charles Alan Wright, the Texas law professor who has been directing Mr. Nixon's defense in the legal battle over the tapes, the summary will describe the contents of the tapes in the following manner:

When the conversations on the tapes concern matters such as foreign policy, the summary will simply say so, saying, for example, "the parties discussed foreign policy." Where the conversation turns to Watergate, the summary will give a "third person transcript," saying, for instance, "Mr. Nixon said, '...'"

In some instances, Wright said, the Watergate-related comments will be paraphrased, so that the summary will read, "Mr. Nixon said that . . ."

SATISFY

"We think it will satisfy every legitimate need" expressed in Sirica's order,

Wright said, adding that the White House hopes the judge will rule that "it is an adequate compliance."

When Mr. Nixon announced Friday night that

he would not appeal the Court of Appeals' recent decision to uphold the Sirica order and that he would nevertheless not hand over the tapes but instead provide a summary, many legal experts concluded that the President was thereby defying the court order.

Archibald Cox came to the same conclusion, and said that he could not accept the "compromise." For this he was fired Saturday.

The historic clash between the President and the judiciary is thus placed before Sirica, the 69-year-old chief judge of the U.S. District Court here, who first gained national prominence when he presided over the trial last winter of defendants charged with the Watergate break-in.

FACTS

It was largely his insistence for more facts than he was getting at that trial, combined with coverage of the Watergate affair, that led to the renewed investigation of the break-in and disclosure of the massive cover-up of the facts behind the break-in.

And despite the White House's contention that the Nixon summary plan complies with Sirica's order, there was great doubt yesterday that the judge would agree.

The judge was out of town for comment. But legal experts for the day and unavailable

parts here and elsewhere in the country were speculating as to the possible courses he could follow.

OPTIONS

Legally, he has a number of options.

He could drop the matter, deciding that Mr. Nixon has complied with the court's request.

He could hold the President in contempt of court, for instance, under Rule 42 of the federal rules of criminal procedure.

The judge could also set a fine, on a day-by-day basis, pending the President's compliance with the order, a procedure that is often followed when a court has ordered a labor union to comply with an order but the labor union refuses.

To collect the fine, the court could order the President's property to be attached.

JURY

In addition, he could appoint an attorney to represent interests of the grand jury — or even rule that Cox is not relieved of his past duty to represent the jury. Under law, the judge is technically in charge of the jury.

The judge can also disband the jury, of course. But, assuming that he doesn't, the grand jury had some options of its own. It can continue to investigate; it can also issue reports.

Sirica can lend his power to the grand jury, in the sense that if the jury wants a subpoena issued, the judge can approve it.

TRADITION

Lately, grand juries have often been thought of as "rubber stamps" for prosecutors, voting indictments whenever the prosecutors want. But there is another and far older tradition — more evident on the state level than on the federal — of "runaway grand juries," juries that insist on continuing an investigation even after the prosecutor has decided to call a halt.

The grand jury may not actually indict anyone — or, more precisely, cause anyone to be prosecuted — without the agreement of the prosecutors. The justification for this, according to Leon Friedman, an American Civil Liberties Union counsel who has written a study on the general subject, is that prosecution has been considered a discretionary power of the executive branch of government.

But the jury can investigate without a prosecutor's approval. It can report on its investigation. And the judge can make the report public.

There was a large group of people yesterday who thought that all three options were good bets.

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