SFChronicle

Legal Fallout From the Released Transcripts

MAY 1 1974

Fuller story in NYT, p. 39

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New York Times

Washington

Whatever else President Nixon might have accomplished or failed to accomplish in releasing his carefully edited transcripts of Watergate conversations, he has opened up a vast trove of evidence that may affect a number of criminal cases now pending in the courts.

His action might also lead to additional proceedings not previously contemplated, criminal as well as civil.

A News Analysis

It might lead as well to further proceedings against Mr. Nixon himself — to disbarment proceedings, for instance, whether or not Mr. Nixon is impeached, or even, some legal experts said yesterday, to civil suits based on defamation or libel.

The first time that the release of the transcripts might affect another legal proceeding is tomorrow.

Mr. Nixon must respond, in federal court, to a Watergate prosecution subpoena for tapes and other materials relating to 64 White House conversations involving the Watergate cover-up.

James D. St. Clair, the President's chief defense counsel, said yesterday that the White House plans to ask the court to quash the subpoena.

St. Clair said that the prosecution had not shown an adequate need for the materials, and that the subpoena represented an "unwarranted incursion" into the confidentiality of presidential communications.

This resembles the arguments often made by the White House in the past — that because of the need to protect confidentiality of White House conversations, materials relating to those conversations were protected by "executive privilege" and were not vulnerable to subpoena.

Yet to many lawyers, Mr. Nixon's action yesterday destroyed the argument. For in making public the transcripts, he obviously removed them from the confidential category — and he did it voluntarily.

The trial of the six defendants charged with the burglary of the office of Daniel Ellsberg's former psychiatrist is scheduled to begin in June; the transcripts released yesterday might have an impact in that proceeding as well. One conversation included in Mr. Nixon's collection could be interpreted as a flat contradiction of a key defense contention in the Ellsberg break-in case.

Those defendants contend that they were motivated by legitimate concerns of national security. The transcripts indicate, however, that the matter came up during a conversation between Mr. Nixon and two of his aides on March 21, 1973, and that Mr. Nixon commented thus on the White House involvement in the break-in. :I don't know what the hell we did that for!"

The presidential release yesterday might also affect the outcome of the forthcoming trial if the seven defendants charged with the Watergate coverup — although in this case, the effect may be harmful to the prosecutor rather than to the defense. For John W. Dean III, the President's former counsel, is expected to be a key prosecution witness in the coverup case. And the material released by Mr. Nixon yesterday — particularly the 50-page legal brief attached to the transcripts — tend to portray Dean as less than forthright.

Dean's credibility, of course, has also been cast into some doubt in the wake of the acquittal in the Mitchell-Stans trial in New York, in which he was a key prosecution witness. On the other hand, much of the testimony that Dean has given in previous proceedings has been corroborated.

Both the coverup trial and the Ellsberg break-in trial might also be affected by the heavy publicity that is already being generated by the Pressident's transcripts.

The law is firmly established that defendants are entitled to trial by an unbiased jury; pre-trial publicity can sometimes prejudice jurors.

The law thus requires courts to take steps to mitigate the prejudicial effect or, if that is impossible, to dismiss the charges. Yale Kamisar, a constitutional expert at the University of Michigan Law School, noted yesterday that dismissal is almost never used as a remedy. He added, though, that the defendants would probably be able to get a six-month delay in the start of their trial.

And as every court buff knows, defense attorneys like as much delay as they can get — on the off-chance that witnesses' memories may grow hazy, for instance, or that witnesses may change their minds about testifying or perhaps even die.