

NYTimes

White House Will Contend  
That Tapes Plan Satisfies  
Judge's Order

OCT 22 1973

NYTimes

# Sirica to Get Statement On 'Summary' Method

OCT 22 1973

By LESLEY OELSNER  
Special to The New York Times

WASHINGTON, Oct. 21—The White House will contend, in a written statement to be delivered to Judge John J. Sirica tomorrow or Tuesday, 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 Mr. 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 today.

"It will describe the procedure that we intend to undertake," Mr. Garment said, giving the role that Senator John G. 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.

## The Method of Description

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, Mr. Wright said, the Watergate-related comments will be paraphrased,

so that the summary will read, "Mr. Nixon said that . . ."

"We think it will satisfy a very legitimate need" expressed in Judge Sirica's order, Mr. Wright said. So, he said, the White House hopes that the judge would rule that "it is an adequate compliance."

## Defiance Seen

When Mr. Nixon announced Friday night that he would not appeal the recent decision by the Court of Appeals upholding the Sirica order and that he would nevertheless not hand over the tapes but provide a summary instead, many legal experts concluded that the President was thereby defying the court order.

Archibald Cox, the special



Associated Press

Melvin R. Laird talking to reporters after appearing on Meet the Press in Washington yesterday.

prosecutor, came to the same conclusion and said that he could not accept the "compromise." For this, he was ousted yesterday.

To some legal observers, the departure of Mr. Cox from the scene meant that Mr. Nixon could make the legalistic argument that he was not really defying the law because none of the persons still involved in the original lawsuit wanted the court order enforced.

One problem with this argument, of course, would have been that Judge Sirica was also a party to the case—he was a defendant in the appeal of his ruling taken to the United States Court of Appeals.

Mr. Wright, asked whether the White House had considered making this argument, said that it had received no serious consideration. It would have appeared too "shabby," he said.

The historic clash between the President and the judiciary is thus placed before Judge Sirica, the Chief Judge of the Federal District Court here, who first gained national prominence when he presided over the trial last winter of defendants charged with the Watergate break-in.

## Insistence on Facts

It was largely his insistence

on more facts than he was getting at that trial, combined with news 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 Judge Sirica's order, there was great question today that the judge would agree.

The judge was out of town for the day, showing his teenage daughter a college that she is considering attending, and so unavailable for comment. But experts here and elsewhere in the country were speculating as to the possible courses he could follow.

Legally, he has a number of options.

He could hold the President in contempt of court, for instance, under Rule 42 of the Federal Rules of Criminal Procedure. The rule states that the judge must give oral notice, in court, of a hearing on the matter, but that the defendant need not be present to hear the notice. It is sufficient, the rule says, that the court appoint an attorney for the purpose of hearing the notice.

## Could Set Fine

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 union refuses.

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

In addition, he could appoint an attorney to represent interests of the grand jury—or rule that Mr. 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. But, assuming that he does not, the grand jury has some options of its own. It can continue to investigate; it can also issue reports.

## 'Runaway Grand Juries'

Judge 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.

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 Lon 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 that report public.

## Mitchell-Stans Trial

As a result of the White House tapes dispute, a Federal District judge here was still considering yesterday the prosecution's request to postpone the trial of former Attorney General John N. Mitchell and former Commerce Secretary Maurice H. Stans, who are charged with obstructing a Federal investigation in return for a secret \$200,000 cash contribution to President Nixon's 1972 election campaign.

The trial is scheduled to start tomorrow, but the prosecutors have asked Judge P. Gagliardi for a postponement until Jan. 7 to provide time to resolve the dispute over the tapes, which include an April 15 conversation in which the former White House counsel, John W. Dean 3d, reportedly told the President that he was seeking immunity from prosecution in return for testimony against Presidential aides.